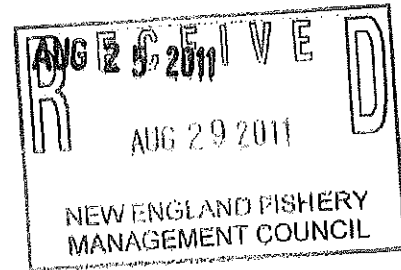




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
1
THE DIRECTOR

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



Dear Mr. ^{RIP}Cunningham:

This is in response to former Council Chairman John Pappalardo's letter regarding concerns about accountability for scientific research catch of managed species in the U.S. Exclusive Economic Zone.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) states in its definition of fishing that it "does not include any scientific research activity which is conducted by a scientific research vessel." This statutory exclusion is reflected in national regulations. NOAA's National Marine Fisheries Service (NMFS) encourages researchers to request a Letter of Acknowledgment (LOA) when proposing to conduct a scientific research activity from a scientific research vessel in the EEZ. If NMFS determines that an activity is not a scientific research activity, but is instead fishing or commercial fishing, an LOA is not provided and the applicant is informed that the proposed activity must be conducted in accordance with all applicable regulations, or the vessel operator must apply for exemptions from such regulations.

One of the factors used by NMFS to determine whether an activity is a scientific research activity or commercial fishing is the quantity of fish the investigators propose to catch in order to conduct their research, as laid out in their scientific research plan. When a scientific study proposes to harvest commercial quantities of fish instead of de minimis amounts (e.g., the minimum amount necessary that allows for a robust analysis), the agency will make a determination as to whether the activity is a scientific research activity or commercial fishing. Due to the regional nature of fisheries management, these determinations are made at the regional level, by the Regional Administrator, with advice from NOAA General Counsel. These determinations allow for regional flexibility in handling these matters on a case-by-case basis, while still providing for national consistency.

In order to properly manage a fishery, all mortality must be accounted for, including mortality resulting from scientific research. This is one reason the agency requests that researchers provide us with a copy of any reports generated from their research, and similarly why the agency requires the same from researchers conducting studies under exempted fishing permits. As you point out in your letter, the National Standard 1 Guidelines require that all catch must be counted against optimum yield. We must ensure that scientific research catch is adequately documented. Without proper accountability of scientific research catch, the Council and NMFS cannot perform adequate analyses to support annual catch limits and accountability measures.

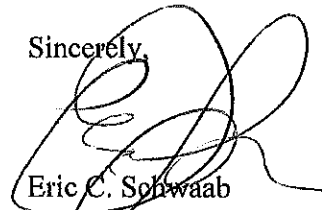


cc: Council, Pch (8/30)

Since the MSA was first enacted, the levels of scientific research activity, and cooperative research ventures between scientists and the fishing industry, have steadily increased. In the past, NMFS received a number of requests for LOAs for small-scale fisheries research studies. In recent years that number, and the scale of the research projects, have continuously grown. Today, there are concerns regarding the amounts of fish that are proposed to be caught and sold, the accountability of this research catch (both landings and discards), and the cumulative impacts of numerous studies on the natural resources.

I appreciate the Council bringing its concerns to my attention. NMFS is committed to ensuring that the Nation's fisheries are effectively and consistently managed to ensure sustainability for the future. I have directed the NMFS Office of Sustainable Fisheries to lead an evaluation of the current scientific research and exempted fishing guidance and regulations to determine whether modification is needed. They will work with the Councils during this evaluation.

Sincerely,



Eric C. Schwaab
Assistant Administrator
for Fisheries



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 485 3116
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

June 29, 2011

Mr. Eric Schwaab
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Room 14636
Silver Spring, MD 20910

Dear Eric:

I am writing to express the deep concern of the New England Fishery Management Council over the lack of control and accountability for scientific research catch of managed species in the EEZ. While the Council recognizes the importance of scientific research and does not want to present obstacles to legitimate research, the lack of regulatory oversight and accounting for research catch raises these concerns, for the following reasons:

- Fish taken in the course of scientific research is not accounted for in stock assessments, and the unknown amount taken in any year is a source of uncertainty in the estimates of fishing mortality;
- In the context of Annual Catch Limits and Accountability Measures requirements of the Magnuson-Stevens Act, all catch needs to be considered to determine if the overfishing limit has been exceeded, and accountability measures applied to prevent or account for exceeding the ACL, yet the scientific research activities are not subject to MSA provisions and catch cannot be constrained regardless of the amount of fish taken and its effect on fishing mortality, and there is no accountability for such catch;
- National Standard 1 Guidelines require that “all catch must be counted against optimum yield, including that resulting from ...scientific research”, yet there is no monitoring, reporting or accountability for such catch, and, therefore, it is not possible to comply with this provision;
- Fish taken in the course of scientific research can be sold. Without any control over the catch, this aspect of the scientific research program creates a serious incentive and potential for abuse, and may have localized effects on market prices depending on the amount of fish being sold at any given time;
- There is no oversight of scientific research activities by NMFS to determine whether the catch, which may be sold, is actually necessary for the conduct of the research, or if it is in excess of what is needed for research and is being landed to fund activities beyond the scope of the research, or for profit; and
- While NMFS encourages scientists to obtain a Letter of Acknowledgement to conduct scientific research, that letter is not required, and there are no reporting requirements, nor

are there any limits to the amount of catch that can be taken or other restrictions or requirements.

The standards by which NMFS evaluates scientific research proposals, as to whether they are legitimate research projects and not fishing, are unclear but do not appear to be sufficiently rigorous to prevent abuses. The lack of oversight, combined with the ability to sell an unconstrained amount of catch creates a potential way to circumvent the fisheries regulations under the guise of scientific research. The Council believes that this unaccounted for and uncontrolled scientific research catch may have detrimental effects on the livelihood of fishermen and their communities. It is imperative that scientific research catch be accounted for and that the need for such catch is balanced with the economic needs of the fishing industry.

The New England Fishery Management Council requests that you seriously consider these concerns and take appropriate action to remedy this situation. On behalf of the entire Council, thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Pappalardo". The signature is stylized with a large initial "J" and "P".

John Pappalardo
Chairman

cc: Patricia Kurkul