

Correspondence

Joan O'Leary

From: Karen Roy
Sent: Tuesday, December 24, 2013 10:51 AM
To: Joan O'Leary
Subject: Fwd: Common Pool Multispecies Quota

FYI

Sent from my iPhone

Begin forwarded message:

From: Tom Nies <TNies@NEFMC.ORG>
Date: December 24, 2013 at 10:08:24 AM EST
To: 'Brad Johnson' <bradandrose@verizon.net>, John Bullard <john.bullard@noaa.gov>, Terry Stockwell <terry.stockwell@maine.gov>
Cc: Permits Ne - NOAA Service Account <permits.ne@noaa.gov>, "Jamie M. Cournane" <JCournane@NEFMC.ORG>, Frank Blount <francesflt@aol.com>, Karen Roy <KRoy@NEFMC.ORG>
Subject: RE: Common Pool Multispecies Quota

Hi Brad

I've forwarded your idea to our groundfish analysts (Dr. Jamie Cournane) and groundfish committee chair (Frank Blount). You should be sure to follow up on this issue with the Committee. As it was not identified as one of the priorities for 2014 when we set priorities in December, you will need to try and convince the Committee that this measure should be addressed. If a change is pursued, it would not be effective for this spring.

FYI, we no longer assume that all cod released are dead. In the case of commercial handgear, the discard mortality assumption is that 20 pct of discards are dead. This change was adopted in the 2012 assessment.

Tom Nies
Executive Director
New England Fishery Management Council
tnies@nefmc.org
978-465-0492 ext 113

From: Brad Johnson [<mailto:bradandrose@verizon.net>]
Sent: Monday, December 23, 2013 6:41 PM
To: John Bullard; Tom Nies; Terry Stockwell
Cc: Permits Ne - NOAA Service Account
Subject: Re: Common Pool Multispecies Quota

Thanks very much for your response John.

Tom and Terry:

I hope you'll consider the suggestion I made below to John Bullard. I'll also note that handgear is the most selective method of harvest so it would be a very good tool to allow for the taking of cod rather than haddock (although I believe that the quotas are set assuming 100% release mortality for groundfish; which is certainly wrong, but this is another question entirely). Thanks for your consideration.

Brad Johnson

On Dec 23, 2013, at 5:20 PM, John Bullard - NOAA Federal <john.bullard@noaa.gov> wrote:

Captain Johnson,

Thanks for taking the time to email me with your request to provide an exemption to common pool Handgear B vessels to allow them to land fish from March 1 through March 20.

As you pointed out, we took steps near the end of October to allow for additional harvest of five stocks in the Gulf of Maine. Unfortunately, we've also had to take several actions this year to reduce the harvest of Gulf of Maine haddock, as required by the regulations when a common pool quota has been reached. In July, we closed a large portion of the Gulf of Maine, we then prohibited the possession of haddock in the Gulf of Maine in September, and we will be closing the same portion of the Gulf of Maine on January 1 for the remainder of the fishing year. Unfortunately, as I write to you today, we are at 105% of the annual quota for Gulf of Maine haddock, and the actions we've had to take affect the ability to harvest other groundfish stocks in the Gulf of Maine.

You are right that I have some discretion over the management of common pool quotas. Namely, I have discretion on setting trip limits. However, I do not have any discretion on closing areas due to quota overages. I also do not have any discretion regarding the March 1 through 20 spawning block that applies to Handgear A and Handgear B vessels. These measures were put in place by the New England Fishery Management Council as effort controls, and the 20-day spawning block was implemented specifically to protect spawning fish. The Council would have to take action to change the spawning block; whether it would be to keep or remove the block, adjust the season or amount of time for the block, or give me the authority to change the block.

I am copying Terry Stockwell, the New England Council Chair, and Tom Nies, the Executive Director, on this email to share your ideas with them. If you have further questions, please, contact my staff in the Sustainable Fisheries Division, at [978 281-9315](tel:978-281-9315). They can point you up-to-date landings and quotas and other information for the common pool.

Again, thanks for your time. I hope you and your family have a happy and healthy holiday season and New Year.

John

On Mon, Dec 16, 2013 at 10:14 AM, Brad Johnson <bradandrose@verizon.net> wrote:

Mr. Bullard:

My vessel currently holds a Handgear B multispecies permit. Last month, I received the attached notice to permit holders announcing increases in possession limits for common pool vessels (including those operating under Handgear B permits) due to the fact that “as of October 16, 2013, less than 20% of the quotas for GOM cod, CC/GOM yellowtail flounder, GOM winter flounder, white hake, and pollock have been caught. These trip limit increases will provide additional fishing opportunities and allow the common pool fishery to catch more of its quota for these stocks”. I’m not sure if these changes have had any substantial effect on landings, but I have a suggestion to make that would help to increase landings if there is still plenty of room left under the quota later in the fishing year. Handgear B vessels are currently prohibited from landing fish for sale from March 1 through March 20 of each year. This is prime groundfishing time both off of Cape Cod and south of Rhode Island. Allowing Handgear B vessels to land fish during this time period would certainly increase landings, but probably not dramatically due to the relatively low number of active Handgear B permits and the fact that only manual handgear is allowed to be used. This time period is also very close to the end of the fishing year on April 30, so it would be a low-risk approach to take if landings are well below the quota as of late February. I urge you to consider allowing Handgear B vessels to land fish for sale during the March 1 -20 period if landings continue to be well below the quota.

Capt. Brad Johnson

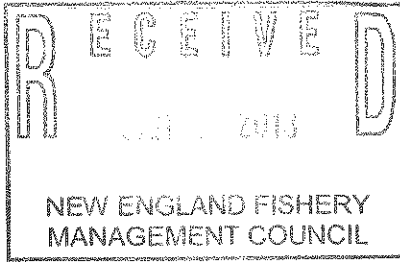
F/V MIGNIFICENT

John K. Bullard
Regional Administrator
National Marine Fisheries Service
Northeast Regional Office
Gloucester, Massachusetts
Phone: (978) 281-9250
john.bullard@noaa.gov



91 FAIRVIEW AVE
PORTSMOUTH NH 03801

January 5, 2014
NOAA Fisheries Service
Northeast Regional Office
Regional Administrator
55 Great Republic Drive
Gloucester, Massachusetts, 01930-2276
Phone: (978) 281-9300
Fax: (978) 281-9333



**NORTHEAST HOOK
FISHERMAN'S ASSOCIATION**



Dear John Bullard:

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. We are very concerned that the NMFS recently closed the whole 3rd Trimester for the Common Pool fishery from January 1, 2014, through April 30, 2014. This closure represents the entire winter commercial ground fishery. It is our understanding that this closure was caused because a de-minimus* quantity (approximately 250 lbs) of GOM haddock was harvested by the Common Pool Fishermen. This closure was required because of the regulations governing the Northeast (NE) multispecies fishery that are found at 50 CFR part 648, subpart F.

Per section 553 (e) of the Administrative Procedures Act we are requesting that the NMFS immediately take action to repeal 50 CFR part 648, subpart F rule specific to the Trimester quota system for the common pool and any associated closure rules when 90% of a fishery is harvested. We are requesting that the common pool be returned to a status where the common pool sub-ACL fishery is managed on a yearly quota basis (first 2 years of Amendment 16). Under section 553 (e) of the Administrative Procedures Act) each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule. Our rationale for requesting this repeal of the Trimester TAC system is as follows:

1. Some individual stocks sub-ACL, such as GOM haddock, are so low it does not make sense to track these quotas in a Trimester system. The Trimester systems intent, developed by fishery managers, was that if a sub-ACL was caught for a species the fishery would close for a few days or weeks. Now entire trimesters are closed (Trimester 3 for 2012-13). The NEFMC did not anticipate that such low quotas would be left in the common pool to trigger whole trimester closures when the Trimester system was developed. Specifically Amendment 16 stated under Common Pool Vessel Accountability Measures "The purpose of using a trimester approach, rather than an annual quota, is to spread the fishery out over the year and avoid a prolonged closure at the end of the year." Closure of a whole trimester was not the intent of the NEFMC and they specifically did not want this to happen.

* From Wikipedia "**De minimis** is a Latin expression meaning about minimal things or *de minimis non curat lex* ("The law does not concern itself with trifles"). Queen Christina of Sweden (r.1633-1654) favored the similar Latin adage, *aquila non capit muscas* (the eagle does not catch flies)." The Regulations promulgated thru the NMFS are now "catching flies" over "trifles".

2. Amendment 16 states under Common Pool Accountability Measure *“By splitting the TAC into three trimesters, fisherman are certain of at least a limited opportunity to fish over the course of the year and do not need to be as concerned that if they don't fish as hard as possible at the beginning of the year they will lose all opportunities. While it is often said that dividing the TAC into periods just creates multiple races to fish rather than just one, there may be some benefit in doing so to extend availability of fish to fishermen and the market.”* The current Trimester system has now creates the problem that if a fisherman doesn't fish as hard as they can the fishery will in fact close as it did for the 3rd Trimester this fishing year. The Trimester system has created a derby fishery that the NEFMC specifically intended to avoid or limit. It is far better for the stability of the fishery to now have a yearly TAC for the common pool.
3. The target TACs, or percentages of total TAC allocated to each trimester for each species does not match the current trends in fishing effort causing unnecessary closures. At the time when the Trimester system was developed the effort was based on assumptions made by a fishery under DAS. With the majority of fishing effort now in Sectors the effort has significantly changed as has when the fish within each Trimester are now caught seasonally.
4. The Trimester system is currently not allowing the harvest of the majority of fish species allocated to the Common Pool. With the closure of the 3rd Trimester (2012-13) approximately 2,000,000 lbs of New England Groundfish will not be harvested by the common pool because of an overharvest of approximately 250 lbs of GOM Haddock. The Trimester system no longer allows harvesting to optimum yield.
5. The NEFMC does not have any current Frameworks or Amendments currently under consideration that repeals the Trimester system. The topic was discussed at several meetings & public comments were provided however no action was made to pursue a change to the Trimester system. Due to current closure and immediate need for a repeal of the Trimester system we believe the fastest method to accomplish this is thru the Administrative Procedures Act. The NEFMC is currently occupied with other very urgent fishery management matters. The fishermen in the common pool need immediate relief that only the NMFS can initiate expeditiously with the possibility of saving a portion of the current fishing year for these fishermen.
6. Any small overages such as what may occur with a yearly quota system will not undermine conservation objectives. For example an overage of approximately 250 lbs of GOM haddock would not undermine conservative objectives when there is 182,000 lbs GOM haddock available for harvest in the GOM (Common pool & Sectors). It should be noted that the combined GOM and Georges TAC for haddock is approximately 66 million pounds. It is totally nonsensical to believe that the overharvest of 250 lbs when 66 million lbs of haddock can be removed sustainably from the waters off New England would compromise rebuilding efforts. With in-season reductions in trip limits, once the Common Pool is near harvesting a particular stock, any overages would be small enough to not compromise rebuilding plans for that stock.
7. The current Trimester system may now be in conflict several sections of the MSA and National Standards for Fishery and Conservation.

Per section 553 (e) of the Administrative Procedures Act we are also requesting that the NMFS issue and or amend the fishery regulations as follows:

- a. For the common pool quotas, once 90 percent of a stock is anticipated to be harvested, for a fishing year that the trip limit for this stock would be adjusted to allow fishing for other species while retaining small quantities of this stock as by-catch. The adjustment to the trip limit would be proportional to the quantity of fish remaining (the 10% left). This change would complement the removal of the Trimester system.
- b. Allow up to 10% roll over of each common pool quota to be applied to the following fishing year common pool quotas for each stock. This is allowed in the Sector fishery that is also under a TAC for each year. This change would help to mitigate some fluctuations in fishing from one fishing year to the next without compromising rebuilding efforts. This is a fair and equitable change that is already in place with other fisheries.
- c. Allow small overages (possibly 10% depending on individual stock TAC) of any stock allocated to the common pool without any deduction of quota from the common pool in the following year unless the total ACL for the stock was overharvested by all commercial fishermen. This is also a change that would complement the removal of the Trimester system and would be a better way to manage the fishery.

This letter provides the NMFS with a means to change fishery regulations. Without these changes significant economic harm will happen to the common pool fishery. These changes will not compromise any rebuilding plans. We are requesting that these changes are made as soon administratively possible.

Respectfully,

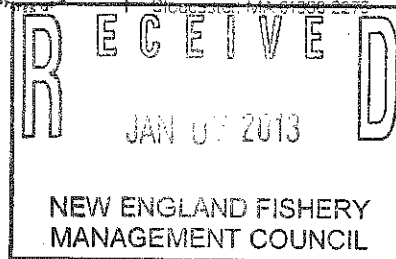
Marc Stettner /s/

CC: NEFMC Council Members, Letter with NMFS response to various lawmakers.

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



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive



JAN - 6 2014

John Haran, Manager
Northeast Fishery Sector XIII
205 Rockland Street
Dartmouth, MA 02748

Dear Mr. Haran:

On October 22, 2013, you wrote to Mark Grant requesting that vessels in Northeast Fishery Sector XIII be allowed to set and haul fish pots to target groundfish while on a sector trip. A vessel issued a limited access Northeast multispecies permit (excluding handgear and hook-only permits) may use fish pots to target multispecies (groundfish), provided the vessel complies with other requirements as detailed below.

The Northeast Multispecies Fishery Management Plan (FMP) considers pots and traps to be exempted gear, defined as gear that is not capable of catching groundfish. That definition allows any vessel to use trap and pot gear to target non-groundfish species (e.g., lobster, black sea bass) when declared out of the groundfish fishery. However, a federally permitted vessel must be on a declared groundfish trip to use pots or traps to target or retain groundfish, and there are regulations that apply to the use of this gear. A vessel on a declared groundfish trip may use trap and pot gear exclusively or in combination with any other legal gear.

The Atlantic Large Whale Take Reduction Plan (ALWTRP) is intended to reduce the incidental mortality and serious injury of three strategic stocks of marine mammals (North Atlantic right, humpback, and fin whales) in commercial gillnets and trap/pot fisheries. Any trap or pot gear, including fish pots used to target groundfish on sector trips, must comply with the requirements of the ALWTRP. Additional information about the ALWTRP is available on our website at: <http://www.nero.noaa.gov/Protected/whaletrp/>.

Trap/pot gear also poses an entanglement risk to endangered sea turtles. If a vessel encounters an entangled marine mammal or sea turtle, the vessel should call for emergency response immediately and visually monitor the animal from a distance until it has spoken with a responder, or the responders arrive on scene. The NMFS Northeast Region Stranding and Disentanglement Hotline can be reached by calling 866-755-NOAA (6622) or call the U.S. Coast Guard on VHF channel 16.

A vessel issued a limited access lobster permit may only fish with pot or trap gear that meets the Federal lobster gear requirements. However, if a fish pot or trap is configured in such a way that it is not capable of catching lobster, then we would not consider it to be a lobster trap, and the vessel would not be subject to the lobster trap gear specifications. We have determined that the floating Norwegian fish pots proposed for use by Northeast Fishery Sector XIII, as described in the Northeast Consortium Final Report POTYEAR: Determining the Seasonality of Cod Pots,



are not lobster traps. Therefore, these fish pots do not need to comply with the lobster trap regulations when used by groundfish vessels to target groundfish on a sector trip and do not need lobster trap tags. However, any lobsters incidentally caught in these fish pots must be immediately discarded, even if the vessel possesses a lobster permit.

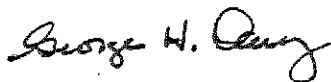
This determination is based solely on the fish pot gear design and specifications you provided our office for review. Be advised that this determination is not applicable to any trap or pot design that is not exactly as specified in your submissions. We will continue to monitor this situation, may revisit this issue, and may revoke this determination if new information suggests that unforeseen impacts have or may occur with respect to the deployment of this pot gear.

Please also be aware that regulations implementing the FMP require that all bottom-tending fixed gear, including fish pots, be marked. Fixed gear must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys or other appropriate gear so that the identifying information is visible on the surface of the water. Additionally, if the fish pots are fished in a trap trawl (e.g., black sea bass trap trawl) containing more than one fish pot, the trap trawl must be marked so that the westernmost end of the gear displays a standard 12-inch tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet above the buoy. The easternmost end of the gear only needs to display the standard 12-inch tetrahedral radar reflector positioned in the same way.

I have informed our Office of Law Enforcement of this determination and this determination does not preempt any state laws that may apply to the participating vessels. I encourage you to contact the states of landing to ensure that fishing with this gear type is consistent with state laws.

We look forward to continued collaboration with Northeast Fishery Sector XIII. Please contact Mark Grant of the Sustainable Fisheries Division at 978-281-9145 with any questions.

Sincerely,



George H. Darcy
Assistant Regional Administrator
for Sustainable Fisheries

cc. Libby Etrie, NESSN
NEFMC
Logan Gregory, Office of Law Enforcement

3



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

January 10, 2014

The Honorable Penny Pritzker
Secretary of Commerce
HCHB/Room 5852
14th Street and Constitution Ave., NW
Washington, DC 20230

Dear Secretary Pritzker:

On September 13, 2012, Acting Secretary of Commerce Rebecca Blank determined that a commercial fishery failure due to a fishery resource disaster would exist for the Northeast Multispecies Groundfish Fishery for the 2013 fishing year. At the time the Department of Commerce and the National Oceanic and Atmospheric Administration (NOAA) promised to engage with the New England Fishery Management Council to explore all possible options to mitigate the impacts of the 2013 catch limits. These catch limits were adopted to promote the rebuilding of overfished groundfish stocks. I would like to advise you of the current situation in the fishery and the progress that has been made in mitigation efforts.

As expected, the low catch limits that were adopted for FY 2013 have had a devastating effect. As recently as FY 2011, 61.6 million pounds of groundfish worth over \$90.4 million were landed. Landings declined to 46.3 million pounds in FY 2012, worth only \$69.7 million¹. While the fishing year is not yet complete, recent analyses suggest that gross groundfish revenues are likely to decline even further this year, to about 43.4 million pounds and only \$55.8 million – a 38 percent reduction in revenue from FY 2011². Because of increased operating costs the net revenues are expected to decline even more. These sobering statistics, however, do not fully tell the story. Many fishermen have been forced to abandon their chosen careers, selling their vessels and permits and leaving the fishery. The sense of loss and hopelessness that permeates many groundfish fishing communities is gut-wrenching.

To date, efforts to mitigate these losses have not been very successful. While successfully rebuilding fish stocks will prove beneficial in the long run, in the short term the best way to help this industry is to increase the pounds of fish crossing the dock. As a review of current landings statistics will show, there are several stocks that could support dramatically increased catches. The problem is figuring out ways to access those stocks.

¹ Summary tables for FY 2012 Northeast Multispecies Fishery,
http://www.nero.noaa.gov/ro/fso/reports/Sector_monitoring/FY12_Groundfish_Tables.pdf

² Draft Framework Adjustment 51 Economic Analyses,
http://www.nefmc.org/nemulti/council_mtg_docs/Dec%202013/1a_Revised131213_FW51_Economic%20Impacts-version2.pdf

One opportunity to increase access to healthy stocks was pursued through a recent framework adjustment to the management plan. There are several large closed areas that were adopted years ago as mortality controls – a rationale for closure that is no longer applicable now that the fishery is managed with quotas. The Council and National Marine Fisheries Service (NMFS) worked diligently to craft a narrow, tightly controlled plan that would allow access to parts of those areas in order to provide the opportunity to increase catches of abundant stocks such as Georges Bank haddock. Ultimately, however, the NMFS added industry-funded observer coverage requirements that made access unprofitable and almost all the areas remain closed. As a result, we view this attempt at mitigation as a failure.

Another effort focused on increasing catches of Acadian redfish by allowing the use of small-mesh nets in a special program. This effort has been stalled by a requirement that the industry pay for observer coverage on all trips using this program. There have been few if any such trips taken and yet another mitigation effort was stymied.

Prior to publication of regulations for these programs the Council clearly communicated its concern to NMFS that the imposition of the industry-funded observer requirements could not be supported by a beleaguered industry and would render these programs ineffective³. These warnings went unheeded and that concern now seems fully warranted.

The Council also asked for an emergency action to allow increased harvesting of monkfish, a healthy stock that can be caught on groundfish trips. NMFS only partially granted this request, taking a more conservative approach to a trip limit change than the Council requested. This change had hardly any effect on monkfish landings during the first four months of the fishing year⁴. The trip limit was recently liberalized and we hope it will increase landings. If it does, this emergency action will be partially successful in providing some mitigation but it appears that potential benefits were sacrificed for nearly six months.

While these are the major regulatory actions that were pursued, I would be remiss if I did not mention the informal committee organized by the NMFS Northeast Regional Office to more broadly explore other opportunities for mitigation. For example, efforts by this committee led to increased understanding of the availability of Small Business Administration loans and other federal assistance. It may lead to improved marketing efforts as well. While many ideas have been generated and discussions continue, we cannot yet point to demonstrable results from these meetings.

As the fishing year approaches its end we are left with an unfortunate conclusion: we failed to adopt anything that substantially mitigated the effects of the low catch limits that led to the declaration of a fishery disaster. We have spent significant Council and agency staff time seeking solutions but there has been no benefit to the industry.

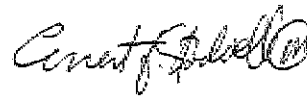
³ C.M. Cunningham letters to John Bullard, Regional Administrator Northeast Region, dated March 29, 2013 and July 26, 2013

⁴ 78 *Federal Register* 63892

The prognosis for FY 2014 is bleak as many of the conditions that led to the declaration of a fishery disaster in FY 2013 will continue. While there will be some increases in quotas for several stocks, forecasts suggest that revenues will be nearly the same as in FY 2013⁵. It is not clear whether you intend to extend the current fishery disaster declaration. Even if the disaster declaration is not extended I would hope that efforts to mitigate the low quotas will continue.

Ultimately the groundfish fishery will benefit from successful stock rebuilding, but this is of little comfort to current participants who rely on the fishery for their livelihoods. The Council remains willing to work with you to explore ways to allow limited access to closed areas, or to increase the catch of healthy stocks such as redfish and pollock. It is our duty to do all we can to ensure the survival of this iconic fishery while we rebuild overfished stocks. I hope you remain dedicated to this same sentiment.

Sincerely,



E.F. "Terry" Stockwell III
Chairman

⁵ Draft Framework Adjustment 51 Economic Analyses,
http://www.nefmc.org/nemulti/council_mtg_docs/Dec%202013/1a_Revised131213_FW51_Economic%20Impacts-version2.pdf

