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

Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

APR 19 2011

Dear Paul:

This letter is to inform you that the Secretary of Commerce (Secretary) has partially approved Framework Adjustment 45 (FW 45) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and has filed a final rule implementing the approved measures.

As you know, a proposed rule to implement FW 45 published in the *Federal Register* on March 3, 2011 (76 FR 11858), with public comment ending on March 18, 2011. Twenty-four comments were received during this period. A summary of the comments received and NOAA's National Marine Fisheries Service's (NMFS) response to these comments will be published in the final rule.

One of the FW 45 proposed measures was disapproved because it was found to be inconsistent with the FMP and the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act): The proposed delay in industry responsibility for the costs associated with at-sea monitoring coverage in fishing year (FY) 2012. In Amendment 16, the New England Fishery Management Council (Council) established monitoring measures to ensure that sector catch could be accurately monitored, including the requirement for sectors to develop and pay for an at-sea monitoring program beginning in FY 2012, noting that "effective management of sectors requires that catch be accurately known." To reduce monitoring costs to industry, the Council proposed to delay the requirement for the fishing industry to pay for at-sea monitoring coverage in FW 45 by one year. However, without industry funding, NMFS funding would be the sole source for any at-sea or observer monitoring coverage during FY 2012.

During the Council's deliberation of this measure, I repeatedly expressed concern about the Council's reliance upon NMFS funding to fully support a provision required by the FMP, particularly the specific at-sea monitoring coverage levels in Amendment 16 for FY 2012. Because the NMFS budget for FY 2012 has yet to be finalized, we remain uncertain whether funding will exist in FY 2012 to provide sufficient coverage to accurately monitor sector catch, as required under Amendment 16. NMFS has determined, therefore, that the proposed delay of industry funding for at-sea monitoring coverage in FY 2012 is inconsistent with the FMP and the requirements of sections 303(a)(1) and (a)(11) of the Magnuson-Stevens Act.

Information on discards is most reliably acquired through observer and at-sea monitoring coverage. Without adequate Federal funding for at-sea monitoring, the disapproved measure would have prevented NMFS and the Council from collecting sufficient catch information in FY 2012 to effectively estimate F, evaluate whether overfishing is occurring, and develop annual

catch limits and other measures to prevent overfishing and rebuild overfished stocks. Therefore, the disapproved measure would have likely failed to maintain conservation and management measures that are necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, as required by section 303(a)(1) of the Magnuson-Stevens Act. Further, by reducing the likelihood that sufficient funding will be available to provide at-sea monitoring coverage necessary to accurately monitor catch in the fishery, the disapproved measure would have undermined measures in Amendment 16 that helped to ensure that the standardized reporting methodology is capable of assessing the amount and type of bycatch occurring in the fishery, as required by section 303(a)(11) of the Magnuson-Stevens Act.

NMFS intends to pay for at least some level of at-sea monitoring coverage in FY 2012, as it has done every year, based on the amount of available funding, and will try to secure the funds necessary to fully support such coverage in FY 2012. However, industry will need to be responsible for the balance of at-sea monitoring coverage costs that are not covered by available Federal funding, starting in FY 2012.

I appreciate the hard work that you and your staff put into the development of FW 45 and look forward to working with you and the Council to ensure that the NE multispecies fishery continues to achieve the objectives of the FMP. Please let me know if you have any questions regarding this letter.

Sincerely,

for Patricia A. Kurkul
Regional Administrator