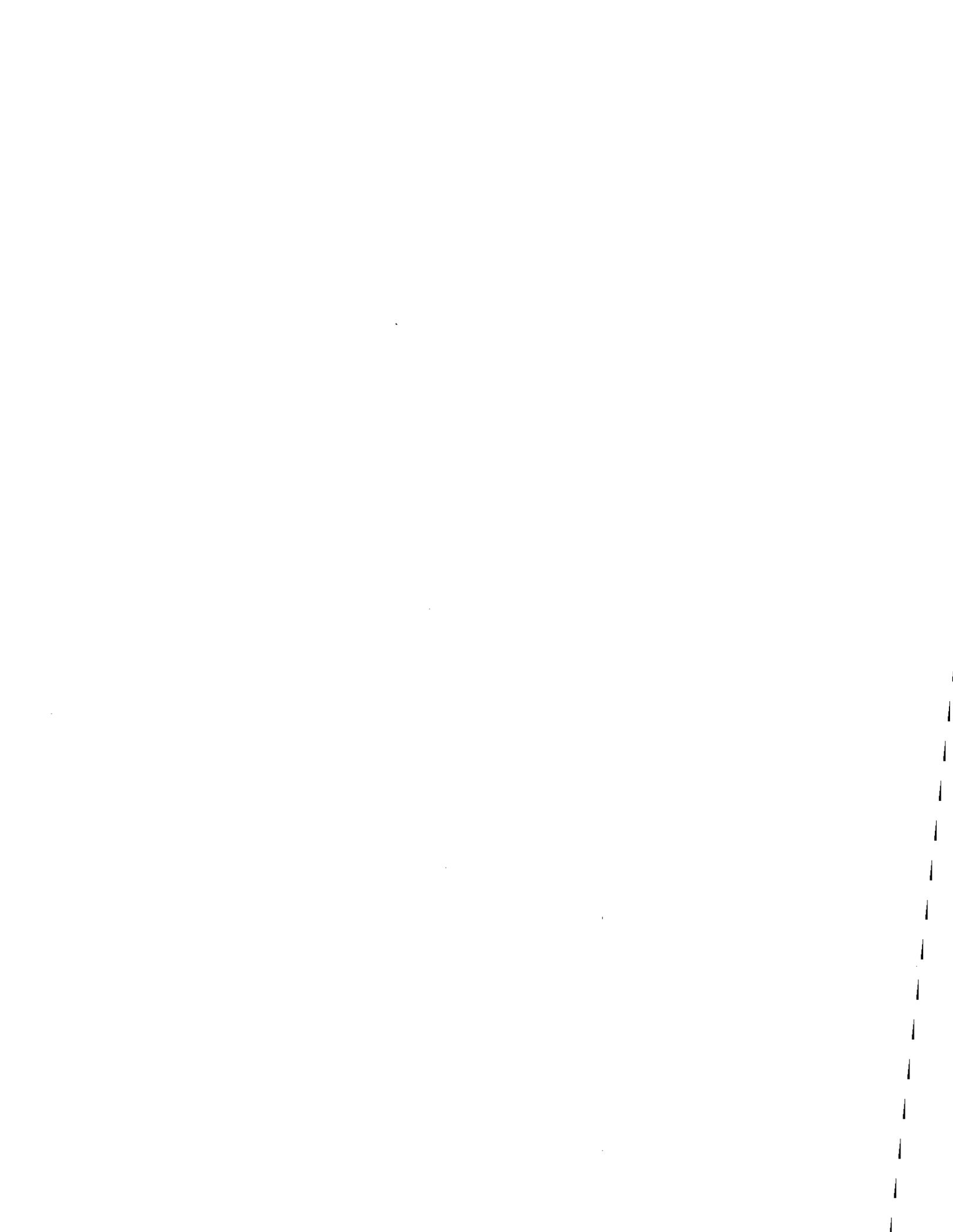


#13

# Correspondence



April 10, 2013

Marshall Spear  
373 Bayview Street  
Yarmouth, ME 04096

New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950



Dear Groundfish Oversight Committee,

I'm writing in regards to the subject of opening the Western Gulf of Maine Closure to draggers. I heavily disagree with opening this closed area to bottom trawling. Closure areas were put in place to protect spawning grounds; Jeffrey's ledge is still a spawning area and should always remain closed. As someone who has lobstered in this area for over 8 years, I continuously see spawning groundfish in my traps and I am extremely concerned that opening this area will deplete the resource. If the resource is to recover, several things need to happen: Known spawning grounds need to be protected and remain so permanently. Secondly, over-efficient and in discriminatory means of catching ground fish need to be put in check and phased out. Lastly, the industry needs to be run from a scientific standpoint, not a political or economic one.

The Gulf of Maine groundfish industry has serious underlying problems. Opening a closed area to fishing is not a solution these problems, it's essentially putting a Band-Aid on a gushing wound and it will not help. Allowing boats to tow in an area that's been closed for the last fifteen years might allow them to make extra money for a few weeks or months but it won't be before all the progress that has been made by closing the area becomes undone. The fish population will be wiped out, and the fisherman will be in worse trouble than they were in before. Opening a closed area is not the answer to saving the groundfish industry. Additionally opening up this area will create turmoil between draggers and lobsterman. Lobsterman like me would be seriously impacted by opening these closed grounds as this would eliminate key lobstering grounds. In the US we have parks to preserve nature and wildlife, there's no reason we shouldn't have such measures in place protecting our oceans and fisheries.

The future of the resource had become uncertain, and cannot be put in jeopardy for the short term benefit of those who wish to exploit it. It took decades for those who plied to the gulf of Maine's waters to deplete the resource, and it will take great patience on the behalf of fisherman, scientists, and managers to allow stocks to rebuild to a sustainable level. These closed areas provide a great basis for comparison against areas that do get fished, and provide examples of "what could be" if left undisturbed. My father Willis Spear who has fished the gulf of Maine for over 40 years and bore witness to the destruction of the groundfish industry told me "We don't inherit a resource we borrow it from our children" I write this letter to you not in concern for my own well-being but that of our children and their children, so there might be something for them in the years to come. The fisherman of today had the chance to manage the resource wisely and did not, there is no reason to put the future of the resource and that of future generations of fisherman to try and make an extra buck. Opening one of the last known refuges for spawning groundfish in the gulf of Maine only runs of chance of destroying these futures, ones that we are here to protect.

Thank you for your time and consideration on this matter.

Kindest Regards

Marshall Spear & Jed Spear

cc: FH (4/11)





New England Fishery Management Council

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

April 9, 2013

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

RE: Framework 48 to the Northeast Multispecies Fishery Management Plan including an Environmental Assessment

Dear John:

Please accept the re-submission of Framework 48, which has been modified after consideration of changes recommended by your staff. Enclosed you will find eight copies and five CDs of Framework 48 to the Northeast Multispecies Fishery Plan.

I have attached a table that summarizes the issues brought to our attention, and our response to those issues. There are a few instances where we have not fully adopted the suggested changes. Most notably, I believe that it is important to keep it clear that there are specific Council proposals that are identified in this combined management action/NEPA document. It is essential to make it clear what measures in the document are subject to approval, disapproval, or partial approval by the Secretary of Commerce, as authorized by Section 304(a). If the document is drafted as if it is only a NEPA document, this can be unclear because the use of the terms "preferred alternative" and "proposed action" can have different interpretations under NEPA and the Magnuson-Stevens Act. As a result, the changes that your staff proposed for the Executive Summary have been modified. This issue may warrant further discussion as it applies to all of our management actions.

The Council deeply appreciates the assistance of NERO and NEFSC staff in completing this action. Please call if you have any questions.

Sincerely,

Thomas A. Nies  
Executive Director

enclosures

### Substantive Comments

Section	Page	Comment	NEFMC Response
1.0 Executive Summary	4, 5, 6, 7	Where the terms “if the proposed action adopts preferred alternatives” are used, please replace with the language used in Framework 47 “if NMFS implements the Preferred Alternatives...”	Text modified to address concern but not as suggested.
1.0 Executive Summary	8	Change “significant impacts” to “important impacts” in the second sentence of the Impacts of Alternatives to the Proposed Action	Done.
6.2.1.10 GB yellowtail stock status	119	GB yellowtail stock status is incorrect – should be overfished and overfishing.	Done.
6.4.4	161	May need to update sturgeon text with text to be provided by SFD staff.	Done.
Table 63, Figures, 99-101	341-348	Copy and paste error of swept area abundance and biomass outputs. Fill in with correct tables provided by Sean Lucey.	Done
7.1.2.2.1 Bio impacts analysis of coverage level no action	411	Says “18 percent” NEFOP coverage, but should be 8%.	Done.
7.1.2.2.3 Bio impacts analysis of coverage level option 3	421	In the third paragraph under Sub-option A (starts with “Sub-option A2 would apply...”, it says Sub-option A2 would lead to lower coverage rates than the No Action, but this is the opposite of what was stated in the No Action impacts analysis on page 411. I think the correct relationship is what was stated on page 411: A1 results in lowest coverage rates, then No Action, then A2. Note that would change the impacts in the rest of this paragraph (would be inverse of what is stated).	Text changed to reflect likely result is coverage as higher under no action, then a2, then a1. This is difficult to evaluate since the Council has never received an explanation of how coverage rates are determined. The document provided for the 2013 coverage rates is not in sufficient detail to answer this question.
7.2 EFH impacts analysis	466-479	No action analysis is lacking throughout this section (no action is described, but not	Done

		analyzed). Need to add impacts analysis and comparison of other alternatives to the no action.	
7.3.2.3, 7.3.2.5, 7.3.2.7 Protected species impacts analysis of DSM, GB yellowtail measures, and AMs	488, 489, 492	In the Option 1 No action, need to briefly explain why the measures are not expected to have impacts to protected species.	Done.
7.4.2.2.3 Economic impacts of SNE/MA windowpane sub-ACL option 3	496	Under "Groundfish fishery" Option 2 is mentioned in the second paragraph in this section, but this should be Option 3. Also needs comparison to Options 1 and 2. Under "Scallop fishery" impacts, need to explain why there are no expected impacts compared to other options.	Done.
7.4.2.3.1 Economic impacts of GB yellowtail sub-ACL option 1	497	Under "Groundfish fishery" impacts, Edit the third sentence to: "However, there is an existing cost to both the multispecies and scallop fisheries resulting from the uncertainty associated with setting the scallop sub-ACL annually that is not realized under option 2 or 3.	Done.
7.4.2.4.1 and 2 Economic impacts of GB yellowtail sub-ACL for small mesh fishery option 1	504	Under no action, need to explain impacts of no action compared to option 2. Can borrow comparative language from Option 2 analysis.	Done.
7.4.3.1.2 Economic impacts of revised recreational AMs option 2	505	Under option 2, clarify that impacts are compared to Option 1, e.g., "This may increase operating costs <i>[compared to the no action].</i> "	Done.
7.4.3.3.1 and 3 Economic impacts of minimum fish sizes	508	Under no action, need to explain impacts of no action compared to option 2. Can borrow comparative language from Option 2 analysis. Also, Option 3 is incorrectly identified as a	Done.

		preferred alternative.	
7.4.3.4.1-3 Economic impacts of GB yellowtail measures	524	Under no action, need to explain impacts of no action compared to option 2. Clarify if impacts of Options 2 and 3 are relative to each other or the no action. Also, Option 3 is incorrectly identified as a preferred alternative.	Done
7.4.3.6 Economic impacts of commercial fishery AMs	546-552	Under no action, need to explain impacts of no action compared to option 2. Need comparison of alternatives to each other throughout this section.	Done.
7.4.3.7.1 Economic impacts of trawl gear stowage option 1	552	Under no action, need to explain impacts of no action compared to option 2. Can borrow comparative language from Option 2 analysis.	Done
8.2.1 Environmental Assessment (Other applicable laws section)	600-601	Please change the introductory language of this section to the more general language used in FW 50.	Done
8.2.2 FONSI	606	FONSI statement says FW 47, need to update.	Done.
8.3 ESA	609	ESA determination still says FW 47.	Done.

### Editorial Comments

Section	Page	Comment	
3.1 Background	38	At the end of the background section, briefly mention FW 50 and that it is being implemented concurrently.	Done.
3.3 History of FMP	40	Please update the summary with the results of the Amendment 16 lawsuit to make clear Amendment 16 measures still apply.	Done.
4.1.3.2 Option 2 scallop fishery GB yellowtail sub-ACL	45	The second paragraph responds to a criticism of Option 2, but it's not clear whether this was as a result of public comment, etc. Re-word to be a clarification of the method rather than a response to public comment/criticism.	Done.
4.2.3.2	56	The wording about the evaluation of sector	Done.

		exemption requests re: min mesh size is a little awkward because it is not clear whether this is the Council's or NMFS' expectation. Could try to clarify that evaluation of min mesh exemptions is the Council's expectation rather than NMFS being pre-decisional about future sector exemption requests.	
6.2.3 Stock status trends	126	20, not 19 groundfish stocks (remove # altogether so don't have to continually update)	Done.
6.2/6.3	121-124 and 132-135	Non-allocated stocks appear in both regulated species (121-124) and non-allocated sections of the AE (132-135). Should remove from non-allocated/bycatch section.	Done.
6.3 Intro to non-allocated stocks and bycatch section of AE	129	Add sentence to explain why scallop fishery, fluke, whiting, squid information is included in the AE (like did for lobster).	Done.
6.4.2	143	Remove sentence specific to sectors, already describes interaction of multispecies fishery.	Done.
6.4.2.2	146	Cross reference needs to be updated, if possible	Done.
6.4.3	149	Update cross reference, if possible.	Done.
6.4.3	150	Remove sector-specific language.	Done.
6.4.4	152	Update Waring reference to 2012, and clarify that shows bottom longline gear used in multispecies fishery (as opposed to pelagic longlines).	Done.
6.4.4 Table 20	155-156	Cetacean is misspelled in the table.	Done.
6.5.8	173	References "Appendix B," which FW 48 doesn't have. Reference sector EA here, or just reference NEFSC website?	Done

6.5.12.1.1	198	Intro to realized CVs says A16 adopted ASM for sectors and the common pool, but there are no ASM requirements for the common pool. NMFS implemented its own ASM for the common pool starting in 2010, but may not continue.	Reference to common pool removed.
6.5.13	211-213	Figure 26, Tables 48-51 are about the common pool but are in the scallop fishery description section. Should be in Section 6.5.11, if possible.	Tables moved.
6.5.14	215	Update table reference, looks leftover from sector AE.	Done.
Figure 68	268	Table title says haddock, but pretty sure this is cod.	Done.
Figure 108	355	Figure title typo, supposed to say Federal "lobster" permits	Done.
6.6.3.2	356	Seems to be a leftover note-to-self, need to fix cross reference if possible.	Done.
7.1.2.2.3 Bio impacts analysis of coverage level option 3 on other species	424	In the last paragraph of this section it says "...they would not be likely to be less than that needed to meet requirements for accuracy specified by the SBRM." Should say precision?	Done.
7.1.2.2.4 Bio impacts analysis of coverage level option 3	425	Clarify in final sentence why it is not possible to predict what result of reduced/no federal funding for ASM would be. I think this is because it is not clear if NMFS would allow people to fish without ASMs, or only to the extent that ASMs are available, so could just say that.	Done.
7.2 Intro to EFH Impacts	469	Change "status quo" to "no action alternative"	Done.



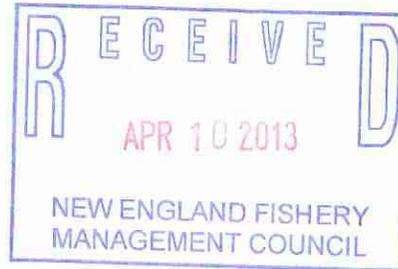




Via Electronic Mail

April 9, 2013

John K. Bullard  
NMFS, Northeast Regional Office  
55 Great Republic Drive  
Gloucester, MA 01930-2276  
[susan.a.murphy@noaa.gov](mailto:susan.a.murphy@noaa.gov)



**Re: Proposed Rule Framework 48 (NOAA-NMFS-2013-0050 / RIN 0648-BC27)**

Dear Mr. Bullard:

We are writing regarding NOAA Fisheries' proposed rule to implement Framework 48 to the NE Multispecies FMP. *See* Proposed Rule, 78 Fed. Reg. 18188 (March 25, 2013). Specifically, we oppose the proposed change to the NE Multispecies FMP that would remove the prohibition on access to the groundfish closed areas by sector vessels.<sup>1</sup> The proposed access to areas that have been closed to bottom trawling for nearly twenty years is not only illegal, but is also a short-sighted effort at mitigation that is not supported by the economic analysis. If approved, this measure will negatively impact spawning and juvenile groundfish stocks and the long-term productivity of the fishery.<sup>2</sup> The best available science also shows that increased access to these closed areas will fail to protect habitat to the extent practicable, and based on the record threaten rebuilding efforts of groundfish populations and adversely affect protected species. Opening closed areas is a major federal action that will have significant impacts on the environment, and requires an amendment to the FMP and an environmental impact statement ("EIS") consistent with the National Environmental Policy Act ("NEPA").

NOAA Fisheries should also disapprove the proposed change to the Eastern U.S./Canada Quota monitoring requirement, 50 C.F.R. § 648.85(a)(3)(ii)(A). NMFS has unlawfully failed to implement this existing regulation since 2010. The proposed change has not been approved or even requested by the council, and is therefore beyond the authority of the agency to propose and implement in this rule. *See* 16 U.S.C. § 1854(a)(1), (3).

<sup>1</sup> *See* 78 Fed. Reg. at 18198 (Option 2 allow sectors to access year-round closed areas, except where they overlap current or proposed habitat closed area under consideration as a potential habitat management area in the Omnibus EFH Amendment, currently under development by the Council).

<sup>2</sup> *See* FWA 48 at 6 ("the benefits and costs are highly uncertain"); *see also* FW 48 at 451 ("A short-term gain in income is expected from greater access to some stocks, but there may be a long-term loss in stock productivity caused by a reduction in large, old fish that may be present and spawn in the existing groundfish closed areas."); FW 48 at 528 ("the expected increase in profits due to fishing in exemption areas do not seem to justify large shifts of effort, but that effort flow is highly uncertain given alternative incentives and data availability.").

*cc: Council, AA, FH (4/11)*

## ***I. Access to Groundfish Closed Areas Through Framework 48 Violates NEPA***

### **A. Access to Groundfish Closed Areas Will Significantly Affect the Environment and Requires an EIS**

The proposed action would change the NE Multispecies FMP to allow groundfish sector vessels to request access to existing groundfish closed areas through a framework adjustment and environmental assessment (“EA”). *See* 78 Fed. Reg. at 18198; *see also* Framework Adjustment 48 to the NE Multispecies FMP (submitted February 26, 2013), FONSI at 600-605.

NEPA requires federal agencies to prepare an EIS whenever it proposes “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). To determine whether an EIS is required, the agency must first prepare an EA. *See* 40 C.F.R. § 1501.4(b). The EA must provide sufficient evidence and analysis to determine whether to prepare an EIS or a finding of no significance (FONSI). *See* 40 C.F.R. § 1508.9(a). Significance can be found in a variety of ways including actions with either negative or beneficial impacts, that set precedent for future actions, impact ecologically critical areas, have unknown effects, impact endangered or threatened species, or involve a high level of controversy. *See* 40 C.F.R. § 1508.27.

Although directly relevant analysis is currently incomplete, such as the analysis being conducted by the Closed Area Technical Team (CATT), and there is a complete absence of analysis on many potential impacts of the proposed action, the FONSI for Framework 48 states that the EA: 1) “do[es] not suggest that limited access will jeopardize the sustainability of any non-target species;” 2) “cannot reasonably be expected to cause substantial damage to the oceans and coastal habitats and/or essential fish habitat;” 3) is “not expected to have a substantial impact on biodiversity and/or ecosystem function with the affected area;” 4) “cannot be reasonably expected to adversely affect endangered or threatened species;” 5) will have “no more than minimal adverse impacts to EFH;” 6) “is not believed to be highly controversial as defined by NEPA;” 7) “cannot be reasonably expected to result in substantial impacts to unique areas or ecological critical areas;” 8) shows that “measures used in this action are similar to those adopted in past management actions” 9) is “not expected to result in cumulative adverse effects.” *See* Framework Adjustment 48, FONSI at 600-605. These conclusions are not supported.

The proposed access to the groundfish closed areas will have significant impacts on the environment.<sup>3</sup> Under this proposal, sectors would be eligible to access approximately 13,000 of 22,000 sq. kms (approximately 60% of the previously protected area/ approximately 5,000 square miles) for groundfishing that have been protected from most commercial fishing for the past 15-20 years. Closed areas protect targeted fish, other marine species, and habitat. The closed areas were established based on analysis identifying high abundance areas for spawning adults and juveniles, a fact confirmed by recent CATT analysis, and have valuable ecological functions that go well beyond simply controlling mortality. The five closed areas under consideration for exemptions include: Closed Area I and Closed Area II (May 1- February 15), Cashes Ledge, Western Gulf of Maine (when not subject to rolling closures applicable to

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<sup>3</sup> *See* March 28, 2013 and April 9, 2013 Letters from the Pew Charitable Trusts to John Bullard; *see also* March 27, 2013 Letter from Scientists re New England Groundfish and Habitat.

sectors), and Nantucket Lightship. *See* Framework 48 at 62-63. Access may be granted for anywhere not defined as habitat closed areas, or that have not been identified as potential habitat management areas as part of the development of the Omnibus Habitat Amendment. *Id.*

The biological implications of this access are significant. The best available science, including existing analysis by the Council's CATT, shows: 1) the potential for long term loss of biological productivity of the ecosystem; 2) that access will impact ecologically critical areas; 3) that access will impact the spawning grounds of depleted and overfished groundfish stocks.<sup>4</sup> Scientific information from these areas, and from similar closures in other temperate regions, strongly indicates that protecting adults of reproductive age and habitat that enhances survival, feeding and growth, especially for juveniles, is the only wise course of action in the face of dwindling stocks. *Id.* The effects of this proposal are also significant because: 1) this change would set a precedent for removing protections in place for decades through a framework adjustment; and 2) allowing access is highly controversial, even among different groups of fishermen.

NMFS has not analyzed the relevant environmental impacts nor taken a hard look at the problem, and cannot make a convincing case for this FONSI or that there are sufficient safeguards to reduce the impacts of access on groundfish and protected species. *See Flaherty v. Bryson*, 850 F. Supp. 2d 38, 69 (2012) (In reviewing an EA or FONSI, courts look to see whether the agency: 1) accurately identified the relevant environmental concern(s), 2) took a "hard look" at the problem; 3) can make a convincing case for its FONSI; and 4) has shown that even if there is an impact of true significance, an EIS is unnecessary because changes or safeguards in the project sufficiently reduce the impact to a minimum.). In order to take a hard look at the problem, NMFS must fully analyze the environmental impacts of this action in an EIS.

#### B. Additional NEPA Violations

Framework 48 also fails to analyze a reasonable range of alternatives related to closed area access. *See* FW 48 at 60-62 (Option 1: No Action and Option 2: Sector exemptions). An EA is unlawful if it fails to consider a reasonable range of alternatives. *See* 42 U.S.C. § 4332(2)(E); *see also Am. Oceans Campaign v. Daley*, 183 F. Supp. 2d 1, 20 (D.D.C. 2000) (holding EA for New England Omnibus Essential Fish Habitat unlawful where NMFS failed to consider all relevant and feasible alternatives). Even an EA must take a "hard look" at the problem and include consideration of a reasonable range of alternatives. *See Flaherty*, 850 F. Supp. 2d at 71. A reasonable range of alternatives should include alternatives that increase access to the closed areas through actions *other* than the sector exemptions proposed here (i.e. Exempted Fisheries Permits<sup>5</sup>), and a full spectrum of alternatives that would provide access to a limited amount of the existing closed areas based on appropriate criteria. For example, an appropriate range of alternatives might have included options that accessed 10, 25, 50, and 75 percent of the GFCAs. In addition, this proposal and analysis of access to areas specifically created as habitat for

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<sup>4</sup> *See* March 28, 2013 and April 9, 2013 Letters from the Pew Charitable Trusts to John Bullard; *see also* March 27, 2013 Letter from Scientists re New England Groundfish and Habitat.

<sup>5</sup> EFPs are one-year, renewable permits authorized under the Magnuson-Stevens Act that allow their holders to use otherwise-prohibited methods to harvest managed species for a few specific reasons. *See* 50 C.F.R. § 600.745(b)(1) (allowing EFP issuance for "limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes").

spawning and juvenile groundfish in an EA, separate and apart from the comprehensive Omnibus Habitat Amendment and its EIS, has unlawfully segmented the decision-making. As Framework 48 acknowledges, the purpose of the Omnibus Habitat Amendment was to “evaluate existing habitat management areas and develop new habitat management areas.” FW 48 at 100. Therefore, any attempt to provide access in a sector operations plan intentionally divides these actions to avoid the finding of significance. *See Flaherty*, 850 F. Supp. 2d at 70 (“Agencies may not evade their responsibilities under NEPA by artificially dividing a major federal action into smaller components, each without significant impact.”).

The Council, with NMFS assistance, has also predetermined the outcome of this action. Access to the closed areas became the focal point of NMFS and the Council’s search for mitigation measures intended to ease the economic impacts of necessary quota cuts. By choosing a vehicle intended to grant sector allocations and regulatory exemptions through an EA, in time for the start of the coming fishing year, the Council committed itself to the action most likely to achieve its goal of access. *See Flaherty*, 850 F. Supp. 2d at 71 (“Predetermination occurs only when an agency *irreversibly and irretrievably* commits itself to a plan of action that is dependent upon the NEPA environmental analysis producing a certain outcome.”) (emphasis in original).

Finally, NMFS failed to take a hard look at the cumulative impacts on the larger marine ecosystem. NEPA requires that federal agencies identify the direct, indirect, and cumulative impacts of the proposed action, and consider alternative actions and their impacts. *See* 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1502.14, 1502.16. A cumulative impact is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions” and “can result from individually minor but collectively significant actions taking place over a period of time.” *See* 40 C.F.R. § 1508.7. To fulfill NEPA’s promise, agencies must include a hard look at potentially significant cumulative impacts in an EA. *See Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 342 (D.C. Cir. 2002) (stating an “EA must give a realistic evaluation of the total impacts and cannot isolate a proposed project, viewing it in a vacuum”); *Sierra Club v. Peterson*, 717 F.2d 1409, 1413 (D.C. Cir. 1983). Framework 48 failed to take a hard look at the cumulative impacts, merely stating its unsupported conclusion that “the proposed measures are not expected to have substantial cumulative effects on non-target species, protected resources, or habitat (including essential fish habitat).” *See* FW 48 at 7. In the case of protected species, the framework does not analyze any direct and indirect impacts of access, making any attempt at a cumulative analysis impossible. *See* FW 48 at 490 (“the impacts to protected species due to the opening of any of the year round mortality closures will be analyzed in a separate action.”).

## **II. Framework 48’s Proposed Access to Groundfish Closed Areas is a Fundamental Shift in Management Policy That Requires an Amendment**

Access to up to 60 percent of the area previously closed to bottom trawling through sector exemptions fundamentally alters the way the fishery is managed and is a policy decision that undermines and contravenes key provisions of the NE Multispecies FMP. This fundamental change in policy is more than a mere adjustment necessary to implement an FMP, therefore it is not appropriate for a framework and requires an amendment to the FMP. *See Oceana v. Evans*, 384 F. Supp. 2d 203, 255 (D.D.C. 2005) (“[In framework adjustments] both the statute and the

agency's own internal guidelines contemplate 'actions' that implement an FMP, but do not fundamentally alter it." Through the proposed measure, sector vessels can gain access to 5000 square miles of ocean where access is specifically prohibited in order to protect spawning and juvenile fish as part of a program to end overfishing and rebuild stocks.<sup>6</sup> This *de facto* elimination of the ban on access to closed areas, radically changes the way the fishery is managed, including the way habitat is protected, and therefore requires an amendment. See *Oceana* at 255 ("changes in regulating a fishery will require an amendment to the FMP when these ...introduce a new concept into the management of the fishery or eliminate or radically change an existing one [or] alter management of the fishery in a way, or to an extent, not considered in the FMP or prior amendments, or in hearings held during their preparation.").

The NE Multispecies regulation that governs frameworks appears to reflect this standard, requiring that measures in a framework be consistent with the goals and objectives of the FMP. See 50 C.F.R. § 648.90(a)(2)(iii). Although "closed areas" and "area management boundaries" are included in the list of frameworkable measures, this list contemplates minor and seasonal adjustments to existing boundaries to facilitate implementation of the plan, not whole-scale changes in policy. *Id.* Access to areas specifically closed to protect spawning and juvenile groundfish undermines and contravenes the conservation goals and objectives of the FMP which includes biological conservation, rebuilding overfished stocks, and minimizing impacts on habitat to the extent practicable. See Northeast Multispecies FMP Amendment 16 (October 16, 2009) at 67-68. Thus, under even the existing FMP and regulations governing framework adjustments, the proposed measure providing access to currently closed areas requires an FMP amendment. If access is granted, it must be through an amendment.

### **III. Opening the GFCAs Does Not Protect Habitat to the Extent Practicable**

The Council and NMFS have protected groundfish habitat for the last twenty years.<sup>7</sup> Under the Magnuson-Stevens Act, essential fish habitat must be protected to the extent practicable. See 16 U.S.C. § 1801(a)(6)(finding "a national program for the conservation and management of the fishery resources is necessary to . . . facilitate long term protection of EFH"); and 16 U.S.C. § 1853(a)(7) (an FMP must "describe and identify EFH for the fishery . . . , minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat."). Essential fish habitat is defined as the "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." *Id.* § 1802(10). In addition, councils must consult NOAA's guidelines, *id.* § 1855(b); 50 C.F.R. § 600.815, and designate Habitat Areas of Particular Concern ("HAPCs"), 50 C.F.R. § 600.815(a)(8). HAPCs are areas within EFH that are ecologically important, sensitive to environmental degradation, stressed by development activity, or rare; designation results in no additional regulatory protection beyond that for EFH, but activities proposed in HAPCs will be subject to particular scrutiny.

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<sup>6</sup> See FW 48 at 528 ("A large influx of effort would likewise impact the rebuilding potential for Georges Bank cod and yellowtail flounder, as well as Southern New England winter flounder and Gulf of Maine cod and could greatly stress the Georges Bank and Southern New England winter flounder subpopulations.").

<sup>7</sup> See April 9, 2013 Letter from Pew Charitable Trusts to John Bullard Re Framework 48, Appendix, at 12 (history of year round groundfish closures).

NMFS own science shows that the closed areas have provided, and continue to provide, valuable habitat for critical groundfish stocks:

Georges Bank haddock . . . experienced an increase in biomass directly related to groundfish area closures. Large and older haddock, particularly in Closed Area I and II, were, however, more abundant inside the proposed sector exemption areas than in currently open fishing areas. Fishing would probably target these large haddock and remove them from the population, reducing age structure. (FW 48 at 456).

Although many of the large and spawning cod occur in the Cod HAPC or EFH closed areas, impacts on Georges Bank cod spawning, spawning potential, and rebuilding potential were classified as “High.” The Georges Bank stock is at relatively low biomass, so any removals of large, spawning cod is likely to have a relatively high impact on spawning, spawning potential, and on rebuilding potential. Cod length frequency data indicated a disproportionate abundance of large female cod in the Georges Bank habitat closed areas and in the proposed sector exemption areas.” (FW 48 at 457).

Winter flounder were one of the two Georges Bank stocks (the other being haddock) that Kerr et al identified as benefiting from the existing closed areas. And although there were no observable differences in length at age or in maturity at age, the analysis of spring and fall survey data indicated that there were differences in the length-weight relationship and in length frequency of winter flounder in the habitat closed and proposed sector exemption areas, compared with fish caught in areas currently open to fishing. In the spring, winter flounder were often observed in the northern part of the Closed Area II proposed sector exemption area, but this area would not be open to fishing by sector vessels at this time of year. In the fall, high concentrations of developing winter flounder were observed in the northern part of the Closed Area II and throughout the Closed Area I proposed sector exemption areas, plus some developing winter flounder in the Nantucket Lightship Area proposed sector exemption area. Winter flounder are also believed to form spawning sub-populations inshore and may have similar characteristics offshore. Taking all these factors into account, the Council classified the impact on age/size structure, spawning, spawning potential, and preservation of sub-populations as “High”. Due to the status of winter flounder, the Council classified the potential removal of large winter flounder on rebuilding as “Med” to “High.” (FW 48 at 457).

One example where increased access will harm habitat is on the Northeast Peak of Closed Area II which has been closed for nearly twenty years and is well known to have gravel areas that support juvenile cod.<sup>8</sup> Although there is an HAPC on the northern edge, there is additional habitat adjacent to the HAPC that will be harmed by new dragging along its perimeters. The risks to the HAPC itself will also be greater due to increased incursions from the North and the South. Even while recognizing variability in habitat impacts based on substrate, four general conclusions are supported by the best available science: “1) trawling reduces habitat complexity;

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<sup>8</sup> See Murawski S et al 2000. Large-scale closed areas as a fishery-management tool in temperate marine systems: the Georges Bank experience. *Bulletin of Marine Science*, 66(3): 775–798, 2000; Murawski et al (2005). Effort distribution and catch patterns adjacent to temperate MPAs. *ICES Journal of Marine Science*, 62: 1150-1167; see also April 9, 2013 Letter from Pew Charitable Trusts to John Bullard Re Framework 48, at 5.

2) repeated trawling results in discernible changes in benthic communities; 3) bottom trawling reduces the productivity of benthic habitats; and 4) fauna that live in low natural disturbance regimes are generally more vulnerable to fishing gear disturbance.”<sup>9</sup> See FW 48 at 98-100.

Because the long term biological productivity of the fishery is at risk due to this proposal, the benefits of access to fishermen will be minimal, at best. See FW 48 at 528 (“exemption area access is unlikely to result in large profit increases, and trips are expected to displace local effort”); see also FW 48 at 451 (The long term loss in stock productivity caused by fishing in existing groundfish closed areas is not likely to produce more than a short-term gain in income to certain fishermen.). In enacting the Magnuson-Stevens Act, Congress identified a strong public interest in prioritizing sustainable fisheries over short-term economic gain. *Natural Res. Def. Council v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) (“The Government concedes, and we agree, that, under the Fishery Act, the Service must give priority to conservation measures.”); see also *Natural Res. Def. Council v. Nat’l Marine Fisheries Serv.*, 421 F.3d 872, 879 (9th Cir. 2005).<sup>10</sup> These closed areas were established to protect habitat for spawning and juvenile fish, and intended to protect essential fish habitat; under the circumstances (depleted stocks, poor recruitment, environmental changes) habitat should be increased rather than decreased. Moreover, the existing closed areas have been in place for years, consistent with their purpose and intent, without any demonstrated adverse effect on commercial groundfishermen, while opening them will significantly reduce the amount of habitat protected in New England. The potential short-term benefit, if any, to certain fishermen, will not protect habitat to the extent practicable and is unjustified and inconsistent with the law.

#### **IV. Access to the Groundfish Closed Areas Will Impact Protected Species**

Although these groundfish closed areas were initially established to provide refuge and habitat for economically important fish, they have provided crucial ecological benefits to other wildlife, including marine mammals, as seasonal feeding areas and as year-round refuge from the impacts of fishing, including entanglements with fishing gear.<sup>11</sup> Marine mammals are under NOAA Fisheries jurisdiction and are protected under the Endangered Species Act (ESA) and/or the Marine Mammal Protection Act (MMPA). The record shows potential for significant impact to protected species and at least four Take Reduction Plans that may be affected by access to these groundfish closed areas including the Atlantic Right Whale Take Reduction Plan, the Bottlenose Dolphin and Harbor Porpoise Take Reduction Plans, the Large Whale Take Reduction Plan, and the Pelagic Longline Take Reduction Plan. Providing access to the closed areas would alter the underlying assumptions about risk and mortality in these Take Reduction Plans, and the agency must fully analyze the impacts of its decision to approve this measure prior to approving the Take Reduction Plans and MMPA consultations as appropriate.

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<sup>9</sup> See Framework 48 at 98 (report from a “Workshop on the Effects of Fishing Gear on Marine Habitats off the Northeastern U.S.” sponsored by the NEFMC and Mid-Atlantic Fishery Management Council (MAFMC) (NEFSC 2002)).

<sup>10</sup> See FW 48 at 528 (“A large influx of effort would likewise impact the rebuilding potential for Georges Bank cod and yellowtail flounder, as well as Southern New England winter flounder and Gulf of Maine cod and could greatly stress the Georges Bank and Southern New England winter flounder subpopulations.”).

<sup>11</sup> See March 29, 2013 and April 9, 2013 Letters submitted on behalf of the Humane Society of the United States, Center for Biological Diversity, Whale and Dolphin Conservation, and Dr. Caroline Good to John Bullard regarding the 2013 Sector Operations Plan and Framework 48.

Although it did not analyze the impacts of access to closed areas on protected species, *see* FW 48 at 490 (impacts to protected species will be analyzed in a “separate action”), the New England Council concluded (and seeks confirmation from NMFS), that there is no jeopardy to protected species, *see* FW 48 at 609. Further, despite the conclusion that “none of the Preferred Alternatives in Framework 48 are likely to produce impacts to protected species beyond those described in previous regulations,” FW 48 at 6, the EA acknowledges the potential for serious impacts. *See* FW 48 at 489 (“Impacts on protected resources will depend greatly on effort shifts that result from access to areas previously closed. Marine mammals and sea turtles can be found in and around all the closed areas. . . .Based on data identifying where species occur, it is anticipated that the two areas of most concern would be the WGOMCA and NLCA for both Atlantic sturgeon and harbor porpoise; these areas would also be of concern for endangered large whales and sea turtles. Gillnet gear is primarily responsible for most of the takes of these animals in these areas.”). The EA also shows that required consultation under Section 7 of the ESA, *see* FW 48 at 609, has not been initiated for all potentially affected ESA-listed species. Until a full analysis of the likely impacts of this access on marine mammals is conducted consistent with the requirements of the ESA and the MMPA, the proposed removal of the prohibition on access to the groundfish closed areas by sector vessels must be rejected.

\* \* \*

**V. NMFS Must Implement 50 C.F.R. § 648.85(a)(3)(ii) to Properly Attribute Catch on Eastern Georges Bank and Cannot Change This Regulation without Council Action**

NMFS has failed to lawfully implement 50 C.F.R. § 648.85(a)(3)(ii) since FY 2010. Instead of complying with the law and taking action that properly accounts for the mis-reported GB catch, NMFS instead proposes to change the regulation without any council action. *See* 78 Fed. Reg. at 18199-18200 (“the full Council has not had an opportunity to comment as to whether it believes this change is consistent with Amendment 16”). The regulation, 50 C.F.R. § 648.85(a)(3)(ii), currently requires *all* cod, haddock, and yellowtail flounder caught on trips fishing both inside and outside of the Eastern U.S./Canada Management Area<sup>12</sup> to be counted inseason as Eastern U.S. total allowable catch (“TAC”) in order to accurately track national quota under the U.S./Canada Resource Sharing Understanding.<sup>13</sup> *See* 78 Fed. Reg. at 18199. By its own admission, NMFS has not attributed all relevant catch to the Eastern U.S./Canada Area TAC consistent with the regulation since fishing year FY 2010; therefore, NMFS is violating the law. Further, any change in the way this TAC is attributed in Framework 48, without prior Council action, exceeds NMFS’s authority under the Magnuson-Stevens Act.

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<sup>12</sup> The U.S. and Canada jointly manage several transboundary stocks in the U.S./Canada Management Area including GB cod, GB haddock, and GB yellowtail flounder. The U.S./Canada area consists of an Eastern and Western section. “The management objective for these shared stocks is to achieve but not exceed the U.S. fraction of the harvest (NEFMC 2003).” *See* Draft EA FY 2013 NE Multispecies SOPs and Contracts, at 32.

<sup>13</sup> “The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. Annual harvest levels and recommended management measures for the U.S./Canada Management Areas will be determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./ Canada Steering Committee... Once any one of these TACs is reached, all vessels will be prohibited from harvesting, possessing, or landing the species for which the TAC has been reached.” Amendment 13, Final Rule, 69 Fed. Reg. 22906, 22912 (April 27, 2004).

A. 50 C.F.R. § 648.85(a)(3)(ii)(A) Is Current Law

50 C.F.R. § 648.85(a)(3)(ii)(A) is a NE Multispecies regulation that governs the Special Management Program between the United States and Canada.<sup>14</sup> First implemented under Amendment 13, it was revised in 2006 in Framework 42 to reflect its current text:

**When a vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on that trip shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.**

50 C.F.R. § 648.85(a)(3)(ii)(A)(bold added).<sup>15</sup> The relevant text was added to conservatively account for U.S. quota of Eastern GB stocks when regulations were changed to allow vessels the flexibility to fish in multiple stock areas on the same trip (something previously prohibited). *See* 78 Fed. Reg. at 18199. Attributing “all” inseason catch for these stocks to the Eastern U.S./Canada Area TAC ensured that national quotas were not exceeded when fishing in both areas s on the same trip. *Id.*

At a recent Groundfish Committee/AP meeting, NMFS admitted that 50 C.F.R. § 648.85(a)(3)(ii)(A) “is the law” and failure to enforce it has resulted in problematic misreporting.<sup>16</sup> *See* March 6, 2013 Joint Groundfish Committee/AP meeting Audio Track #4 (“Audio”), available at: <http://www.nefmc.org/nemulti/index.html>. While noting that the relevant regulatory text remains unchanged, NMFS now claims that the failure to remove the monitoring requirement was “inadvertent” when Amendment 16 was implemented, and that the Council’s intent to change the regulation was stated in the Preamble to Amendment 16. *See* 78 Fed. Reg. at 18200 (“Although Amendment 16 did not specifically address how allocations of Eastern U.S./Canada stocks should be monitored in this new quota regime, NMFS’s interpretation of Amendment 16 was that it intended statistical areas reported on VMS catch reports and VTRs to be used to apportion catch to specific stock allocations.”); *see also* Audio at 22-25 min.

However, there is nothing in the record for Amendment 16 that supports NMFS’s assertion that this was the Council’s intent, or that justifies NMFS’s current attempt to make this loophole permanent: the debate during development of Amendment 16 was whether vessels should be *allowed to fish in multiple areas* on the same trip, *not* whether or not to change the conservative

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<sup>14</sup> Available at: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0d16848c718dad1851ca76a1a8a491ba&rgn=div6&view=text&node=50:12.0.1.1.6.6&idno=50#50:12.0.1.1.6.6.1.6>.

<sup>15</sup> Among other things, this regulation also contains a strict area-specific VMS reporting requirement.

<sup>16</sup> There is significant evidence that vessels intentionally misreport catch of GB cod while fishing in multiple areas (reporting Eastern GB cod as Western GB cod). *See* Audio at 15-20 min. This may be true for other species fished across multiple stock areas including GOM cod, SNE/GB winter flounder, GB YTF, and more recently GOM haddock. Currently, 70 percent of these trips are unobserved, and without enforcement, vessels are free to report catch in whichever stock area the quota is the cheapest or the most abundant. Early analysis shows that the VMS and observer data related to area-specific reporting of catch diverged in 2011. Allowing self-reporting by area (the honor system on unobserved trips), has made enforcement nearly impossible and unattempted since 2010. *See* Audio at 25-26; 45-50.

accounting practices used in the Eastern U.S./Canada Management Area to ensure that fishermen on either side of the border do not exceed their national quotas under the agreement.

B. 50 C.F.R. § 648.85(a)(3)(ii)(A) Is Required To Accurately Attribute National Quota

As discussed above, the regulation proposed to be changed tracks and attributes *national quota* not sector quota. For groundfish caught in U.S. waters, changes in Amendment 16 allocated quota of Eastern U.S./Canada stocks to sectors and the common pool under the NE Multispecies FMP. A sector's allocation of GB cod and GB haddock is then divided into an Eastern ACE and Western ACE based on the sectors' percentage of the total annual catch limit (ACL) of these stocks. *See* 50 C.F.R. § 648.87(b)(i)(B). Eastern ACE of these stocks can *only* be harvested in the Eastern U.S./Canada Management Area. *Id.* As the names suggest, the sector allocation regulations in Section 648.87 ensure that sectors do not exceed their ACE and serve a different regulatory purpose than the Special Management Program regulations found in Section 648.85 which ensure that the U.S. does not exceed its national quota.

Without attributing *all* catch of these stocks on relevant trips to the Eastern section inseason, U.S. fishermen (self-reporting statistical areas fished without observer onboard) able to access the Eastern section could conceivably fish in both sections, report it as caught in the Western section, and continue fishing even when their Eastern ACE would be fully caught if reported correctly. Failure to implement (and enforce) this regulation creates an incentive to misreport that harms inshore commercial and recreational fishermen that cannot access the Eastern section and need valuable quota in the Western GB area. Failure to accurately and conservatively report catch in the Eastern section also harms Canadian fishermen and contributes to overfishing on certain stock components of beleaguered cod, haddock and yellow tail flounder populations in the Eastern U.S./Canada Management Area.

To accurately track national quota, NMFS must immediately comply with the law and attribute its quota consistent with 50 C.F.R. § 648.85(a)(3)(ii)(A), as well as take whatever other actions are necessary consistent with applicable accountability measures (AMs) in the NE Multispecies FMP and the Understanding. It must also adjust catch for FY 2010-2012 (and account for any overages) to accurately reflect the catch by area during those years consistent with the regulations. If NMFS makes no attempt to implement the regulation as written, it will be impossible to accurately track national quota, or defend its monitoring program as adequate, under the law. It is estimated that the U.S. may have significantly exceeded its national quota in at least FY 2012.

C. NMFS Proposal To Reapportion Catch of Eastern GB Stocks Without Council Approval Exceeds Its Authority Under the Magnuson-Stevens Act

Under the Magnuson-Stevens Act's comprehensive scheme, regional councils are responsible for developing fishery management plans ("FMPs"). *See* 16 U.S.C. § 1853. Councils must prepare and submit an FMP (and any amendments necessary) "for each fishery under its authority that requires conservation and management." *Id.* § 1852(h)(1). FMPs must be consistent with the ten "National Standards" as well as all other provisions of the Magnuson-Stevens Act, and "any other applicable law." *Id.* § 1853(a)(1)(C); *see also id.* § 1851. Only after

a plan is developed, does NMFS review the plan (and implementing regulations) to determine whether it comports with the National Standards and other applicable law. *Id.* § 1854(a)(1)(A). NMFS authority, after notice and comment, is limited to its decision to “approve, disapprove, or partially approve a plan or amendment,” depending upon its consistency with the National Standards and applicable law. *Id.* § 1854(a)(3).

The proposed change is more than a mere “regulatory correction.” NMFS now proposes to make the loophole it created by failing to implement the regulation permanent by “remov[ing] the text that states all cod, haddock, and yellowtail flounder on multi-area trips must be applied to Eastern U.S./CA allocations,” *see* 78 Fed. Reg. at 18200, and reapportioning catch inseason based on self-reported statistical areas recorded on a VTR report designed to track sector allocations (not national quota), without Council approval. This proposal unlawfully exceeds NMFS authority under the Magnuson-Stevens Act. *See Flaherty*, 850 F.Supp.2d at 44 (“Even if NMFS disapproves the proposed FMP or amendment, it may not rewrite it. That responsibility remains with the Council, except under specifically defined circumstances. *Id.* § 1854(a)(4), (c)”). NMFS must immediately implement the regulation as written and withdraw its proposal pending future Council action on this matter.

\* \* \*

Thank you for considering these comments. Please contact me at 978-846-0612 if you have any questions.

Sincerely,

/s/ Roger Fleming  
Roger Fleming  
Erica A. Fuller  
Attorneys

Cc: C.M. “Rip” Cunningham, Jr., Chairman NEFMC  
Tom Nies, Executive Director NEFMC  
Gene Martin, NOAA General Counsel  
Logan Gregory, NOAA Fisheries OLE



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**ASSOCIATED FISHERIES OF MAINE**

PO Box 287, South Berwick, ME 03908

April 8, 2013

Mr. Terry Stockwell, Chair  
Groundfish Committee  
New England Fishery Management Council (NEFMC)  
VIA ELECTRONIC MAIL



Dear Terry:

Associated Fisheries of Maine (AFM) requests that the Groundfish Committee draft a strong recommendation urging NEFMC support of the proposal by the National Marine Fisheries Service (NMFS) to continue, as has been the practice since the implementation of sector management in 2010, to require sectors to report catch of cod and haddock in the two US/CA areas as distinct and separate to each area. To continue with the F42 requirement of assigning all US/CA area catch of cod and haddock to the eastern US/CA area is, in our opinion, tantamount to requiring the industry to misreport.

It is economically imperative that vessels retain the flexibility to fish in both US/CA areas on the same trip. Assigning all US/CA cod and haddock catch to the eastern US/CA area will result in the early closure of the eastern US/CA area, because the eastern cod quota is so low, and will continue to unnecessarily constrain the catch of haddock. The NEFMC and NMFS must continue to provide incentives for vessels to fish offshore and on the abundant stock of Georges Bank haddock.

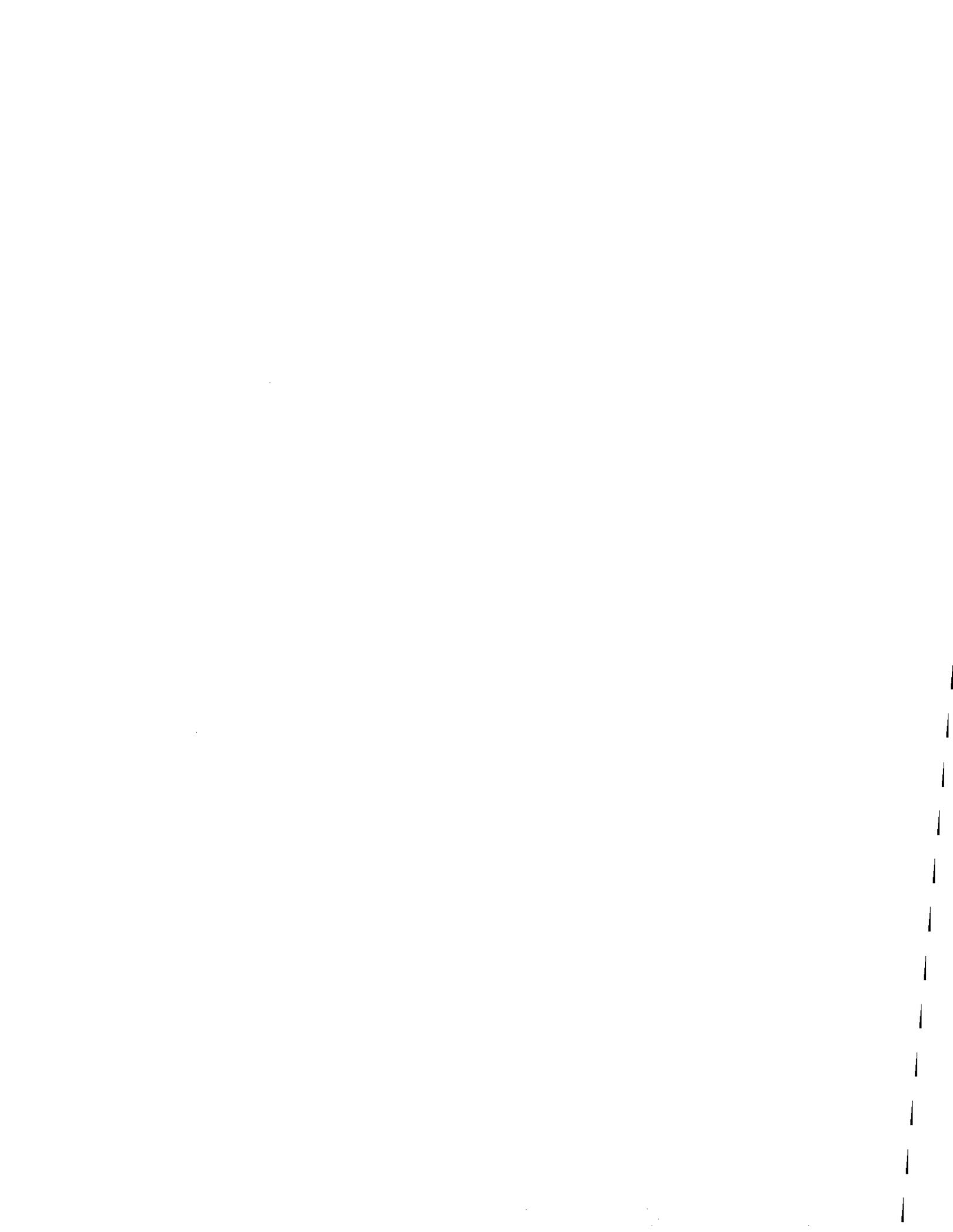
We understand that concerns about misreporting in the US/CA areas have been raised, but have yet to be documented. If there is evidence of misreporting, we urge the NMFS to take swift enforcement action. However, if misreporting is indeed occurring, we fail to see how requiring deliberate misreporting is a sensible or appropriate remedy.

Sincerely,

*M. Raymond*

Maggie Raymond

*cc: Council, FA, GF Cte (4/10)*





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

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



Dear Rip:

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

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

Sincerely,

  
John K. Bullard  
Regional Administrator

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

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

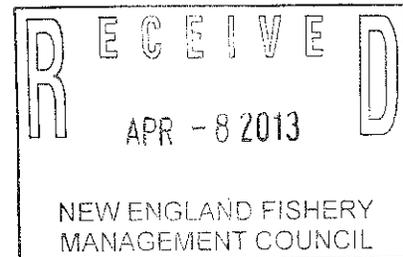




UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Northeast Fisheries Science Center  
166 Water Street  
Woods Hole, MA 02543-1026

April 4, 2013

Mr. Thomas A. Nies  
Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950



Dear Tom:

Thank you for your letter of October 16, 2012, requesting that the "Northeast Fisheries Science Center expedite the development of guidance for (1) an objective set of criteria to determine the validity of an assessment for the purpose of setting catch advice and (2) protocol for setting catch advice in circumstances when the validity of an assessment is rejected."

The questions you have raised have relevance at a national level as well as in the Northeast region. In general, stock assessment review processes are designed to determine the technical validity of assessments, not to provide catch advice directly. Once validated, the results are used by the SSCs as they make fishing level recommendations (e.g., catch advice) to their Councils. In the Northeast this review is accomplished through the SAW/SARC process which provides the scientific basis for crafting management advice. The SSC interacts with this regional peer review process by providing input to terms of reference, having members participate in peer reviews, and developing an operational approach to supporting requirements for ACL implementation by the Council. The final rule for the update to the National Standard 2 (NS2) Guidelines is not yet published but will provide a general context for answering the questions you have posed. However, the guidelines are not so specific as to directly answer the questions. Following publication of the NS2 Guidelines, it is possible that the Agency would develop technical guidelines at the national level on the topic of assessment validity. In the meantime, we are pleased to provide a general response on assessment validity and possible fallback options when an assessment is judged to be not suitable, and invite your input on this matter. For additional information, we have attached an Appendix with an overview of the assessment review process in general and more specifically in the Northeast.

**Assessment Validity:** Four main criteria are taken into account to determine the validity of a stock assessment to provide a comprehensive analysis of the status of a fish stock: (1) the data are sufficiently informative to detect trends in the status and exploitation of the population; (2) the data time series are sufficiently long to be informative about population trends over a meaningful time span; (3) any changes that might have occurred in the underlying stock dynamics have been detected within the model; and (4) different sources of data support similar assessment outcomes. These criteria will generally be relative, and are typically not independent



cc: Council, AA, DB, FH, LS, Reh, GF Cte (4/9)

of one another. Further, assessments that do not meet all these criteria can still be useful, although with more uncertainty, in informing NMFS and the Council about the status of stocks and ABC levels.

Assessments are rarely rejected due to computational errors. Rather, typical reasons for rejecting assessments are related to the quality of the data or the capacity of the assessment model to accurately reflect patterns in the data. Even the best assessments are uncertain because assessment data are often somewhat noisy, rarely extend back to the earliest years of the fishery, and the several data streams which support an assessment are generally not in complete harmony with each other. Therefore, the NMFS and the Councils must rely on the experience and skill of assessment peer-review panels and, where appropriate, Scientific and Statistical Committees, for determining whether an assessment is valid.

In situations where the review panel finds substantial shortcomings in the data and/or assessment analysis, two actions should be taken. First, the review panel should articulate its reasons for finding that the assessment does not provide a valid basis for determining stock status or fishing mortality (i.e., overfished status and overfishing status relative to biological reference points). Second, the panel should identify those aspects of the assessment that are useful for informing management. For example, an assessment with high uncertainty about recent trends in recruitment may be sufficient for short-term catch advice, but inappropriate for defining longer-term rebuilding targets, associated rebuilding time frames, and appropriate catches for rebuilding. If the causes of recent trends are unknown, such as undetermined environmental or ecosystem factors, then the utility of long-term biomass targets and appropriate harvest strategies is diminished.

**Fallback Options:** Many fishery scientists seek to develop and validate methods for providing catch advice with limited data. Data-limited methods can be used to identify levels of catch and fishing effort that would likely cause a stock to increase or decrease. These methods generally use fish life history data and/or a time series of catch data to evaluate the degree to which the stock has been impacted by fishing. For example “envelope analyses” (an approach which calculates a range of feasible outcomes given plausible bounds for survey catchability and fishing mortality rates) were used to inform the ABC specification process after the reference points for the butterfish assessment in the mid-Atlantic were rejected. Envelope analyses have also been used in model-based assessments to help confirm model outputs. A similar approach using area-swept abundance estimates from multiple surveys was used to define appropriate catch limits for Gulf of Maine winter flounder. In both cases, the analyses enabled the SSC to proceed to develop ABC recommendations without a formal assessment model. Such methods will not work in all circumstances, and cannot replace a full stock assessment. However, when explicit guidance has not been provided by the peer review panel (and also when the existing data have been insufficient for using alternative assessment models), the SSC has used these and other non-model based approaches – on a stock-by-stock basis – to develop its ABC advice. Through the Center’s involvement on Council PDTs and on the SSC itself, the expertise of my staff is always available to assist the SSC in addressing these challenging circumstances.

In summary, the NRCC’s SAW/SARC process determines whether assessments are sufficient to serve as a basis for NMFS stock status determinations, and also for the SSC’s ABC and

management recommendations. There are general guidelines for determining stock assessment validity, and fallback approaches for questionable or rejected stock assessments. Because each stock assessment is unique and the assessment validity criteria are complex and not independent of one another, determining the validity of an assessment requires reliance on the judgment of scientific experts on a case-by-case basis. Terms of reference for assessments and their review can be revised so that the process has a fallback basis for providing science advice when the most comprehensive analysis is judged not suitable as the basis for management. Publication of revised National Standard 2 guidelines on the use of best scientific information available (BSIA) and new guidance on scientific peer review processes is expected to provide additional clarity on the general criteria and protocols to be used in determining assessment validity.

We welcome your contributions on this important topic.

Sincerely,



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William A. Karp, Ph.D.  
Science and Research Director



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Richard D. Methot, Jr., Ph.D.  
Science Advisor for Stock Assessments

cc: J. Bullard

## APPENDIX

### GENERIC FEATURES OF AN ASSESSMENT REVIEW PROCESS

**Step 1:** A draft assessment prepared by NMFS Science Center or other entity.

**Step 2:** Public vetting of draft assessment through peer review process to ascertain the technical merits and shortcomings.

The terms of reference (TORs) for a scientific peer review are established by the NMFS and Council before the peer review, and the TORs must not be modified during the peer review. TORs and assessments should be structured to allow for partial acceptance of assessment results.

The peer review process may use a combination of qualified, sufficiently independent regional experts and external (e.g., Center for Independent Experts, CIE) experts that meet the OMB peer review standards. The use of Scientific and Statistical Committee (SSC) members as peer reviewers or chair can provide continuity across assessments, conformity to regional needs, and facilitate communication of results to the Council's SSC. In some regional systems, Plan Teams and other Council Committees also play a significant role in reviewing the draft assessments.

**Step 3:** Peer review findings and SSC fishing level recommendations.

Peer review process concludes with a statement of the assessment's scientific merit. The peer reviewers do not make management recommendations because this is the responsibility of the SSC. External participants in the review improve the scope and independence of the scientific review, but they are not expected to be sufficiently familiar with the Magnuson-Stevens Act requirements, national standard guidelines, and fishery management plans to provide the specific management advice needed. If the peer review does not find that the assessment has sufficient merit for scientific advice, then it is useful for the review to identify useful components of the assessment that the SSC could take into account when making its recommendations to the Council.

**Review Process in the Northeast:** Major peer review processes in the Northeast region include the Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC) and Transboundary Resources Assessment Committee (TRAC). The SAW/SARC and TRAC differ in structure and meeting format, but both are focused on peer reviewing and determining the validity of stock assessments to serve as a scientific basis for fishery management. Both processes evaluate overfishing limits, and both provide population projections that can be used by managers in establishing catch limits. Having the SAW/SARC and TRAC meetings focus on assessment validity, and not on setting catch quotas, is consistent with the proposed guidance on National Standard 2 about the peer review process (Federal Register 2009).

Population projections that are conducted during the SAW/SARC and the TRAC are intended to serve as a basis for setting catch limits, which is done by the SSC, the Fishery Management Councils, and the Transboundary Management Guidance Committee (TMGC). The TMGC, established in 2000, is a government – industry committee composed of representatives from

Canada and the United States. The Committee's purpose is to develop guidance in the form of harvest strategies, resource sharing, and management processes for Canadian and U.S. management authorities for the transboundary groundfish resources (cod, haddock, and yellowtail flounder) on Georges Bank.

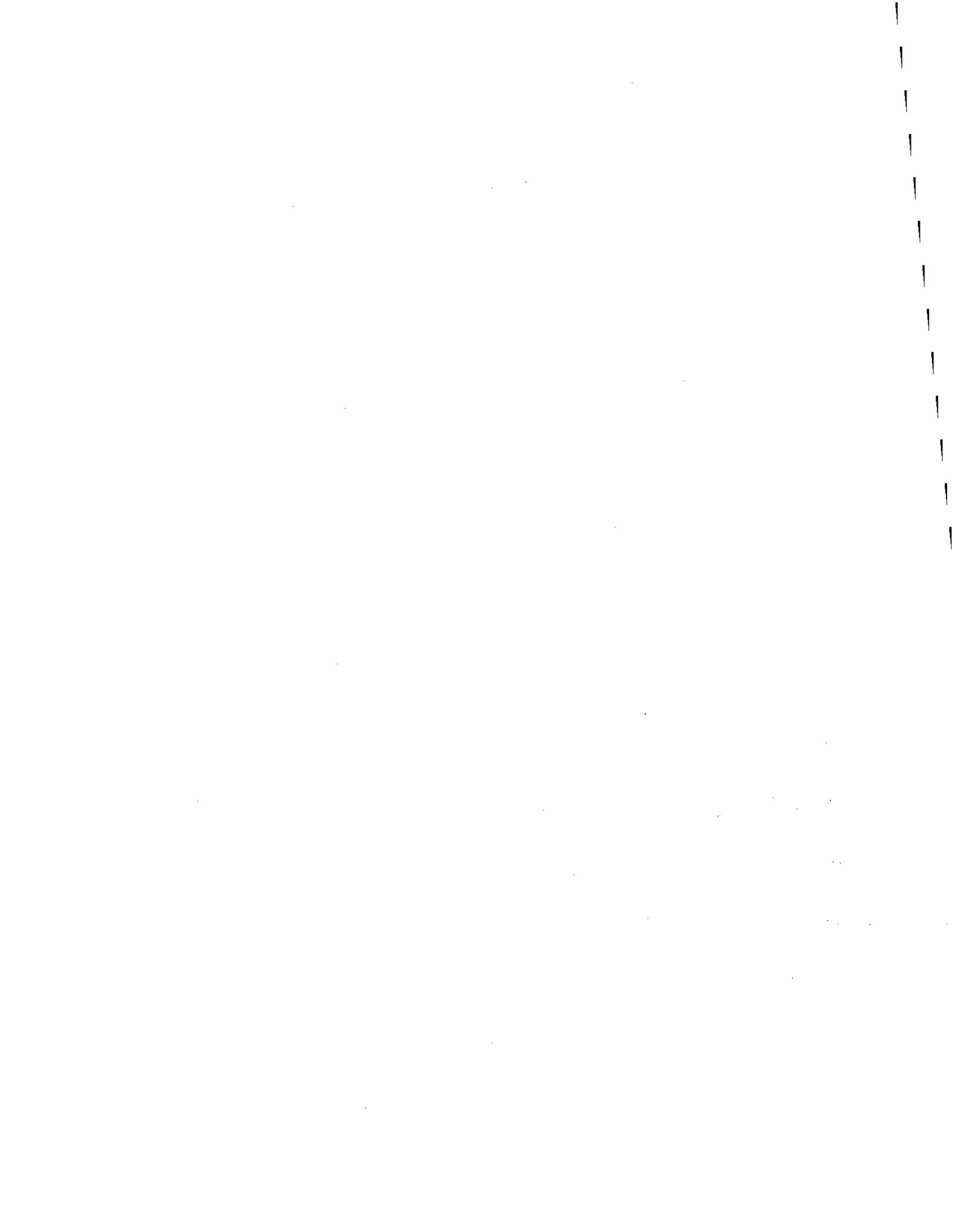
The SAW/SARC employs a sequential peer-review process in which the assessments are prepared by a SAW Working Group comprised of assessment scientists and others who are knowledgeable about the stock and the fishery. The stock assessments are then reviewed by the SARC which consists of a Chair from the SSC and individuals from the CIE. The charge to the review panel is to determine whether each stock assessment TOR of the SAW Working Group was or was not completed successfully. To make this determination, SARC panelists are instructed to consider whether the work provides a scientifically credible basis for developing fishery management advice. Criteria to consider include: whether the data were adequate and used properly, the analyses and models were carried out correctly, and the conclusions are correct/reasonable.

When the SARC rejects a new assessment approach, the default is to use the assessment approach accepted by a previous SARC, unless explicit guidance on how to proceed is provided by the SARC panel that rejected the new assessment approach. In those cases where there is no guidance and where there is no previously accepted approach, catch advice may have to be based on comparing catches (or landings) against a stock abundance or biomass metric (survey index; a reliable CPUE measure; average size/age of fish in the surveys or catches; etc.). If the SSC does not feel that the scientific information from the SARC is adequate, or if the SSC does not agree with the SARC's conclusion, then the SSC explains its reasoning and proposes an alternative that can be used for management in the absence of another stock assessment in the near future.

The TRAC employs a two-tiered review process in which each of the stocks periodically undergoes an intensive peer review of the assessment model and assumptions. This is termed a *benchmark assessment review*. The benchmark assessment framework is then applied, generally on an annual schedule, to provide the peer reviewed assessment of the resource status to fisheries managers. This is simply termed an *assessment review*. Peer review of a *benchmark assessment* involves evaluation of the technical aspects surrounding analysis of fisheries data and requires participation of local technical experts as well as those solicited from the international community. As well, stakeholders with particular insights into interpretation of the data being considered are required. The mandate of a benchmark review meeting is to reach consensus on a framework to be applied for determination of stock status and to fully document that framework. The mandate of the *assessment review* is to appropriately apply the benchmark assessment framework to fishery, survey and biological data acquired since the last assessment to elucidate current status of the stock. Participation in this process by both assessment scientists and stakeholders is encouraged to foster interpretation.

#### **Reference:**

Federal Register /Vol. 74, No. 237 / Friday, December 11, 2009 / Proposed Rules, page 65729; Magnuson-Stevens Act Provisions; National Standard 2—Scientific Information; Section: Scope of work or charge (sometimes called the terms of reference).



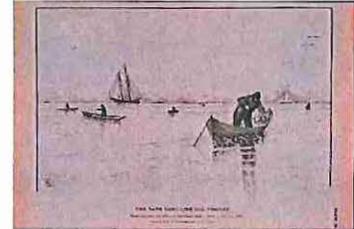
91 FAIRVIEW AVE  
PORSTMOUTH NH 03801

**NORTHEAST HOOK  
FISHERMAN'S ASSOCIATION**

April 7, 2013

**New England Fishery Management Council**

50 Water Street, Mill 2  
Newburyport, MA 01950  
Phone: (978) 465-0492  
Fax: (978) 465-3116



Dear NEFMC:

We represent a small group of Commercial Fishermen with the Limited Access Handgear HA Permits, employing the use rod and reel, handlines or tub trawls to catch Cod, Haddock and Pollock along with small quantities of other regulated and non-regulated marine fish. Historically and currently our fishermen account for a small percentage of the groundfish landed in New England. However, the monetary gains obtained by the participants in this fishery are very important to us.

Due to the recent stock assessment for cod, the NEHFA decided to scale back several proposals in our initial submission to the NEFMC. We left the options in the document for viewing purposes (lined out) and are placing these options in abeyance until such a time when the cod stocks are increasing to a point to expand the handgear fishery.

The number of active Handgear fishermen catching groundfish has significantly fallen off as has the catch thru various fishery management plans. If the NMFS wishes to have a diverse fleet, changes must be made to preserve and rejuvenate this method of fishing. We are requesting that the NEFMC included in Amendment 18, the attached proposal, to restore and rejuvenate this traditional small boat fishery to expand fleet diversity:

There are very few active Handgear fishermen left. The handgear jig fishery was the first in New England and if nothing is done it will be the first to be eliminated.

Respectfully,

Marc Stettner /s/

NEHFA MEMBERS: Marc Stettner, Hilary Dombrowski, Paul Hoffman, Christopher DiPilato, Ed Snell, Scott Rice, Roger Bryson, Brian McDevitt, Anthony Gross, Doug Amorello

*If you are a holder of a groundfish HA permit and wish to join the NEHFA, please contact the NEHFA at the address above.*

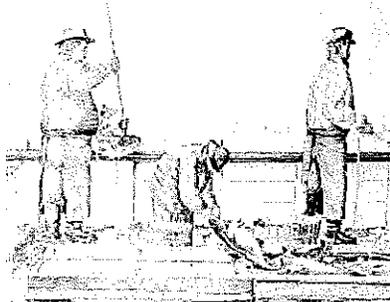


# RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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## NORTHEAST HOOK FISHERMEN'S ASSOCIATION

### AMENDMENT 18



Gaffing and cleaning cod on the deck of a handlining schooner off the North American east coast, ca. mid nineteenth century.

*"Prior to the introduction of steam trawling in 1906, groundfish were caught exclusively with baited lines, fished from schooners and their dories."*

<http://www.nefsc.noaa.gov/history/stories/groundfish/grndfsh1.html#st>

***This proposal is fully supported by the Handgear fishermen of the NEHFA:***

Marc Stettner, Hilary Dombrowski, Paul Hoffman, Christopher DiPilato, Ed Snell, Scott Rice, Roger Bryson, Brian McDevitt, Anthony Gross, Doug Amorello

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- Section 7 Sample HA permit waiting list.

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

### Section 1 Summary of proposal with management measures.

#	PROPOSAL	CHANGE FROM CURRENT MANAGEMENT MEASURES	BENEFITS TO HANDGEAR FISHERY RESTORATION FOR FLEET DIVERSITY
1	Allocate the handgear HA permit cod history (PSC) from 1996-2006 as a specific Sub ACL only to be used by Handgear HA fishermen. <del>Include a stairstep allocation provision as the fishery increases</del>	Yes	<ul style="list-style-type: none"> <li>a. All gear types are fishing on cod handgear history in the common pool.</li> <li>b. Race to fish for handgear fishermen against other gear will be eliminated.</li> <li>c. Specific management measures for handgear fishermen will be made.</li> <li>d. Preserves a traditional fishery and gear type.</li> </ul>
2	Specify handgear cod Sub ACL history can only be used by HA fishermen, using Handgear, if fishing in a sector.	Yes	<ul style="list-style-type: none"> <li>a. Currently Handgear Cod PSC can be moved into sectors and this history may be fished by gear other than handgear.</li> <li>b. <b><u>Eventually all handgear PSC may be used by non handgear vessels and the fishery will be lost.</u></b></li> <li>c. Preserves all the cod history from moving away from the handgear fishery.</li> </ul>
3	<del>Handgear permit holders can sever their HA permit from other fishery permits to sell or transfer it.</del>	Yes	<ul style="list-style-type: none"> <li>a. <del>This will allow fishermen who have other permits (lobster, scallop, etc) on their vessel to sell or transfer their permits without loss of their primary permit.</del></li> <li>b. <del>This would be a way to increase the number of handgear fishermen.</del></li> </ul>
4	Waiting list for new entrants into the handgear fishery	Yes	<ul style="list-style-type: none"> <li>a. <del>Will provide a fair way for new entrants into the fishery who do not have resources to buy a permit.</del></li> <li>b. <del>This will be a way for HB permit holders to upgrade to a HA permit.</del></li> </ul>
5	Use it or lose it rules	Yes	<ul style="list-style-type: none"> <li>a. <del>This will keep the permits with active fishermen who will use it and allow fishermen off the waiting list to get a HA permit.</del></li> </ul>
6	Removal of March 1-20 Handgear fishing closure	Yes	<ul style="list-style-type: none"> <li>a. Not necessary under ACLs.</li> </ul>

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

### Section 1 Summary of proposal with management measures continued.

#	PROPOSAL	CHANGE FROM CURRENT MANAGEMENT MEASURES	BENEFITS TO HANDGEAR FISHERY RESTORATION FOR FLEET DIVERSITY
7	Cod trip limit increased from 300lbs to 400lbs.	Yes	<ul style="list-style-type: none"> <li>a. <del>Modest increase is necessary due to increases in operating expenses (fuel, bait, etc.</del></li> <li>b. <del>Will provide further incentive for new entrants.</del></li> </ul>
8	Access to fish in all permanent and rolling closures except the cod spawning closures.	Yes	<ul style="list-style-type: none"> <li>a. Fishery under a hard ACL.</li> <li>b. Access should be the same as is for Recreational Fishermen who also use hook gear.</li> <li>c. Gear does not disturb bottom habitat.</li> </ul>
9	LOA letter not required to fish either on a commercial groundfish trip or a Charter/Party trip	Yes	<ul style="list-style-type: none"> <li>a. Flexibility needed on a day by day basis to choose what type of trip will be done.</li> <li>b. Many handgear commercial fishermen are also Charter boat operators.</li> </ul>
10	LOA letter required when fishing in the Georges BSA .	No	<ul style="list-style-type: none"> <li>a. The effectively makes sure the correct cod Handgear Sub ACL is accounted for.</li> </ul>
11	Up to 20% unused Handgear HA cod ACL may be transferred to the following fishing year	Yes	<ul style="list-style-type: none"> <li>a. This is allowed in other fisheries.</li> <li>b. Better use of unused cod allocation.</li> </ul>
12	Eliminate Trimester accountability measures for HA permit holders developed in A16	Yes	<ul style="list-style-type: none"> <li>a. Catch rates are low.</li> <li>b. Catch of other primary handgear species in the common pool (haddock and Pollock) are not significant.</li> <li>c. Eliminate the race to fish under each Trimester.</li> <li>d. Separate cod sub ACL for Handgear fishermen.</li> </ul>
13	Automatic triggers to not exceed Handgear cod Sub ACL	Yes	<ul style="list-style-type: none"> <li>a. Required by MSA.</li> <li>b. Developed specific to Handgear fishing practices and effort.</li> </ul>

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

### Section 1 Summary of proposal with management measures continued.

#	PROPOSAL	CHANGE FROM CURRENT MANAGEMENT MEASURES	BENEFITS TO HANDGEAR FISHERY RESTORATION FOR FLEET DIVERISTY
14	IVR call in not required unless 85% of the cod Handgear SUB ACL harvested. Call in modified to streamline what is needed for this fishery.	Yes	<ul style="list-style-type: none"> <li>a. Catch rates in this fishery are slow enough to loosen this reporting requirement.</li> <li>b. Repetitive information is gathered that is not needed.</li> <li>c. Current IVR call in requirements too complicated for this fishery.</li> </ul>
15	Fish size limits per existing commercial regulations.	No	<ul style="list-style-type: none"> <li>a. Size limits are an effective management tool especially for hook caught fish.</li> </ul>
16	<del>Discard mortality for hook caught cod will be set at 6-10%.</del>	Yes	<ul style="list-style-type: none"> <li><del>a. Current concept of 100% discard mortality is 100% wrong for this fishery.</del></li> <li><del>b. Best available science says 6-10%.</del></li> </ul>
17	One HA permit per fisherman. One time sell provision for existing HA permit holders	Yes	<ul style="list-style-type: none"> <li>a. Prevents corporations or NGOs from removing permits from the fishery.</li> <li>b. Allows new entrants into the fishery.</li> </ul>
18	Removal of requirement for HA fishermen to carry a tote.	Yes	<ul style="list-style-type: none"> <li>a. Handgear fishermen keep their fish in coolers. Totes take up needed deck space in small boats.</li> </ul>
19	VTRs for reporting catch	No	<ul style="list-style-type: none"> <li>a. Primary means of reporting catch.</li> </ul>
20	Changes to handgear input controls	Yes	<ul style="list-style-type: none"> <li>a. More flexibility needed to harvest cod Sub ACL</li> <li>b. Encourage more fishermen to participate in this fishery.</li> </ul>

# RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

## Section 2 STATUS OF THE HANDGEAR FISHERY

### Current Commercial Cod Handgear Fishery:

(HA) Handgear A: Limited Access permit (limited number of permits)

*A vessel with a valid open access multispecies handgear permit is allowed to possess and land up to 300\* lb (136.1 kg) of cod, one Atlantic halibut per trip, and the daily possession limit for other regulated NE multispecies, provided that the vessel did not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board. A Handgear permit vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year and the vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.*

(HB) Handgear B: Open Access permit (open to any fisherman, unlimited in number of permits issued)

*The vessel may possess and land up to 75\* lb of cod and up to the landing and possession limit restrictions for other NE multispecies. Same gear and seasonal restrictions as HA permits.*

\*Cod trip limit changes automatically proportional to cod trip limit changes for DAS vessels with Management actions.

### Current Participation (2008/2009) data:

# Handgear HA Permits :	140
# HA fishermen who are active in the Cod fishery:	<10 (estimate)
# HB Permits:	1,137

### Amendment 16 Data & Information:

**Table 58 - Total number of multispecies vessels landing groundfish by permit category, FY 2004-FY 2007**

Year	2004	2005	2006	2007
Individual DAS	691	637	590	530
Fleet DAS				
Small Vessel Exemption	2	1	2	4
Hook Gear	34	32	20	18
Combination Vessel	16	16	10	16
Large Mesh Ind. DAS	27	22	16	10
Large Mesh Fleet DAS	1			
Handgear Open Access	0			
Handgear - A	44	32	26	23
Handgear - B	75	63	59	73
Other Open Access	65	57	64	65
<b>Total</b>	<b>955</b>	<b>860</b>	<b>787</b>	<b>739</b>

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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### Section 3 WHY CHANGE?

1. The current handgear rules and multiple layers of restrictions have resulted in a handgear fishery that is not profitable. The average revenue for handgear HA permits has plummeted to less than \$5000 per year when at one time this was the primary New England method of catching cod in New England. The MS fishery act requires that there be diverse fisheries with different gear types.
2. Amendment 16 (A16) EIS (Environmental Impact Study) states "**Vessels less than 30 feet saw the biggest decrease in revenue, with an 88.8% change between FY 2001 and FY 2007**". If no action is taken to invigorate the small boat fisheries, we will have been regulated off the water, due to fishery Management Actions, even as fish stock rebound.
3. Fishing under Sectors is not a viable option considering the high costs compared to the low PSC (Potential Sector Contribution) that the Handgear fishermen received. The overwhelming majority of Handgear fishermen did not join sectors. Those who have PSC are not likely to fish in the sectors but are more likely to lease or sell their PSC. A16 estimated that it will cost fishermen \$17,000 per vessel to participate in sectors. The allocation of Cod (primary species) to Handgear fishermen is not enough to make it a profitable option to join a sector. There is no guarantee that even if a Handgear fisherman leased additional cod that the fisherman will be able to land the fish since they must first bite the hook. Once all the current Handgear permits and PSC history is bought up vessels not using Handgear, it will be extremely hard for new entrants into the fishery.
4. The current Handgear (HA and HB permits) Cod trip limits are tied to increases in the Cod trip limits for vessels fishing under DAS. At the time of Amendment 13 this rationale made sense. The idea was to have an automatic adjustment as the cod fishery rebound. With the majority of fishermen in Sectors, and the Handgear fishermen in the Common Pool, there is the very real possibility the cod TAC for the common pool will be harvested before the Handgear fishery will have had a chance to harvest their traditional percentage of the fishery. There is no possible way for the Handgear fishery to harvest cod at the rate of modern fishing methods such as trawls or gill nets. In the race to fish Handgear fishermen will lose every time.
5. There is no way for a person who wishes to become a commercial fisherman, to obtain a viable groundfish permit without substantial financial resources. The future generations need a way to be commercial ground fishermen with minimal startup costs.
6. Handgear fishermen can selectively fish with little or no bycatch. New England handgear fishermen primarily only catch Cod, haddock and Pollock with practically no appreciable quantities of other groundfish that are not considered rebuilt.
7. The fishery is very easy to manage if the management measures are kept to a minimum. The primary management measure proposed for this fishery will be trip limits with an Annual Catch Limit (ACL).
8. Similar Hook gear fisheries are successful such as the Hook Gear Halibut fishery in Alaska and the commercial Striped bass fishery in Maryland.

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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### Section 4 Specifics of proposal and discussion.

- #1 Permanently allocate the handgear HA permit cod history (PSC) from 1996-2006 as a specific Sub ACL only to be used for Handgear HA fishermen. ~~Institute a stairstep provision to increase the HA cod allocation by 1%, if 90% of the allocation is harvested in any given year. Step down provision to decrease the HA cod allocation by 1%, if 90% of the previous allocation (prior to the most recent stairstep increase) is not harvested during two consecutive years. The allocation would not drop below its initial permanent allocation level.~~**

Discussion: Currently the majority of the cod allocated to the common pool is the history of the handgear fishery. All gears can fish on this history which in turn leads to a race to fish where other gear types can harvest the cod Sub ACL before handgear have had the chance to catch their historical percentage of the fishery. It is fair to allocate this small percentage to the Handgear fishery as what was done for the recreational fleet and for other commercial fisheries. Once this allocation is made, management measures can be developed to eliminate the race to fish and to reestablish of this traditional fishery in New England. ~~The stairstep provision would be a means to expand the fishery as more fishermen are fishing with handgear as it hopefully becomes popular again~~

- #2 Specify handgear cod Sub ACL history can only be used by fishermen using handgear.**

Discussion: Currently under Sectors, it is possible for a Handgear fisherman to join a sector and lease their cod PSC to other sector members who do not use Handgear. A Handgear fisherman can also sell their HA permit with attached PSC to a Boat owner who transfers it to a skiff and then the Handgear PSC is transferred into the Sector. Unless this practice stops, all the historical handgear PSC will be lost to other gear types and the handgear fishery will be lost. This practice, if continued will severely affect the sustainability of those wishing to fish using handgear by lowering the cod Sub Handgear ACL. This would not prevent a Handgear fisherman from fishing in a sector but if they choose to then they must use handgear.

- #3 ~~Handgear permit holders can sever their HA permit from other fishery permits to sell or transfer it.~~**

Discussion: ~~Many HA permits are tied to boats in other fisheries such as lobster. This would allow these fishermen to sever the HA permit off and sell it to anyone wishing to buy the HA permit. This would hopefully allow new entrants seeking a handgear HA permit into the fishery. Currently a lobster fisherman, for example, would have to sell his combined lobster and handgear permit to someone at the combined price that may be significantly higher if it was just a handgear permit.~~

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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### Section 4 Specifics of proposal and discussion.

#### #4 ~~Waiting list for new entrants into the handgear fishery.~~

~~Discussion: The current HA permit holders will only be able to sell their permit. The buyer will know up front that he/she will not be able to sell the permit in the future and the market price will determine the price of the existing permits when they are sold. Current handgear fishermen may have purchased their permit or invested heavily in the fishery with the intent of selling it which is why they must be allowed to sell their permits. The only way to obtain a permit after the sale of the initial HA permits will be off the waiting list. The waiting list will have two categories with one being current fishermen with DAS permits with some cod PSC and the second category will be open access Handgear B permits. When a permit is retired for failure to renew or under the "use it or lose it terms", fisherman off the waiting list will be offered the permit.~~

#### ~~List rules:~~

- ~~a. The order of the DAS fishermen list will be by highest cod PSC that would be transferred into the HA total sub ACL for cod. The higher the cod PSC attached to the permit the higher on the list the fisherman would be. A minimum of cod PSC (5,000 lbs, 10,000 lbs, 15,000 TBD) will be required to get on the DAS HA permit waiting list. The exact pounds of cod TBD by the NEFMC for this proposal with the intent that they would be bringing in about the cod they would catch under this permit. This would bring more cod quota into the handgear fishery that is very much needed. Once this fisherman obtains a HA permit their DAS permit is retired from the fishery.~~
- ~~b. The order for the HB permit will be by the date they initially obtained a HB permit.~~
- ~~c. The selection for new entrants will start with a fisherman from the DAS category and will alternate between the two as permits as permits become available. See the enclosure for how the waiting list will be generated and the order.~~

#### #5 ~~Use it or lose it rules~~

~~Discussion: In order to retain a HA permit fisherman must land (250 lbs, 500 lbs or TBD) cod in any one year out of three. Failure to land #lbs (TBD by NEFMC) will result in being ineligible to renew their permit. This will result in some way for new entrants into the fishery. A fisherman who loses their HA permit may petition the NMFS for reasons that include military service where they are stationed overseas or with a note from a Physician that states they were unable to fish for the last year of the three and that they can now fish. Failure to petition the NMFS within 3 months (postmarked letter) after May 1<sup>st</sup> of the 3<sup>rd</sup> year will result in the loss of the permit.~~

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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Section 4      Specifics of proposal and discussion.

### #6      Removal of March 1-20 Handgear fishing closure

Discussion:      No longer needed with a specific cod Sub ACL. Catch of other species is not significant enough to warrant this closure.

### ~~#7      Cod trip limit increased from 300lbs to 400lbs.~~

~~Discussion:      Handgear fishermen prefer a self imposed trip limit as a management tool. This will help spread out the small cod quota among the coast where the cod show up in abundance at various times. Those HA fishermen who wish to have unlimited cod trip limits may join a sector. This trip limit may be adjusted by future groundfish Frameworks or Amendments depending on the use of the HA cod Sub ACL and the status of the cod stocks. This modest increase in the cod trip limit is intended to offset the skyrocketing costs of fuel and other expenses since the 300lb trip limit was implemented. A higher trip limit and potential profit will help draw more fishermen into this fishery.~~

### #8      Access to fish in all permanent and rolling closures except the cod spawning closures.

Discussion:      Handgear fishermen would now be fishing under a cod Sub ACL and no longer need this effort control imposed under previous management measures. Handgear fishermen use small boats that mostly limit them to inshore waters. They do not disturb essential fish habitat. They should have the same access as the recreational fishery that also use hook gear.

### #9      LOA letter not required to fish either on a commercial groundfish trip or a Charter/Party trip.

Discussion:      Many handgear fishermen also are Charter/Partyboat operators. Flexibility is needed more than ever so a fisherman can choose if they wish to charter for the day or fish under their Handgear permit commercially. This LOA letter is not need when Handgear fishermen have access to the permanent and rolling closures. Enforcement will be similar to the BF tuna fishery where they are limited by the trip limits. Once a recreational trip limit is exceeded the trip is automatically becomes a commercial trip and a VTR would be filled out prior to returning to the dock as a commercial trip.

### #10      LOA letter required when fishing in the Georges BSA.

Discussion:      Existing measure. By default a fishermen without this LOA is fishing in the GOM. This makes sure the cod Sub ACL for handgear fishermen is deducted properly.

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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### Section 4 Specifics of proposal and discussion.

#### #11 Up to 20% unused HA cod ACL Quota may be transferred to the following fishing year.

Discussion: This would provide some stability from a poor fishing year into a good fishing year for quota management. Roll over provisions currently exists in other fisheries. This is a conservation positive provision since there is no guarantee the extra 20% will be caught.

#### #12 Eliminate Trimester accountability measures for HA permit holders developed in A16.

Discussion: Catch rates are low and this is not warranted because of a specific cod sub ACL. The primary catch is Cod with some haddock and pollock. The catch of other species is not significant.

#### #13 Automatic triggers to not exceed Handgear Sub ACL.

Discussion: The following automatic trigger will be applied to make sure the cod Sub ACL (per BSA) will not be exceeded. NEFMC shall choose between choices a & b below. The choice shall be made with input from the PDT and the Handgear fishermen.

- a. Cod trip limit initially set at 300 lbs. When 85% of the Handgear ACL is harvested, the trip limit will be reduced to 200 lbs. When 95% of the Handgear ACL is harvested the trip limit will be reduced to 100 lbs.
- b. Cod trip limit initially set at 300 lbs. When 90% of the Handgear ACL is harvested, the NMFS will reduce the trip limit (in increments of 100lbs but no less than 100lbs) to spread the cod fishery out over the remainder of the fishing year.

#### #14 IVR call in not required unless 85% of the cod Handgear SUB ACL harvested. Call in modified to streamline what is needed for this fishery.

Discussion: Catch rates in this fishery are slow enough to loosen this reporting requirement. Repetitive information is unnecessarily gathered such as (phone number, BSA, gear used, ect). **Only end of trip IVR call in with permit number and VTR # is needed when 85% of the cod Sub ACL is reached.** The dealer reports the catch within 24 hrs. via the dealer reporting. The current call in & out system is too complex for this simple fishery.

#### #15 Fish size limits per existing commercial regulations.

Discussion: Handgear fishermen may choose to implement higher size limits as a management tool thru fishery Management plans. The 100% discard mortality number would have to change before this can be considered.

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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Section 4      Specifics of proposal and discussion.

~~#16      Discard mortality for hook caught cod will be set at 6-10%.~~

~~Discussion:      Discard mortality for hook caught cod will be set at 6-10%. "Survival of Discarded Sublegal Atlantic Cod in the Northwest Atlantic Demersal Longline Fishery", HENRY O. MILLIKEN, 2009 is the best available science and must be used.~~

**#17      One HA permit per fisherman. One time sell provision for existing HA permit holders**

~~Discussion:      This is to be a one boat, one permit one Captain Fishery. No banking of the permits is permitted by entities, companies, organizations or NGOs. Only the fishermen using the permit will be able to obtain and keep this permit. This is a permit to harvest fish commercially, by fishermen, and is not to be a commodity to be traded or bartered by investors. All initial Handgear HA permits will be able to be sold 1 (one) time only. After this one time transfer, the permit can't be transferred to another person, corporation or NGO. See #4 above how this relates to the waiting list and for further information.~~

**#18      Removal of requirement for HA fishermen to carry a tote.**

Discussion:      Handgear fishermen keep their fish in coolers. Totes take up needed deck space in small boats. Fish are often unloaded from coolers into totes at point of sale or at the dock where the fish are transferred off the vessel. Other commercial fisheries do not require totes to be onboard. Transferring the fish at sea from iced coolers to totes, spoils the quality of the fish. Since the quantity of fish is small, Handgear fishermen must maximize the quality. The dealer report will list the precise quantity of fish in pounds and this is reported to NMFS.

**#19      VTRs for reporting catch.**

Discussion:      No change from existing regulations.

**#20      Changes to handgear input controls**

Discussion:      Electric assist reels will be allowed on fishing rods. Small winches typically found as lobster haulers or line haulers may be used to bring in the 250 hooks (# hooks may increase in future fishery actions) tub trawl. Under a hard Sub ACL for cod these input controls are warranted. This is requested to allow an easier harvest of the cod Sub ACL but is keeping in line with the type if fishery this is. Electric assist reels are very popular in the recreational fishery for deep water fishing and this would help handgear fishermen target larger cod. Small winches for hauling the tub trawl is for safety reasons and well as easing the input controls.

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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### Section 5 Why current HA fishermen should support this.

1. HA cod is now part of the Amendment 16 common pool. If the other fishermen in the common pool catch the cod TAC early, the handgear cod fishery may be shut down before HA permit holders had a chance to harvest any cod. This is the race to fish that handgear fishermen will lose.
2. Removing the Handgear historical cod catch from the common pool cod measures Handgear fishermen will not be under a race to fish and can fish when it best suites their business plan.
3. Currently with the rolling closures small boat fishermen do not have access to the fishery when the weather is best suited and safe to fish.
4. Existing permits who decide to leave the fishery can sell/transfer their permits, to recoup any costs associated with their participation in the fishery, if they choose.
5. As the cod fishery rebounds, the cod trip limits will increase that will lead to much better profits per fisherman.
6. Exemptions from the rolling/permanent area closures (except cod spawning closures) which in some cases reduced Handgear cod catches by 75% and made the cod fishery inaccessible to many when cod are historically most plentiful. Handgear fishermen can't fish offshore or around rolling closures.
7. Future generations of fishermen will be able to actively once again participate in a historical fishery and be profitable.
8. **Once again a 17yr old HS student can borrow his parent's skiff and go commercially cod fishing in the summer instead of flipping burgers. The only cost to fish is the fuel to run the boat for the day and some ice. Eventually this fishery could lead to a way for new entrants into larger scale commercial fishing ventures for groundfish.**

### Section 6 Why Fishery Managers should support this.

1. MSA requires a diverse commercial fleet with different gear types.
2. This is hard cod Sub ACL fishery.
3. This is basically a one species fishery that is easily managed.
4. Many layers of outdated Handgear management measures are removed.
5. Easy enforcement. The only enforcement necessary would be size limits and trip limits.
6. At sea monitoring is not required since handgear fishermen do not harvest many species nor do they move between management areas. Marine Mammal interactions do not occur in this fishery.

## RESTORING THE NEW ENGLAND GROUND FISH HANDGEAR FISHERY PROPOSAL

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7. Double monitoring for quota purposes at point of sale (dealer) and via the traditional VTR. It is anticipated that Handgear will be able to enter their VTR trip data electronically at home via the internet after a trip.
8. Sustainable fishery to match the fishery stocks.
9. Catch rates are slow due to the gear used.
10. Reinvigoration of the handgear cod fishery fleet that has fallen to its lowest level ever.
11. Enable new entrants into a fishery without the unknowns of an open access fishery.

### Section 7 — SAMPLE HA PERMIT WAITING LIST

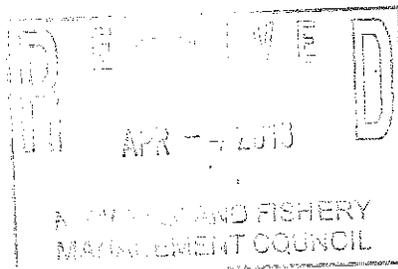
#	DAS FISHERMAN NAME	DAS FISHERMAN PSC-COD	HANDGEAR-HB NAME	HANDGEAR-HB DATE FIRST APPLIED
1	JOHN CODFISH	25,800	JAMES CONGER	1/15/2013
2	STEVE CUSK	12,700	JIM BLUEFISH	2/21/2013
3	TIM CUNNER	11,200	CHET SEABASS	7/8/2013
4	JOE BLOWFISH	10,350	BOB TUNA	1/10/2014
5	ANTHONY TUNA	8,560	TRACY YELLOWTAIL	3/21/2015
6	MARK TAUTOG	6,250		
7	PHIL FLUKE	5,100		

John Codfish would be picked first followed by James Conger and so on alternating between the two types of fishermen. Fishermen would declare their intent to remain on the waiting list or be added to the list with their permit application every year.



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Northeast Fisheries Science Center  
166 Water Street  
Woods Hole, MA 02543-1026

April 4, 2013



Mr. Thomas A. Nies  
Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

Dear Tom:

I am writing to respond to your letter of March 5, 2013, requesting that we address two motions passed by the Council at its January meeting. In the following, I will provide specific comments regarding each motion and also outline previous steps and plans for future actions by NEFSC to bring climate and ecosystem considerations into the stock assessment process and develop an Ecosystem-Based Approach to Fisheries Management in the region.

I will first respond to the Council's motion that "NEFSC provide advice on the appropriate Gulf of Maine cod reference points for when natural mortality equals 0.40 and (that the Council) task the PDT to provide ABC that would result with F40% MSP and M=0.40." The Stock Assessment Review Committee (SARC) is generally asked to recommend appropriate reference points and this requirement was included in the Terms of Reference for the 2012 GOM cod assessment peer review. The Assessment Summary Report indicates that the SARC Panel was not willing to conclude that M would remain at 0.4 in perpetuity (regime shift scenario) and so did not provide reference points for this condition. While we recognize that significant changes are taking place in the Gulf of Maine (see below), we cannot, at this time, determine that a permanent change in natural mortality has occurred. Thus, it would not be appropriate for us to provide advice under this scenario because it is not consistent with best available science as determined through the peer review process. I understand that the PDT has calculated ABCs using an M=0.4 reference point that was calculated by the stock assessment working group but not adopted by the SARC panel, and that these results will likely be discussed by the Council at its April 2013 meeting; I will certainly be willing to participate in this discussion and to elaborate on our position.

The larger issue of ecosystem changes in the Gulf of Maine and Georges Bank, and the extent to which these changes influence the productivity of groundfish stocks is, of course, of great concern. This is raised in the first motion referenced in your letter "that the Council direct the SSC and ask the NEFSC to evaluate, by the June Council meeting, whether reference points should be changed in light of ...." It is also discussed at length in recent correspondence from Captain Goethel to the Council. The Council's motion and Captain Goethel's letter both ask that new reference points be calculated relative to shifts in environmental conditions. It is important



cc. Council, Tech Staff (4/15)

to note that in many instances assessments have considered ecosystem or climate effects. Often, however, the resulting deliberations have been inconclusive for reasons that include data limitations and lack of evidence to support ecosystem/climate interactions. In one recent assessment (SNE/MA yellowtail flounder), the reference point takes into account recent low recruitment without identifying a causative factor; in this instance the decision was made by the SSC because the SARC panel was unable to choose among two possible values.

The concerns raised in by the Council and by Captain Goethel speak to the broader challenges associated with developing Ecosystem-Based Fisheries Management in the Northeast Region and enhancing the stock assessment process to support this effort. This is a challenge we face nationwide and which we will be working to address at the regional and national level within NMFS.

Captain Goethel's letter provides an excellent perspective of the challenges presented to stock assessments by ecosystem and climate interactions. The basic themes in the letter are that (1) ecosystem and climate considerations are generally not included in current stock assessments (please see comments elsewhere in this letter); (2) including these factors can change biological reference points, and (3) there is evidence that climate and ecosystem interactions are important in the past, present, and future of stock dynamics.

The NEFSC has been engaged in ecosystem and climate science for several decades. The physical conditions on the shelf and the base of the food web have been surveyed since the early 1960s. Fish eggs and larvae – the products of fish spawning – have been monitored and fish stomachs have been sampled since the early 1970s. As a result of these long-standing surveys, the Northeast U.S. shelf ecosystem is one of the best described ecosystems in the world. Our commitment to ecosystem observations provides the foundation for many of the studies cited by Captain Goethel. This body of work demonstrates that the Northeast U.S. shelf ecosystem is dynamic and that changes in the ecosystem and climate will affect the dynamics (and reference points) of fish populations.

While we have been gradually incorporating ecosystem considerations into our stock assessments, we must now develop a regular and consistent process for considering this information in the assessments and evaluating the effect of these interactions on biological reference points and stock forecasts. This process will evolve as our understanding of ecosystem and climate processes advances, and as we develop more integrative assessment approaches. We have already taken some important steps forward with the establishment of our Ecosystem Assessment Program in 2008 and our initial Climate Research Plan which was also developed in 2008. Going forward, we will require ecosystem and climate considerations through Terms of Reference for all benchmark assessments.

To take full advantage of our capabilities within the Center, I have established a high-level working group to develop a strategy for advancing our assessment capabilities and guide the implementation of the strategy. Their initial focus will be to expand and enhance our existing capacity for considering ecosystem and climate interactions in the assessment process and evaluating the effect of climate and ecosystem change on biological reference points and stock

forecasts. In the longer term, however, they will broaden their attention to more integrative ecosystem-based fisheries management approaches.

As this process unfolds, I will keep the Council informed and seek input on a regular basis. Our overarching goal in initiating this process is to continue to bring the best available scientific advice forward to support the NEFMC and MAFMC, and to enhance our capacity to do this through our ongoing research endeavors and through collaboration with industry and academic partners. Thus, while we are unable to provide specific answers to the Council's request, I expect that we will be able to do so as the process evolves.

Sincerely,

A handwritten signature in cursive script that reads "William Karp".

William A. Karp, Ph.D.  
Science and Research Director

cc: J. Bullard





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* | Thomas A. Nies, *Executive Director*

March 5, 2013

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

Dear Bill:

At the January, 2013 Council meeting two motions were passed that request analyses from the Northeast Fisheries Science Center (NEFSC). Both motions specifically address status determination criteria for multispecies stocks.

The first motion is as follows:

“that the Council direct the SSC and ask the NEFSC to evaluate, by the June Council meeting, whether reference points should be changed in light of current predator/prey relationships and changes in environmental conditions for the following stocks: Georges Bank cod, Georges Bank yellowtail flounder, Gulf of Maine haddock and Southern New England/Mid-Atlantic winter flounder. If changes in reference points are needed, those calculations should be made immediately.”

This motion **carried** on a show of hands (16/1/0). Addressing this motion by the June Council meeting will require close coordination between the SSC and the NEFSC and we look forward to working with you closely on this issue. While this motion identifies specific stocks of interest, there is increasing interest in the broader question of the impacts of environmental change on stock productivity and fishery management reference points. I hope that efforts to address this motion will advance understanding of the larger issue.

The second motion asks for specific information on Gulf of Maine cod:

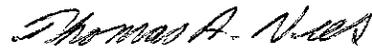
“request the NEFSC provide advice on the appropriate Gulf of Maine cod reference points for when natural mortality equals 0.40 and task the PDT to provide the ABC that would result with F40% MSP and M=0.40.”

The motion **carried** on a show of hands (11/6/0).

Only the first half of this motion applies to the NEFSC. Using the default ABC control rule, the Groundfish Plan Development Team (PDT) will provide a catch projected from the Mramp assessment model with an  $F_{40\%}$  calculated assuming that  $M=0.40$ . The PDT will not address whether this is the appropriate  $F_{MSY}$  proxy for managing GOM cod, as this is beyond the PDT's expertise, and this should be the focus of the NEFSC's response.

I recognize that these requests impose additional burdens on the assessment process, but these are critical questions of great importance to the groundfish fishery and the Council. I look forward to discussing with you the best way to answer them. Please contact me if you have any questions.

Sincerely,



Thomas A. Nies  
Executive Director



The Commonwealth of Massachusetts

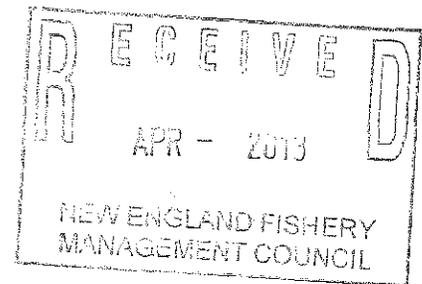
MASSACHUSETTS SENATE  
OFFICE OF THE MINORITY LEADER

SENATOR BRUCE E. TARR  
MINORITY LEADER  
First Essex and Middlesex

STATE HOUSE, ROOM 308  
BOSTON, MA 02133-1053  
TEL: (617) 722-1600  
FAX: (617) 722-1310

BRUCE.TARR@MASENATE.GOV  
WWW.MASENATE.GOV

April 1, 2013



Mr. Samuel D. Rauch III  
Acting Assistant Administrator for Fisheries  
NOAA Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910

Dear Acting Administrator Rauch,

Given the unprecedented gravity of the situation facing the New England groundfishery, and the expansive uncertainty surrounding the accuracy of decisions to make drastic cuts in allowable catches we are writing to seek a change in the course of regulation planned for the new fishing year to begin on May 1, and the corresponding avoidance of incalculable harm to those who depend on this fishery and the ports they populate.

The context surrounding the looming allowable catch reductions of as much as 77% for species such as Gulf of Maine (GoM) Cod is deeply troubling, and demands a reexamination of alternative courses of action. According to published data from the NOAA Fisheries Social Sciences Branch, landings of cod in late February and early March exceeded 20,000 pounds on 5 days in the past six weeks, despite the constraints imposed by severe winter storms. In addition, published reports in the Gloucester Daily Times have documented significant increases in landings at the two auction facilities in Gloucester. Specifically, the Times reports that cod have returned in notable concentrations on Stellwagen Bank and are being "landed with plentiful yellowtail flounder by the inshore fleet." (March 22, 2013)

Beyond the discrepancy, compelling information about the uncertainty and inaccuracy of the methods used to establish catch limits is provided by a report issued in mid-January by the University of Washington. That report, entitled "*The frequency and intensity of productivity regime shifts in marine fish stocks*," documented that the current abundance modeling methods used to establish catch limits are ineffective at maximizing sustainable harvests. The report indicates that reaching the abundance levels developed by current models fails to effectively cause maximum sustainable yields for 82% of the stocks examined. Thus, the industry is being subjected to possible financial ruin for scientific methods that have a roughly 18% chance of success. The report also concludes that potential fish harvests are either random or controlled more by irregular shifts in environmental conditions than abundance or shifts in environmental patterns.

In the context of large and growing discrepancies between stock assessments and the abundance reflected in harvester observations and landings and the pervasive inaccuracies documented by the University of Washington, the impending irreparable damage that would be caused by planned reductions in catch limits on species such as GoM cod is unwarranted and indefensible.

cc: Council, GF Cte (4/5)

A far more reasonable, practicable and justifiable course of action is available and we request that you take that course. More specifically, that course of action involves at least the following four steps:

1. Suspension of the drastic cuts in allowable catch limits for GoM cod, GoM yellowtail flounder, and GoM haddock scheduled to go into effect for the next fishing year on May 1, 2013.
2. The implementation of an interim action to reduce, but not end, overfishing of Gulf of Maine Cod and Gulf of Maine Haddock for 2013.
3. Completion of an interim stock assessment, on an emergency basis, to analyze current observations of relative stock abundance and reconcile them with the stock assessments upon which the currently planned catch reductions were based.
4. Development and implementation of new catch limits, following the expiration of an interim action, based on the best available science. That science can be achieved through the completion of the interim stock assessment as described in step 3, above.

A unique and prime opportunity to develop better science and achieve step 3 is presented by the fact that both NOAA Fisheries and the Massachusetts Marine Fisheries Institute are conducting a systematic review of the scientific method in developing stock assessments. An interim assessment of GoM cod, GoM haddock and GoM yellowtail flounder could be conducted in collaboration with the institute or independently, and in concert with these reviews.

Furthermore, a compelling case exists for the interim action involved in step 2, and it involves the following factors:

- The declaration in September of 2012 by Acting Secretary of Commerce of the New England groundfish industry as an economic disaster.
- The provisions of §304 (e) (6) of the Magnuson Act, which specifically authorize interim actions for the purpose of allowing Regional Councils to develop new and protective rebuilding plans. The section provides that such interim measures, "may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery."
- The written expression of Congressional intent provided to you by the letter of January 25, 2013 from several members of the Massachusetts Congressional Delegation, a copy of which is attached and highlighted, indicating the implementation of successive interim measures in the circumstances presented here, and does not violate the Congressional intent that produced the enactment of §304 (e) (6).

Throughout the last several years the New England Fisheries Management Council and federal regulators have repeatedly used extremely precautionary measures to hedge against the uncertainty of the science being used to manage our fisheries, and that precautionary approach has taken its toll on fishing families, ports, and infrastructure. Now, it threatens their economic survival.

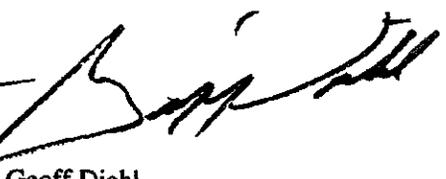
We appreciate the difficulty of the path now before you, and your consideration of our views in this matter. Please do not hesitate to contact us if we may be of any further assistance.

Sincerely,

  
Bruce Tarr  
State Senator

  
Therese Murray  
Senate President

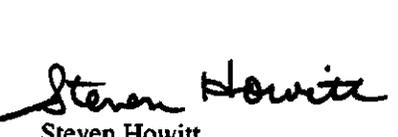
  
Ann-Margaret Ferrante  
State Representative

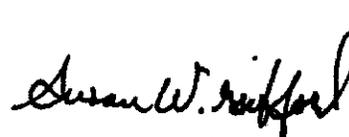
  
Geoff Diehl  
State Representative

  
Robert Hedlund  
State Senator

  
Anne Gobi  
State Representative

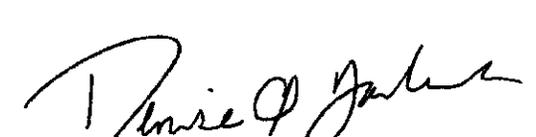
  
Robert Koczera  
State Representative

  
Steven Howitt  
State Representative

  
Susan W. Gifford  
State Representative

  
Garrett Bradley  
State Representative

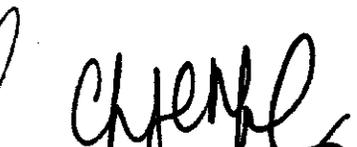
  
Rhonda Nyman  
State Representative

  
Denise Garlick  
State Representative

  
Kathi-Anne Reinstein  
State Representative

  
James Dwyer  
State Representative

  
Antonio F.D. Cabral  
State Representative

  
Christopher Markey  
State Representative

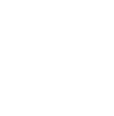
  
Matthew Beaton  
State Representative

  
Kandy Hunt  
State Representative

  
Richard Ross  
State Senator

  
James Cantwell  
State Representative

  
Angelo D'Emilia  
State Representative

  
Paul Schmid  
State Representative

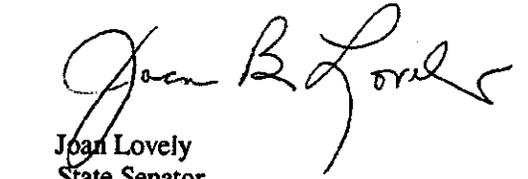
  
Kathleen O'Connor Ives  
State Senator

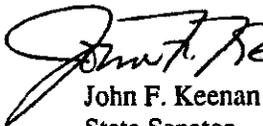
  
Kimberly Ferguson  
State Representative

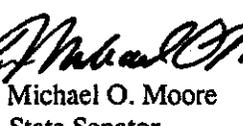
  
Jerry Parisella  
State Representative

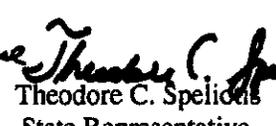
  
John D. Keenan  
State Representative

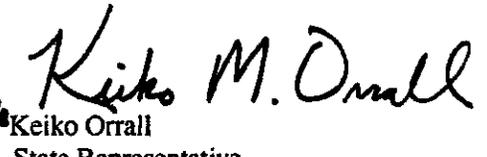
  
Bradford Hill  
State Representative

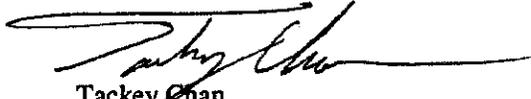
  
Joan Lovely  
State Senator

  
John F. Keenan  
State Senator

  
Michael O. Moore  
State Senator

  
Theodore C. Speliotes  
State Representative

  
Keiko Orrall  
State Representative

  
Tackey Chan  
State Representative

- Cc: Honorable Governor Deval L. Patrick  
Honorable Senator Elizabeth Warren  
Honorable Senator William "Mo" Cowan  
Honorable Congressman Richard Neal  
Honorable Congressman Jim McGovern  
Honorable Congresswoman Niki Tsongas  
Honorable Congressman Joseph Kennedy III  
Honorable Congressman Edward Markey  
Honorable Congressman John Tierney  
Honorable Congressman Michael Capuano  
Honorable Congressman Stephen Lynch  
Honorable Congressman William Keating



New England Fishery Management Council

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

April 4, 2013

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

Re: Framework Adjustment 48 Proposed Rule (*78 Federal Register 18188*)

Dear John:

On March 25, 2013, a Proposed Rule was published that requests comments on the proposed regulations implementing Framework Adjustment 48 (FW 48) to the Northeast Multispecies Plan Plans (*78 Federal Register 18188*). Please consider the following comments on this proposed regulation. My comments are provided in the order of discussion in the proposed rule.

*White Hake Status Determination Criteria*

The preamble correctly notes that FW 48 expected that the results of the white hake benchmark assessment would be available in time to publish revised status determination criteria in the Proposed Rule. As noted this did not occur and so the Proposed Rule is not proposing any change to the criteria through this rulemaking. The assessment results were released on April 3, 2013 and recommend increasing the overfishing level from F=0.13 to F=0.20. This would limit the ability to modify the FY 2013 ABC as a result of the new assessment. I recommend that the new status determination criteria be adopted as quickly as possible.

*Commercial Groundfish Fishery Accountability Measures (AMs)*

FW 48 proposes changes to several commercial groundfish fishery AMs. Subsequent to submission of FW 48, staff was notified of an apparent error in the coordinates for one of the fixed gear AM areas for Atlantic halibut. The document has been revised with the correct coordinates, which are as follows:

Fixed Gear Halibut AM Areas – Corrected Coordinates

- 42-30N 70-20W
- 42-30N 70-15W
- 42-20N 70-15W
- 42-20N 70-20W
- and
- 43-10N 69-40W
- 43-10N 69-30W
- 43-00N 69-30W
- 43-00N 69-40W

*Requirement to Stow Trawl Gear While Transiting*

I urge you to approve the proposed elimination for the requirement to stow trawl gear while transiting. The stowage requirements are a relic of an earlier management system, and the time has come to eliminate it from the groundfish plan. The discussion in the preamble does not completely describe the Council's deliberations on this issue. While it is true the VMS/Enforcement Committee made a different recommendation, the Council forwarded this recommendation to the Groundfish Committee for further deliberations in January, 2012. This led to the Committee's recommendation to eliminate the measure for groundfish trawl vessels. The Council voted to include this option in FW 48 on April 26, 2012, with a unanimous vote (one abstention). The Coast Guard representative to the Council did not oppose removing the regulation at this meeting (minute 21:45 of the April 26, 2012 meeting recording). The vote for final approval was also unanimous and included the agency's vote in favor of the change (December 20, 2012).

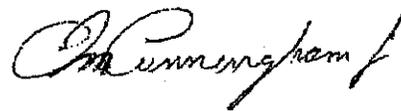
*Change to Eastern U.S./Canada Quota Monitoring*

I do not support this proposed change to U.S./Canada area quota monitoring and question the Agency's authority to make this change. As noted in the Proposed Rule, FW 42 adopted a measure to apply all catches of cod, haddock and yellowtail flounder that are caught on any trip that fishes in the eastern U.S./Canada area against the U.S./Canada quota, regardless of where caught. This provision has not been changed by any explicit Council action. I do not agree that the lack of clarity in Amendment 16 provides the Agency authority to modify a Council action. The change is not in accordance with the draft regulatory text that the Council deemed consistent with the intent of Amendment 16.

While I recognize that the proposed change may reflect what the Agency has been doing in recent years, concerns have been raised that this has created a loophole that is being exploited and may be leading to misreporting of cod catches in the U.S./Canada area. The solution to this possible problem is not to ignore it, but to use a tool that was adopted specifically to discourage misreporting. I do not understand why the Agency would propose making this loophole permanent given the sensitivity of the U.S./Canada resource Sharing Understanding. I urge you to not to implement this proposed change.

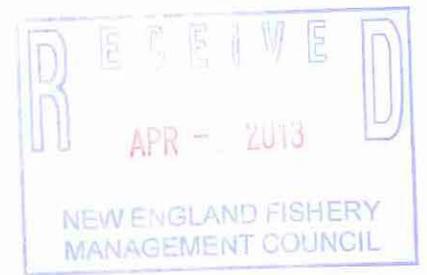
Thank you for considering these comments. Please feel free to call me with any concerns.

Sincerely,



C.M. "Rip" Cunningham  
Chairman

cc: Melissa Hooper, NERO



**PROBLEM STATEMENT:**

The haddock resource in the Northeast is assessed by the Northeast Fisheries Science Center (NEFSC) as two stocks, Gulf of Maine haddock and Georges Bank haddock.

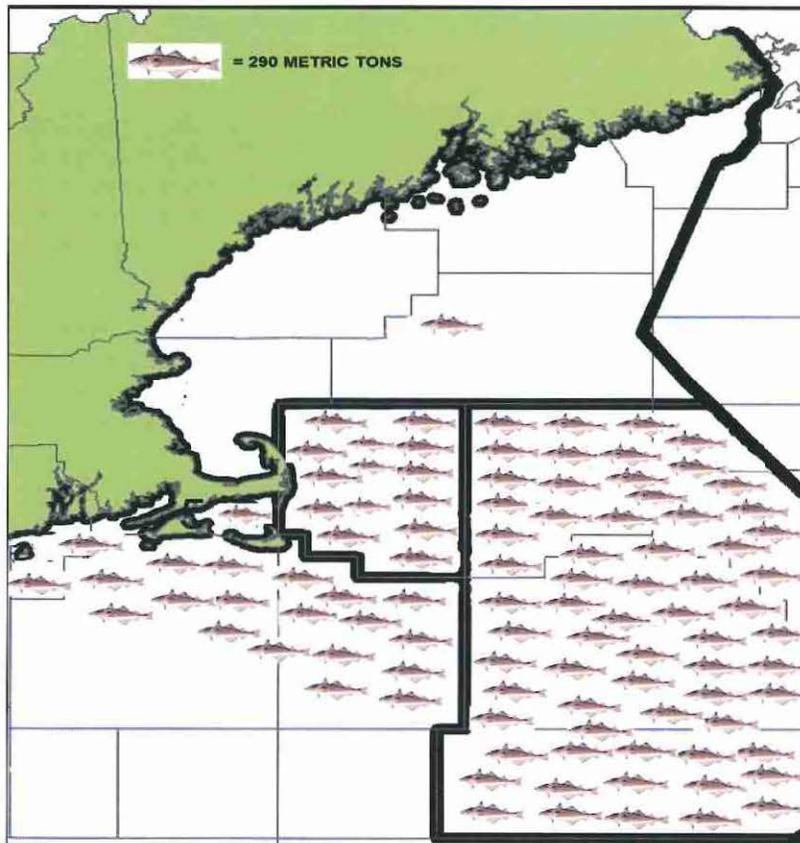
Georges Bank haddock has been intensively studied as far back as the 1930s and assessment documents for the following years are available on the NEFSC web page; 1986, 1987, 1991, 1996, 1997, 1998, 2002, 2005, 2008 and 2012, as well as the annual TRAC updates since 1998. Gulf of Maine haddock has been assessed less frequently: 1986, 2001, 2002, 2005, 2008 and 2012.

The Gulf of Maine haddock stock boundary region is designated as statistical areas 511-515. The Georges Bank haddock stock boundary region is the area south of the Gulf of Maine stock complex.

**In 2013, the Gulf of Maine haddock ABC (allowable biological catch) is 290 mt.**

**In 2013, the Georges Bank haddock ABC is 29,335 mt, or 100 times greater than the Gulf of Maine haddock ABC. (Figure 1)**

**Figure 1**



Information regarding the identification of separate stocks of haddock and the level of interchange between stocks has evolved. Research documents and stocks assessments provide some support for the stock delineation between the Gulf of Maine and Georges Bank, and some information about the “mixing” of the stocks, as well as the observed “spill over” into the Gulf of Maine of large year classes of Georges Bank haddock. Research also shows that historically there has been consistency between year-class sizes for the different stocks, though discrepancies have also been noted. Uncertainty about haddock stock structure within New England waters remains (see attached).

Given the evidence of a large year class (2010) of Georges Bank haddock, it is likely that some will spill over into the Gulf of Maine. If just 1% of the Georges Bank haddock ABC were to spill over the stock boundary, and be caught by Gulf of Maine fishermen, the entire Gulf of Maine groundfish fishery could be closed. Problem will exacerbate if the 2010 year class of Gulf of Maine haddock proves to be strong, as well as by increased ABCs for Georges Bank haddock for 2014, and 2015 and stagnant ABCs for GOM haddock during the same years.

## Research references to Haddock Identification and Stock Mixing

- 1) Review and Assessment of the Georges Bank and Gulf of Maine Haddock Fishery. J Northw. Atl. Fish. Sci., Vol. 3, 1982, page 4  
<http://journal.nafo.int/j03/clark.pdf>

*It is possible that some interrelationships exist between these groups, as Grosslein and Hennemuth (1973) found generally good agreement between yearclass size in the Georges Bank, Gulf of Maine and Browns Bank areas, i.e. the same year-classes have historically tended to be relatively strong or weak throughout the region, but discrepancies have been noted (e.g. the 1978 year-class was estimated to be strong on Georges Bank and weak in other areas).*

And, based on review of historical tagging studies, the authors conclude, page 24:

*The Georges Bank population east of the Great South Channel appears to be relatively isolated from those of adjacent areas, but one or two smaller units, which may intermingle to some degree, also exist in the Nantucket Shoals and western Gulf of Maine area.*

- 2) Report of Second NEFC Workshop Stock Assessment Workshop, June 13, 1986, Ref Doc 86-09, page 8, Gulf of Maine haddock discussion.  
<http://nefsc.noaa.gov/publications/series/whlrd/whlrd8609.pdf>

*Based on recruitment indices from the Massachusetts survey and commercial catches, it appears that large year classes from Georges Bank may spill over into some areas of the Gulf of Maine at age 2-3+.*

- 3) Report of the Thirteenth Northeast Regional Stock Assessment Workshop, February, 1992, page 73, Georges Bank Haddock discussion.  
<http://nefsc.noaa.gov/publications/crd/pdfs/crd9202.pdf>

*The haddock (*Melanogrammus aeglefinus*) within USA waters are considered to comprise two management units, Georges Bank (Division 5Z/Subarea 6) and Gulf of Maine (Division 5Y). These definitions are based on tagging studies, meristic data, age composition and growth.*

(references for tagging studies, meristic date, age composition and growth not cited in this document)

4) Begg, G. A Review of Stock Identification of Haddock, *Melanogrammus aeglefinus*, in Northwest Atlantic Ocean, Marine Fisheries, 60(4), 1998, page 2

*Currently, six stocks are recognized for haddock in the northwest Atlantic: 1) Grand Banks (Div. 3LNO), 2) St. Pierre Bank (Div. 3Ps), 3) Eastern Scotian Shelf and Southern Gulf of St. Lawrence (Div. 4TVW), 4) Western Scotian Shelf (Div. 4X), 5) Georges Bank (Div. 5Zjm - Canada; Div. 5Z - USA), and 6) Gulf of Maine (Div. 5Y)*

And page 12:

*A considerable degree of uncertainty still remains in the current views of haddock stock structure within New England waters, particularly over the discreteness of the Nantucket Shoals population and, to a lesser extent, that in the Gulf of Maine.*

5) Assessment of 19 Northeast Groundfish Stocks through 2000: A Report to the New England Fishery Management Council's Multi-Species Monitoring Committee, page 195. <http://nefsc.noaa.gov/publications/crd/crd0120/pdfs/0120-2r.pdf>

*The Gulf of Maine haddock stock was last assessed at SAW/SARC 2 in 1986.... ..The fishery in the mid 1980s was being supported by spill over of large year classes from Georges Bank, and research vessel surveys indicated that recruitment in the Gulf of Maine was extremely poor.*

6) Update of the Gulf of Maine haddock (*Melanogrammus aeglefinus*) stock assessment: an update of the resource through calendar year 2010, posted March 14, 2012, page 180 <http://nefsc.noaa.gov/publications/crd/crd1206/gomhaddock.pdf>

*“The delineation of the two stocks is supported by differences in growth rates and general distribution patterns (Begg et al. 1999), though tagging studies do indicate some degree of mixing between the two stocks as well as with stocks in Canadian waters (reviewed in Begg 1998)”.*



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* | Thomas A. Nies, *Executive Director*

March 29, 2013

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

Re: FY 2013 Sector Operations Plans (78 *Federal Register* 16220)

Dear John:

On March 4, 2013, a Proposed Rule was published that requests comments on the 2013 Sector Operations Plans (78 *Federal Register* 16220). The Proposed Rule includes the Agency's proposed response to sector exemption requests. In general, I am concerned that some of the actions that are under consideration will inhibit the ability of vessels in sectors to mitigate the low catch limits that were adopted by the Council in Framework Adjustment 50. The industry, the Council and the Agency spent an enormous amount of time and effort to craft limited opportunities for sector vessels to target stocks such as Georges Bank haddock, pollock, and redfish. Some of the measures that are suggested in this Proposed Rule may render that effort worthless.

While I will provide specific comments below, my concerns focus on two general areas. First, the imposition of requirements for the industry to fund all at-sea monitoring (ASM) coverage for many programs may prevent any participation in those programs. Given the fragile economic state of many participants, the increased costs to fund observers may not be affordable. Second, the proposed limitations on access to groundfish closed areas will reduce benefits from opening those areas.

*General Comments on Observer Coverage Issues and Requirements for Industry-Funded Coverage for Several Exemptions*

The Proposed Rule announces the level of at-sea monitoring (ASM) coverage that will be required for FY 2013. I am pleased to see the Agency is proposing a stock-specific Coefficient of Variation (CV) rate across all sectors, the same approach that the Council proposed in Framework Adjustment 48, and I urge you to adopt this requirement.

The level of coverage for sector fishing trips that would be required is 22 percent of trips (14 percent ASM and 8 percent NEFOP). I am concerned that the level of coverage is based in large measure on the rate needed to achieve the desired CV for GB winter flounder, and that this same rate is then applied across all sectors. The coverage rate that results is roughly 10 percent higher than the rate needed for any other stock. There are several sectors with little or no catch of GB winter flounder, a stock that is only caught by offshore vessels and so it does not seem appropriate to use this stock as the basis for the monitoring standard. Using one rate also removes any incentive for sectors to reduce the variability in discards in order to reduce observer costs, since this will not have any impact on their future coverage rates. The primary rationale for this approach is concern that using different rates for each sector would complicate the assignment of observers. Perhaps a compromise approach would be to use one coverage

rate for sectors that catch substantial amounts of GB winter flounder and a different rate for sectors that do not. This would reduce industry-wide monitoring costs.

A frequent requirement in the Proposed Rule is to require that vessels participating in several new exemptions (including access to portions of year-round closed areas) will be required to have 100 percent observer coverage of all trips, and that this coverage must be funded by the industry. The Council opposes these new requirements. The Council did not choose to require 100 percent ASM coverage as a condition for access to year-round closed areas. Little, if any, justification is provided for this required level of coverage - all the analyses that are provided conclude that 22 percent coverage provides sufficient precision and accuracy. I urge you to revisit this requirement and provide adequate justification for any coverage level above 22 percent.

But even assuming that 100 percent coverage can be justified, the Agency's rationale for requiring that it be funded by the industry is not convincing. The Council opposed industry funding of all observer coverage for the redfish exemption, and the exemption was approved without this requirement (78 *Federal Register* 14226, March 5, 2012).

The Agency expresses concern that allowing vessels to use NEFOP coverage in these exemptions would encourage vessels to use the exemption if selected for an observer. It is difficult to understand why this is a problem, seeing as how it would encourage fishing on healthier stocks. If the concern is that these trips will reduce observer coverage for other trips, we note that the proposed coverage standard is much higher than that needed for the required CV for almost all stocks so there would appear to be some slack in the coverage requirements. If the concern is that these trips are not representative of standard sector trips, then another possible solution is identify these trips in all relevant databases so that discard rates can be appropriately stratified. Vessels could also be required to declare intent to fish in these exemptions before an observer is assigned, a provision that could be made binding through sector operations plans. These are just a few examples of alternative ways to address this issue; I'm sure that industry representatives could identify many others.

#### *Limits on the Number of Gillnets Imposed on Day Gillnet Vessels*

The Agency is concerned that exempting sector vessels from the limit on the number of gillnets that may be deployed might lead to increased interactions with protected species. This exemption has been approved for three years. The relevant question that is not addressed in the Proposed Rule is whether an increase in interactions has been documented during that period. The draft Sector Operations Plan Environmental Assessment states "NMFS observer data from FY 2011 over FY 2009 (see table 4.5.4-3) indicate no substantial increase in take for listed marine mammals or turtles" as a result of this exemption. With this recent experience it is difficult to understand why the denial of the exemption is being considered.

#### *Restrictions for the Eastern U.S./Canada Haddock SAP*

Sectors have been provided exemptions in the past from the requirement to use specific gears in the Eastern U.S./Canada area. The Proposed Rule raises concerns that this exemption may lead to sectors rapidly catching their allocations of stocks such as GB cod. Since the underlying philosophy of sector management is to enable fishermen to develop optimal fishing strategies, I do not support disapproving this exemption request. Sectors must have the tools necessary to manage their fishing operations to their benefit.

The Proposed Rule also expresses concern that extending the exemption from the gear requirements to SAP areas may be inconsistent with the original intent of the SAP. Please note that Amendment 16

specifically exempted sector vessels from the gear requirements for the Eastern U.S./Canada Haddock SAP, so there is actually no need for the exemption for vessels participating in the SAP, and granting the exemption throughout the SAP area is actually consistent with the Council's intent. I do not agree that requiring a vessel to use selective trawl gear in the Eastern U.S./Canada Haddock SAP is consistent with my letter of June 22, 2012; that letter highlights that ACE, and not gear restrictions, should be the primary control of catches. I urge you to approve the exemption from gear requirements for the Eastern U.S./Canada Haddock SAP.

The Proposed Rule suggests that access to the Eastern U.S./Canada Haddock SAP will be limited to June 1 through December 31 because of concerns that fishing activity will interfere with GB winter flounder spawning between March and May, and GB cod spawning between February and April. The draft EA indicates GB winter flounder life history is similar to that for GOM winter flounder, which spawns in February and March at the latitude of Closed Area II (CAII). MARMAP surveys of egg distribution from 1978 through 1987 show almost no eggs detected on Georges Bank in May (Pereira 1999). A recently completed and reviewed experiment (Smolowitz et al. 2012) noted that peak winter flounder spawning occurred in February and March in Closed Area II (CAII), and found low densities of winter flounder in the area in May with the highest densities in early fall which does not coincide with spawning periods. Analyses of survey data included in Framework 48 indicate that winter flounder spring survey catches/tow are higher within the EFH area (which will not open) than in the rest of the closed area, or open areas. Given this information, and the lack of any contrary information provided for public review, I urge you to allow access beginning May 1, consistent with the Council's earlier request.

*Seasonal Restrictions for the CAI Yellowtail Flounder SAP*

The Proposed Rule would extend the CAII SAP season to June through January because of concerns over possible interference with GB winter flounder spawning activity. Our comments on the dates proposed for the Eastern U.S./Canada Haddock SAP apply to this SAP as well. In addition, given the extensive literature that indicates GB cod spawn along the northern edge and the lack of evidence that cod spawning occurs in the sandy areas of the southern part of CAII, I am surprised that the Agency uses concern over cod spawning to justify restricting seasonal access to this area. I urge you to extend the date for access to CAII to May 1, consistent with the Council's recommendation.

Thank you for considering these comments. Please feel free to call me with any concerns.

Sincerely,



C.M. "Rip" Cunningham  
Chairman

cc: Allison Murphy, NERO

Literature Cited:

Pereira J.J., Goldberg R, Ziskowski J.J., Berrien PL, Morse WW, Johnson DL. 1999. Essential fish habitat source document: Winter flounder, *Pseudopleuronectes americanus*, life history and habitat characteristics. NOAA Tech Memo NMFS NE 138; 39 p.

Smolowitz, Ronald, Kathryn Goetting, Farrell Davis, and Dan Ward. 2012. Optimizing the Georges Bank Scallop Yield by Maximizing Meat Yield and Minimizing Bycatch. NOAA Grant NA11NMF4540027.





New England Fishery Management Council

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

March 18, 2013

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

Dear John:

In accordance with provisions of the Magnuson-Stevens Act, I have reviewed the draft regulatory text for Framework Adjustment 50 to the Northeast Multispecies FMP in order to deem whether it is consistent with the framework text and the Council's intent. The review is based on the draft regulatory text provided to the Council on March 14, 2013 and I have concluded that the draft regulatory text implementing Framework 50 measures is consistent with Council intent.

The draft regulatory text also includes several proposed modifications and corrections to regulations that were previously adopted and changes that limit the amount of ACE carry-over that is allowed. To be clear, the above deeming conclusion does not apply to these changes and there are two issues that are not related to Framework 50 that I wish to highlight:

(a) The draft regulation proposes to limit the amount of unused Annual Catch Entitlement (ACE) that a sector can carry forward, and also modifies how catches are compared to allocations and carry-over. These are not Framework 50 measures, and from the draft regulations it is not clear what regulatory authority is being used to make these changes. I am concerned the agency may be planning to use the language in section 305(d) of the Magnuson-Stevens Act to authorize this change. If this is the case, this would seem to be an exceptional extension of the Secretary's authority to approve, partially approve, or disapprove management measures proposed by the Council. The carry-over provisions were adopted in Amendment 16 and approved by the agency at that time. It is not clear to me how this earlier decision can be overturned absent a Council action.

(b) The changes to the carry-over provisions would seem to make permanent the limitation on the amount of GOM cod that can be carried forward. While the agency provided the Council an explanation why this limit may be necessary for FY 2012 – FY 2013, we have not received any explanation why this limit is appropriate for future years. Indeed, your letter of March 1, 2013 indicated that the carry-over limit was intended to be a one-year transitional approach and not a permanent change. Perhaps this will be addressed by the effective date of the regulations, but if not, I urge you to explicitly propose this limit for FY 2012 to FY 2013 carry-over only.

Please feel free to call me with any concerns.

Sincerely,

C.M. "Rip" Cunningham  
Chairman





New England Fishery Management Council

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C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

March 13, 2013

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

Dear John:

In accordance with provisions of the Magnuson-Stevens Act, the Council Chair has reviewed the draft regulatory text for Framework Adjustment 48 to the Northeast Multispecies FMP in order to deem whether it is consistent with the framework text and the Council's intent. The review is based on the draft regulatory text provided to the Council on March 12, 2013. The draft regulatory text also includes several proposed modifications and corrections to regulations that were previously adopted. To be clear, this deeming conclusion does not consider those changes that are not needed to implement Framework 48.

I have concluded that the proposed regulatory text implementing Framework 48 measures is consistent with Council intent. There are, however, two issues that I wish to highlight:

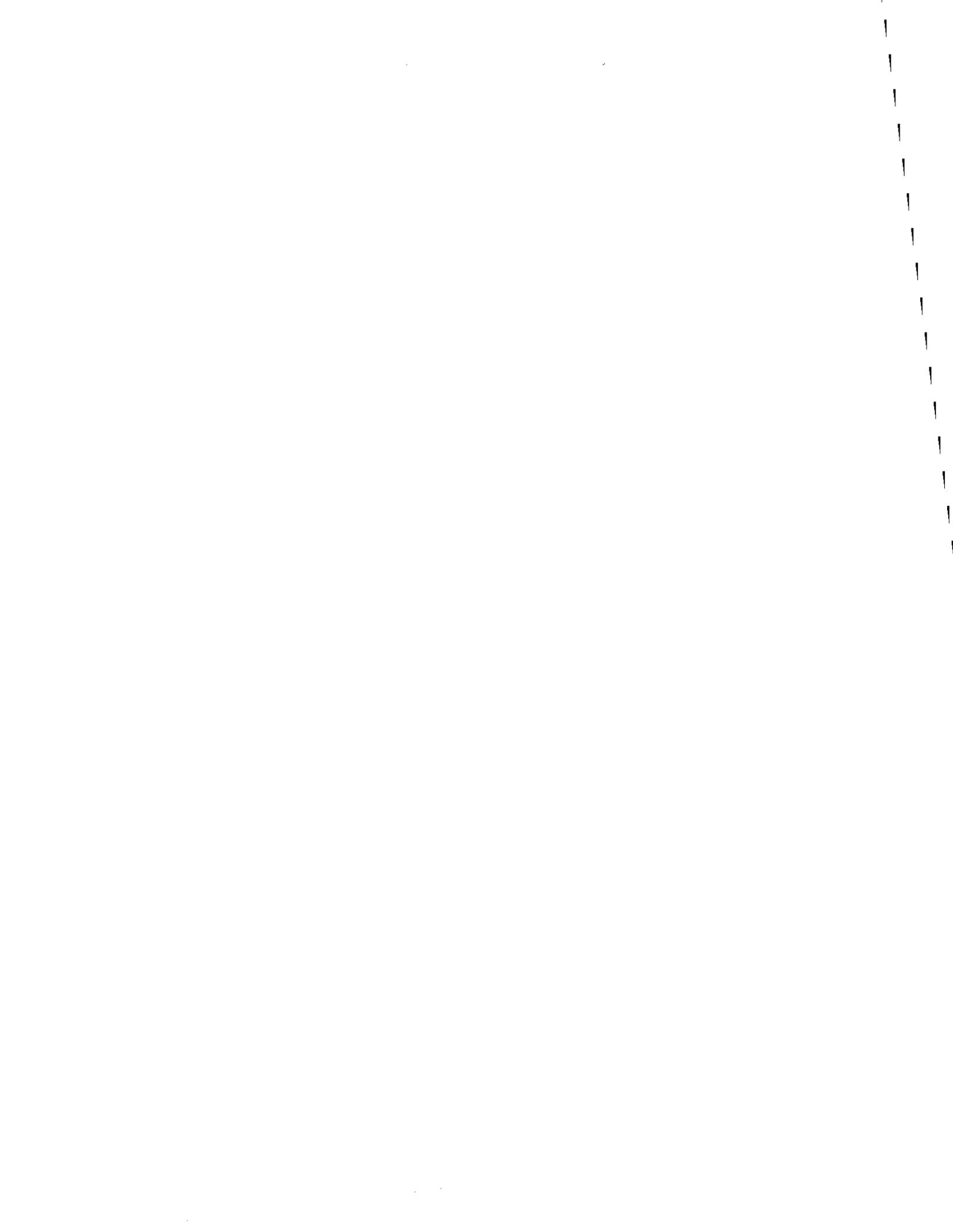
(a) The draft regulation proposes to apply Framework 48 at-sea monitoring standards to all regulated species and ocean pout, while the framework document says they apply to allocated regulated species. The applicability of the measures to only allocated species was raised at the December 2012 Council meeting and it could not be resolved why the draft document did not apply the standard to all regulated species and ocean pout. The Council directed staff to attempt to resolve the issue subsequent to the meeting. Neither NMFS nor Council staff could recall why the standards should be limited to a subset of regulated species and this appears to be an oversight in the document. I suggest that this issue be highlighted in the preamble of the proposed rule so public comment can be solicited.

(b) One of the proposed corrections would modify the monitoring requirements for Eastern Georges Bank cod and Eastern Georges Bank haddock. While this is not a Framework 48 issue, it is unlikely the full Council will have an opportunity to comment on this change prior to publication of the final rule. I would note that while the Amendment 16 document may not clearly address this issue, the proposed change is not consistent with the draft Amendment 16 regulations that were deemed consistent with Council intent. I recommend that this proposed change also be specifically highlighted for public comment in the preamble to the proposed rule.

Please feel free to call me or Council staff with any concerns.

Sincerely,

C.M. "Rip" Cunningham  
Chairman





Paul J. Diodati  
Director

# Commonwealth of Massachusetts

## Division of Marine Fisheries

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(617)626-1520

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

March 12, 2013

John K. Bullard  
Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2276



Re: Reconsideration of Interim Groundfish Request

Dear John:

Both you and Acting Secretary of Commerce Blank have pledged the Department's and Service's continuing engagement with the Council and fishing industry to mitigate the severe impacts of pending groundfish quota reductions. I appreciate all those efforts and your support for further steps. Nevertheless, I must raise concern over an apparent recent inconsistency in NOAA Fisheries' consideration of circumstances to justify or deny possible mitigation measures.

Specifically, your denial of the Council-requested interim action to reduce overfishing for Gulf of Maine cod (and haddock) in FY2013 stated: "...a second year of interim measures in the case of GOM cod is not justified unless a change in circumstances (my emphasis) has created a new emergency situation that would permit such action." Consider that in the proposed emergency rules for monkfish (78 Federal Register 12708), NMFS stated: "(T)he potential impact of the proposed reductions in groundfish ACLs for several groundfish stocks combined represents recently discovered circumstances (my emphasis) that could result in substantial harm to the groundfish fishery and associated fishing communities." You described new circumstances: "the full scope of potential adverse economic impacts for FY 2013...not realized until very recently."

That emergency monkfish action – like the previously requested interim groundfish action – is meant to (and hopefully will) "help mitigate expected substantial adverse economic and social harm resulting from reduced groundfish ACLs in FY 2013." This monkfish action and its rationale dovetails nicely with Secretary Blank's recognition of the emergency situation presented by pending groundfish quota reductions by declaring a fishery disaster back in September of 2012 effective May 1, 2013.

cc: PMF, RF, FH (3/18)

I ask you, therefore, to once again give careful consideration to the Council interim request and reverse your previous decision seemly inconsistent with NMFS logic for emergency action on monkfish measures.

Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David". The signature is written in a cursive style with a large, looped initial "D".

Da

David Pierce, Ph.D.  
Deputy Director

cc  
Paul Diodati  
Rip Cunningham  
Thomas Nies

**Email from Brett Tolley**

**From:** Brett Tolley [<mailto:brett@namanet.org>]

**Sent:** Wednesday, March 06, 2013 7:24 AM

**To:** Terry Stockwell; Terry Alexander; Laura Ramsden; Tom Dempsey; David Pierce; Peter Kendall; Frank Blount; Dave Goethel; Susan A. Murphy

**Cc:** John Bullard; Rachel Feeney

**Subject:** Amendment 18 community workshop general outcomes

Dear Committee Chairman Terry Stockwell and the Groundfish Committee,

Over the past week NAMA and our partners hosted 5 community workshops engaging well over 100 stakeholders around New England to discuss Amendment 18. The purpose of the workshops was to provide both fishermen and community members the opportunity to voice opinions, identify problems, and offer solutions in the context of Amendment 18. We look forward to providing a more thorough report of workshop outcomes however for the timeliness of the committee meeting today, we offer the following general outcomes:

- In Rockland, ME, Portsmouth, NH, Gloucester, MA, and Cape Cod, MA there was consensus that fleet diversity issues need to be addressed and that Council should continue the A18 process.
- Short term problems must be addressed in light of dramatic quota cuts however, that should not preclude the Council from continuous work toward longer term solutions in the context of A18.
- In terms of the 5 safeguard areas as identified in the Council A18 Scoping document -- quota caps, set-asides, owner-operator, leasing, and inshore-offshore -- there was much discussion and various solutions put forward. Overall there was agreement that safeguards or input controls are needed in order for the Council to achieve its goals.
- Overall consensus on the need for safeguards to address current inshore/offshore conflicts. Ideas put forward included some form of trip limits, a Western Gulf of Maine broad stock area, an inshore-offshore delineation, gear size restrictions, and declaration requirements for one broad stock area per trip.
- In Maine, Cape Cod, and New Hampshire participants built consensus on the need for a safeguard to address negative leasing impacts. Ideas put forward included baseline criteria for leasing and caps on leasing price.
- Overall consensus that excessive consolidation is an increasingly real problem and there needs to be transparency. Council members must obtain information on how much PSC individual entities control. Suggestions on caps ranged from 5-10%.
- Emphasis that quota set-asides are important however in light of current low allocation levels a set-aside should be linked to a future point where the TAC reaches a certain threshold. Owner-operator considerations may also be linked to a set-aside.
- Emphasis on the need for short term solutions within A18 as well as longer term safeguards.

We look forward to your continued action on this important Amendment. On our end we look forward to providing constructive community feedback in order to help the Council in the decision making process.

Thank you,

Brett Tolley  
Community Organizer  
Northwest Atlantic Marine Alliance  
718-570-2377

*cc: Council, PMF, FH (3/13)*

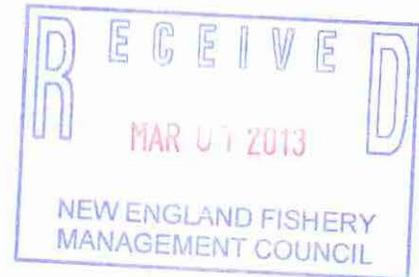




UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2276

MAR - 1 2013

Thomas A. Nies  
Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950



Dear Tom:

I would like to provide the Council a more extensive rationale to our February 14 announcement of our intent to allow the full 10 percent carryover for all allocated groundfish stocks except Gulf of Maine cod. As indicated in our announcement, we intend to allow slightly less than 2 percent Gulf of Maine cod carryover in fishing year 2013 to avoid a risk of exceeding the overfishing limit. We can't finalize our intended carryover approach until we have completed our review and approval of Frameworks 48 and 50. However, we can outline the rationale for our intent, much as we did last year when discussing the Gulf of Maine cod interim measures for FY 2012.

We view the primary purpose of carryovers as a way to promote safety at sea which, in turn, helps fishermen to optimize their year-long fishing strategy. By allowing carryover, fishermen are less likely to feel forced to try and catch every allocated pound before the end of the fishing year, regardless of weather. However, as we have recently indicated to the Council, allowing carryovers to be added to annual catch limits (ACLs) without explicitly accounting for the potential extra catch is problematic. On the other hand, to just eliminate carryovers for FY 2013 in light of these concerns, at this point in the fishing year, could undermine safety and management benefits that fishermen have been understandably relying on from the beginning of the 2012 fishing year. In large part because of this conflict, we have evaluated the appropriateness of continuing the existing 10-percent carryover program at least for the 2013 fishing year.

We considered many issues in stating our intent to allow carryover for FY 2013. We recognize that, if nothing is done, the current regulations require us to provide 10-percent carryover for all stocks. We are sensitive to the timing implications of changing the existing program set forth in regulation with roughly 2 months remaining in the fishing year. We are also concerned that making a substantial reduction to or eliminating carryover at this point could have the undesirable consequence of incentivizing a race to fish for the remainder of the year, as fishermen may attempt to fully utilize available FY 2012 catch limits. This could negate the very safety-at-sea and flexibility objectives of the program. We continue to recognize that there can be a modest benefit to stocks when available catch limits are not fully utilized, as unharvested fish may have additional opportunity to grow and spawn. We have considered the disconnect between the previously approved and implemented program that now, in light of the precipitous declines in allowable catches for some stocks, raises serious questions about the



cc: Council, TN, PMF (3/12), FH

program's consistency with National Standard 1 ACL requirements. We have evaluated the likelihood that stocks could be subject to overfishing if carryover was provided and fully harvested in conjunction with full utilization of all available FY 2013 catch limits. Based on this examination, we believe there is a low risk of overfishing for all stocks except Gulf of Maine cod, even with the full 10-percent carryover added to the FY 2013 catch limits. The potential total catch available with our intended approach to carryover for FY 2013 would remain significantly under established overfishing limits because robust uncertainty buffers remain in place to ensure that these limits are not exceeded. Therefore, allowing these carryovers on a 1-year basis is not likely to result in any significant harm to these stocks or, where applicable, their rebuilding strategies.

Gulf of Maine cod was more problematic in our evaluation because the full 10-percent carryover, when combined with the FY 2013 ACL, results in potential total catch exceeding the overfishing limit. This is because the carryover amount is calculated based on the FY 2012 ACL, which allows overfishing, and because the Council's recommended ACL for FY 2013 is only 10 percent below the overfishing limit. We are intending to allow up to a 1.85-percent carryover for Gulf of Maine cod which is derived by calculating what 10-percent carryover would have been, had the fishing year 2012 catch limit been set at a level that ended overfishing. This level of carryover would provide a modest carryover and maintain an offset from the overfishing limit, and, as with the other stocks, is not expected to result in any significant harm to the stock or rebuilding efforts.

We intend, for FY 2013, to develop an analysis and appropriate action to allow carryovers as outlined above, consistent with the mandate to prevent overfishing and our past practices. We believe that this intended action would strike the right balance in preserving the purpose of carryovers while still ensuring that overfishing does not occur. We intend to allocate and account for carryovers for FY 2013 as we have done in the prior 2 years. Thus, carryover amounts would be made available sometime in July 2013, after final sector rosters and FY 2012 catch amounts are known.

Even though we intend to allow carryovers for FY 2013, we remind the Council, as stated in previous correspondence to the Council and conversations at the Plan Development Team, Committee, and Council level, that the existing carryover program must be clarified or revised to account for carryover in setting ACLs. The Council must address these concerns for FY 2014 and beyond. Carryover continues to be widely discussed at a national level as programs in the Northwest and Alaska also work through the first years of their ACL-based management programs. We are ready and willing to assist the Council in developing a new approach to carryover that provides some operational flexibility for industry, addresses potential safety concerns, and is consistent with the intent of National Standard 1 guidelines and the national guidance for carryover programs.

In the meantime, we are considering proposing regulations to clarify how we will account for carryovers beyond 2013 in a manner more consistent with national policy and National Standards. If implemented, these regulations would serve as default measures while the Council considers other measures to address carryover.

Let me stress that because of the need to address concerns about carryovers in the future, our intended action allowing carryover heading into FY 2013 is a one-time, transitional approach to provide a bridge year to a new approach for FY 2014. We believe that the transitional approach for FY 2013 is warranted because of the extraordinary circumstances due to significant catch limit reductions. Our intended allowance of carryover honors the expectations of fishermen necessary to promote safety at sea and to maximize harvesting strategies for the rest of this year and into 2013, while ensuring a likely probability of not overfishing the stocks.

If you have questions regarding this letter, please contact Mike Ruccio in my Sustainable Fisheries Division at (978) 281-9315.

Sincerely,

  
for John K. Bullard  
Regional Administrator

Cc: Rip Cunningham, NEFMC Chair  
Terry Stockwell, NEFMC vice-chair and Groundfish Committee chair

