

Correspondence



New England Fishery Management Council

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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

December 4, 2013

Mr. James Ford
F/V Lisa Ann II
140 Willow Road
East Kingston, NH 03827

Dear Jim:

Thank you for your December 2, 2013, email expressing your concerns regarding Gulf of Maine haddock quotas. Over the course of 2013, the Council investigated whether the Gulf of Maine haddock stock might be in better shape than previously determined in the most recent assessment, which occurred in 2012. The Council decided to do so based on feedback from the groundfish fishing industry that quotas had been set too low and did not match observations on the water.

Under the direction of the Council's Groundfish Oversight Committee, the Groundfish Plan Development Team (PDT) led a series of technical analyses regarding Gulf of Maine haddock, and the PDT's work was reviewed by the Council's Scientific and Statistical Committee. Both groups reviewed biological information and fishery information and recommended no changes to the current quotas for the Gulf of Maine haddock stock at this time. At its November meeting, the Groundfish Oversight Committee recommend that, in light of continued industry concerns regarding low quotas, Gulf of Maine haddock undergo a benchmark assessment. Recently, NMFS has scheduled a benchmark for Gulf of Maine haddock for July 2014.

Please contact me should you have any questions.

Sincerely,

Thomas A. Nies
Executive Director

From: Lisaann#2 [<mailto:captainjim1@comcast.net>]
Sent: Monday, December 02, 2013 2:39 AM
To: Pat Fiorelli
Subject: Lisa Ann II

Council,

Something needs to be done about GOM haddock. We have seen more haddock than ever, all summer we were catching them not huge amounts but steady. I had one of the biggest allocations of haddock before these cuts. Now we can catch our quota in a single tow. The other day we had to try to get away from them because of lack of quota. We have been buying it but can't make any money because of the cost. We landed 5200 lb over two separate days selling to top buyers Legal Seafood and Whole foods and still only made 150.00 on all that fish. Lease cost is 1.45 live around 1.65 dressed. Either we need to put a limit on lease prices or up the quotas, recreational / party boats have caught a ridiculous amount of haddock I'm sure 150 percent more than their invisible allocation that there is no accountability for. For any fishermen to survive these cuts something needs to be done. Haddock are only going to get thicker, we can't try to catch the pollock and cod mixed in because of the haddock are so thick. I think Peter Shelly might of had some truth to what he said. Its midnight and getting darker!!! I had a call from a prominent offshore fishermen that has the same feelings on our industry as I do. People leasing their fish out are making more than the people that want to work. That's is not right, there won't be anyone left to lease to once all the hardworking fishermen are gone. I have been catching fish and still am not making money, my buyers pay more than the average cost on the auctions. What about the boats that are not getting top dollar. Cod has been 1.60 to 1.80 and it cost around 1.90 dressed. Yellowtail is 80 cents and cost 80 cents to lease. We have lost the market. Buyers have gone to foreign fish to supply them, it's cheaper and some of it is shipped overnight and not frozen. Imports are going to keep rising if something isn't done. Once a market is lost its hard to get it back once a stock is back to all time highs. We have caught 100,000 of Cod that is supposed to be at a collapse and almost non existent. We did not even fish hard this year only part time. Everywhere we went the other day there was cod and the boats to the south have been getting them in good numbers. Fish can be very elusive at times and it is hard to know what's out there. We are in constant change from day to day and you have a tough job to do the right thing and of course you can't make everyone happy but here's my thoughts. Thanks Jim Ford
F/V Lisa Ann II

Sent from my BlackBerry 10 smartphone.

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December 4, 2013



VIA ELECTRONIC MAIL & U.S. MAIL

Mr. Frank Blount, Chair
Groundfish Oversight Committee
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Re: Requirement for Scallop Fleet to Land Yellowtail Flounder

Dear Committee Chairman Blount:

As you know, we represent the Fisheries Survival Fund ("FSF"). FSF's participants include a significant majority of the full-time Limited Access scallop fleet. Our letter pertains to the requirement, promulgated in the groundfish management plan, that the scallop fleet land all legal-sized yellowtail flounder. This regulation, set forth at 50 C.F.R. § 648.14(i)(2)(iii)(D), is not achieving its intended effects and should be eliminated. FSF would like to thank the Committee and Dr. Cournane for working with us on this important issue.

I. INTRODUCTION

To be clear, the goal of FSF is to reduce the amount of bycatch in the scallop fishery, period. Framework 44 to the Northeast Multispecies Fishery Management Plan adopted the requirement that "limited access scallop vessels will be required to land all legal-sized yellowtail flounder that is caught."¹ It also provided a sub-annual catch limit ("ACL") of yellowtail flounder to the scallop fleet, which was based on 100% of the fleet's projected catch in the first year and 90% in subsequent years.² The sub-ACL was widely expected to "create[] an incentive

¹ New England Fishery Management Council, *Framework 44 to the Northeast Multispecies Fishery Management Plan*, at 40 (2010).

² For fishing year 2014, Framework 48 amended scallopers' allocation of yellowtail flounder to correspond to their long-term historical share, which was 16% for Georges Bank yellowtail. As

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for scallop fishermen to reduce bycatch of yellowtail flounder in order to maximize scallop yield”,³ notably by incentivizing behavior modifications within the fleet. The Framework, however, failed to provide a rationale for the full retention rule.

Any unstated assumption that regulations requiring the scallop fishery to land yellowtail flounder would lead to reductions in catch was poorly founded. Recent experiences in the European Union have shown that the banning of discards in and of itself does not incentivize selective fishing.⁴ Even the Food and Agriculture Organization (“FAO”), in its research on bycatch initiatives, points out that discouraging or disallowing discards of a stock does not necessarily discourage its catch, and there is no indication in the record that full retention has had any impact on the level of scallopers’ yellowtail catches.

Instead, according to FAO analyses, bans on discards are mostly useful for providing information on which to base management decisions, and that utility must be balanced against other factors.⁵ For its part, FSF supported full retention as a way to achieve better reporting of scallopers’ yellowtail bycatch. The full-retention requirement has not, however, provided the hoped-for management benefit, as observers estimate the bycatch at sea, regardless of whether it is landed or discarded. Nor, moreover, is full retention of yellowtail consistent with the way other stocks with relatively low ACLs are treated in the groundfish plan.

II. REMOVING THE FULL RETENTION REQUIREMENT WILL DECREASE MORTALITY

Currently, the scallop fishery is restricted to a sub-ACL for Georges Bank (“GB”) and Southern New England/Mid Atlantic (“SNE/MA”) yellowtail flounders. Although the sub-ACLs cap the total amount of fish that may be caught by the fishery, there is an understanding that

FSF has explained, that allocation is wholly insufficient when, as now, the overall Georges Bank catch allocation has been reduced to unprecedentedly low levels, especially in light of the fact that groundfishermen are not harvesting the Georges Bank yellowtail flounder they have been allocated. Indeed, in fishing year 2012, the groundfish fleet harvested 70.3% of its overall allocation.

³ *Id.* at 37.

⁴ Harriet Condie et al., *Does banning discards in an otter trawler fishery create incentives for more selective fishing?*, Fisheries Research 148, 137-146 (2013).

⁵ Ivor Clucas, *A study of the options for utilization of bycatch and discards from marine capture fisheries*, FAO Fisheries Circular No. 928 (1997).

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mortality should be as low as possible, especially since these stocks are also important to the prosecution of the groundfish fishery.

In addition to the sub-ACL, and presumably to assist in reducing mortality, Framework 44 set a requirement that all legal-sized yellowtail caught in the prosecution of the scallop fishery must be landed. The Analysis of Impacts section in the framework's Environmental Assessment states that:

"Adopting this requirement [to require landing] *should* reduce discards of yellowtail flounder... If this measure merely converts existing discards to landings, fishing mortality on yellowtail flounder would not increase from this change... If scallop vessels – which have considerably reduced yellowtail flounder bycatch in recent years through gear modifications and revised management measures – decide to take advantage of this change and actively target yellowtail flounder then mortality targets may not be achieved. ... A relatively modest amount of yellowtail flounder at \$1.50 per pound may provide enough revenue to encourage targeting behavior."⁶

Thus, the question of whether a prohibition on the discarding of all legal-sized fish reduces mortality largely comes down to whether or not it will reduce incentives to target the stock. There is no evidence to support that the yellowtail full-possession rule has done so. Furthermore, while the market price for yellowtail flounder is not high, landing these fish can allow some revenue to accrue to the vessel that catches them, and targeting may therefore be inadvertently encouraged. On rare occasions, a scallop captain has unwisely landed a relatively sizeable amount of yellowtail flounder, despite detailed and consistent guidance from FSF and industry leaders more generally to avoid targeting yellowtail flounder and to move away from them if they are encountered.⁷ While we do not have access to observer program data, a list of yellowtail bycatch estimates by individual scallop vessel should be matched against yellowtail landings by vessel in the dealer database (this would not require vessel identification to be disclosed). Such a comparison would show that, even since the implementation of the full retention rule, most vessels continue to discard, while a few vessels may unwisely land a relatively large amount of yellowtail flounder. This indicates that such vessels may be targeting

⁶ Framework 44 at 189 (emphasis added).

⁷ Moreover, the SMAST bycatch avoidance program in which the majority of scallopers participate seeks to move the fleet away from potential yellowtail bycatch hot-spots, and FSF has distributed a bridge card to the fleet emphasizing the need to minimize yellowtail flounder bycatch, particularly on Georges Bank.

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the stock. The regulation, therefore, leads most fishery participants to disregard the law while some in fact land more yellowtail than they would under a zero retention rule.

By contrast, the scallop fishery's well-publicized yellowtail sub-ACLs represent a far more powerful driver of behavioral modification to avoid yellowtail catch. Framework 44 recognized this in stating "lower ACLs may provide incentives to change fishing practices in both the scallop and groundfish fisheries that would reduce yellowtail flounder catch rates."⁸

In addition to discouraging targeting, allowing yellowtail to be discarded is likely to increase the amount of fish that survive. The most recent assessments for each of the yellowtail flounder stocks assume 100% discard mortality from the scallop fishery. However, recent studies have called into question whether all fish that are returned to the sea are really dead, particularly when they spend only a short period of time on deck.⁹ What is known for certain is that, when the fish are required to be landed, all of the fish that are caught do not survive. Permitting discarding at sea will allow some of the released fish to survive and contribute to future recruitment.

III. REMOVING THE FULL RETENTION REQUIREMENT WILL NOT UNLAWFULLY INCREASE BYCATCH

National Standard 9 of the Magnuson Stevens Fishery Management and Conservation Act ("MSA") requires management measures to minimize bycatch to the extent practicable, and to minimize the mortality of bycatch when it cannot be avoided. The term "bycatch" means fish that are harvested in a fishery, but that are not sold or kept for personal use.¹⁰

While converting catch into landings that would otherwise be thrown away at sea seems on its face to fulfill the mandate of National Standard 9, there are no benefits to that approach in terms of conservation or maintenance of catch limits. In reality, the only ways to minimize bycatch are (1) to provide incentives for fisheries to selectively catch their target stock while avoiding unwanted catch; and (2) to ensure that as many unintentionally caught fish as possible

⁸ Framework 44 at 272.

⁹ Reflex Action Mortality Predictors (RAMP), a tool to address the estimation of discard mortality using direct observations aboard fishing vessels, indicate that the estimated discard mortality rates range from 64% to 90% across the scallop fleet. Adam S. Barkley & Steven X. Cadrin, *Results of the yellowtail and winter flounder discard mortality and maturity analyses*, 2011 Scallop RSA Final Report.

¹⁰ 50 C.F.R. § 600.350.

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are returned live to the sea.¹¹ As discussed above, scallopers' strict yellowtail sub-ACLs satisfy the first criteria, whereas an increased chance of survival associated with limited discards satisfies the second.

Even if the definition of bycatch is interpreted to include discarding at sea, but would not include required landings, allowing discarding is still permissible under the MSA.

"Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses. In their evaluation, the Councils must consider the net benefits to the Nation, which include... incomes accruing to participants in directed fisheries in both the short and long term... A determination of whether a conservation and management measure minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation, should consider the following factors: Population effects for the bycatch species... Changes in fishing practices and behavior of fishermen... Changes in the distribution of benefits and costs... [and] Social effects."¹²

In this instance, the Council should likewise consider other factors including the value of the fish to the groundfish fishery, the fact that scallopers' yellowtail landings could affect the market for the stock, and the requisite changes in behavior of the fleet to accommodate this pointless rule. It is clear that, because there are no mortality or conservation advantages to balance these negative effects, the net benefits analysis allows for the rescission of the measure. Taking a balanced approach is critical for the continued operations of both fisheries in light of this limited resource.

IV. THE LANDING REQUIREMENT PROVIDES NO MANAGEMENT BENEFIT

As mentioned previously, discard bans are only really effective when combined with other management measures that are not practical for this fishery. When Framework 44 adopted the rule, there was some hope that the landings could be used to generate data to provide better catch estimates. Indeed, as explained above, collection of better data regarding scallopers' yellowtail bycatch represented the basis on which FSF supported the current full-retention rule. The rule has not resulted in NMFS estimating scallopers' yellowtail bycatch any different from

¹¹ "Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive." *Id.*

¹² *Id.*

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how NMFS had done so prior to Framework 44. As a result, this requirement is overly burdensome with no management benefit and it creates an incentive to target yellowtail. The costs clearly outweigh the benefits.

V. **THE REQUIREMENT IS INCONSISTENT WITH THE TREATMENT OF OTHER STOCKS UNDER THE GROUND FISH PLAN**

Various other stocks managed under the groundfish plan, including Atlantic wolffish, ocean pout, and Atlantic halibut are subject to rules that *require* discarding at sea, and winter flounder was also formerly managed in this way. The Interim Rule¹³ first introduced these measures, and the Environmental Assessment for that action provided the following rationale:

“The implementation of prohibitions on retention of several other stocks may increase discarding on those trips that encounter these species (SNE winter flounder, ocean pout, and windowpane flounder north). However, due to the overall reduction in fishing effort likely, and the fact that there will be no legal incentive to ever target the stocks that cannot be retained, the net amount of bycatch of such species may decline.”¹⁴

Not only has the Council recognized that these zero possession measures promote healthy stocks and healthy fisheries, but biological data has proven this to be true. After the prohibition on landings of SNE/MA winter flounder, total fisheries catch dropped substantially and spawning stock biomass increased.¹⁵ Yellowtail flounder should be managed in a similar way.

In Amendment 16, the landing prohibitions were reiterated for sector vessels, stating “This will discourage sectors from targeting these stocks.”¹⁶ Framework 47 continued the prohibition on landing Atlantic wolffish, “in order to promote rebuilding of this stock. At least some Atlantic wolffish that are caught and discarded would be expected to survive based on

¹³ 74 Fed. Reg. at 17030 (April 13, 2009).

¹⁴ National Marine Fisheries Service, *Secretarial Interim Action to Implement Measures to Reduce Overfishing in the Northeast Multispecies Fishery Complex*, April 6, 2009.

¹⁵ Northeast Fisheries Science Center, *52nd Northeast Regional Stock Assessment Workshop (52nd SAW) Assessment Report*, NEFSC Ref Doc 11-17 (2011).

¹⁶ New England Fishery Management Council, *Amendment 16 to the Northeast Multispecies Fishery Management Plan*, at 106 (2009).

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studies of discard mortality from trawl vessels.”¹⁷ This rationale – that net bycatch is expected to *decrease* under zero retention – flies in the face of the Council’s intent when it required the scallop fleet to land yellowtail flounder through Framework 44.

VI. CONCLUSION

The Council has recognized that full retention in fact increases mortality, catch, and bycatch. The scallop fishery should not be subject to contradictory rules that conflict with the way the Council has managed these groundfish stocks throughout recent history. The costs of this current regulation clearly outweigh the benefits of maintaining it, as there are no documented benefits for management or the health of the resource. For all of the above reasons, FSF respectfully submits that the Council should remove the requirement for the scallop fishery to land all yellowtail flounder. We appreciate your consideration of this important issue. FSF representatives will be at next week’s Committee meeting and the December Council meeting to discuss this in more detail. In the meantime, please do not hesitate to contact us if you have any questions or need additional information.

Sincerely,



David E. Frulla
Andrew Minkiewicz
Anne E. Hawkins

¹⁷ New England Fishery Management Council, *Framework 47 to the Northeast Multispecies Fishery Management Plan*, at 49 (2012).

