

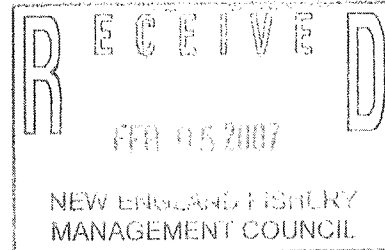


UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910

THE DIRECTOR

#9

JAN 31 2007



Mr. John Pappalardo  
Chairman  
New England Fishery Management Council  
50 Water Street  
Newburyport, Massachusetts 01950

Dear Mr. Pappalardo:

Thank you for your letter to Northeast Regional Administrator, Patricia Kurkul regarding use of the mixed stock exception in fisheries management as covered in the National Standard 1 (NS1) guidelines. NOAA's National Marine Fisheries Service (NMFS) along with NOAA and the U.S. Department of Commerce are committed to ending overfishing. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (2006 Magnuson-Stevens Act) signed by President Bush on January 12, 2007, requires annual catch limits be established in all fisheries so that overfishing does not occur. Beginning about July 12, 2009, any fishery newly determined to be overfished, must have a plan in effect to end overfishing two years after the date that NMFS notifies a regional fishery management council that a fishery is overfished. Given the new requirements under the 2006 Magnuson-Stevens Act, I recommend that you not consider the use of the mixed stock exception, 50 CFR 600.310(d)(6), for new fishery management actions until NMFS can revise the National Standard Guidelines to reflect the changes made by the 2006 Magnuson-Stevens Act.

Thank you for your interest in this important matter related to fisheries management.

Sincerely,

William T. Hogarth, Ph.D.



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THE ASSISTANT ADMINISTRATOR  
FOR FISHERIES



*Council originally rec'd @ Feb 6-8, 2007 Council Mtg.*





New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

October 25, 2006

Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service  
One Blackburn Drive  
Gloucester, MA 01930

Dear Pat:

Over the next two months the Council will begin work on the 2009 adjustment to the Northeast Multispecies Fishery Management Plan (FMP). I believe it will be helpful if there is a clear understanding of the legal and policy framework that applies to this management action. To that end, I ask that your office provide an explanation of the applicability of the “mixed stock exception” to the multispecies FMP.

Recent management actions have struggled to address the differences in the status of groundfish stocks. The measures adopted for the inshore Gulf of Maine area in Framework 42 are an example of the problems faced: restrictions designed to protect stocks in worse condition result in sacrificing yield from healthier stocks. It is likely that the Council will face similar situations in 2009. This has led some to suggest that the “mixed stock exception” may be an appropriate way to facilitate complying with legal requirements to rebuild stocks while mitigating the adverse impacts on communities. I believe that this refers to section 50 CFR 600.310(d)(6) of the National Standard Guidelines, which begins with “There are certain limited exceptions to the requirement to prevent overfishing” and goes on to define the conditions that must be satisfied to allow this to occur.

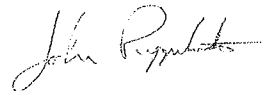
In order for the Council to understand the utility of this provision for groundfish management, we ask the following questions:

- Can this provision be used to allow overfishing on a stock that is overfished, or was previously determined to be overfished, and is in a formal rebuilding program?
- If a stock is overfished, or was previously determined to be overfished and is in a formal rebuilding program, can this provision be used to allow overfishing if this extends the rebuilding period of a stock beyond the time period specified in other sections of the NSGs and the Magnuson-Stevens Act?

- If a stock is overfished, or was previously determined to be overfished and is in a formal rebuilding program, can this provision be used to allow fishing mortality to be higher than called for by the rebuilding program as long as the stock will be rebuilt within the time period specified in other sections of the NSGs and the Magnuson-Stevens Act? In essence, this would be a revision to a rebuilding program by changing the rebuilding period but not exceeding the maximum period allowed under the law.
- If a stock is not overfished or in a formal rebuilding program, and assuming the conditions specified can be met, does this provision allow overfishing to continue indefinitely as long as the stock will not require protection under the Endangered Species Act? If so, would the applicability of this section change if this approach is being followed and the stock becomes overfished but does not require protection under the ESA?

Thank you for helping us interpret this provision. We look forward to your reply.

Sincerely,



John Pappalardo  
Chairman