



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

JAN 21 2010

John Pappalardo, Chair
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Dear John:

This letter is to inform you that on January 21, 2010, the Secretary of Commerce (Secretary) partially approved Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). As you are aware, a notice of availability (NOA) soliciting public comments on Amendment 16 was published in the *Federal Register* on October 23, 2009, with the comment period ending December 22, 2009 (74 FR 54773). A total of 1,192 comments were received and considered in making the decision to partially approve Amendment 16, as described below. A proposed rule to implement Amendment 16 published in the *Federal Register* on December 31, 2009 (74 FR 69382), with the public comment period ending on January 20, 2010. Forty-five comments were received during the public comment period of the proposed rule. A summary of the comments received, and NOAA's National Marine Fisheries Service's (NMFS) responses to these comments, will be published in the final rule.

Comments on both the Amendment 16 NOA and the proposed rule suggest that several industry and environmental groups are concerned that the removal of the 20-percent cap on annual catch entitlements that can be held by individual sectors could have a negative affect on the fishery and associated fishing communities, including reducing fleet diversity and sustained participation in the fishery by the small-boat fleet. Recognizing that removal of the allocation cap as proposed in Amendment 16 increases the flexibility of vessel operations, and that maintaining the existing 20-percent cap would only restrict the initial allocation and not the shares held through subsequent leasing transactions, we do not believe that disapproval of the removal of the allocation cap is warranted. However, because these comments raise legitimate concerns about the consolidation of permits, we would like to work with the Council to develop measures that would mitigate potential negative impacts, both within sectors and among individual permit holders, as they relate to some of the social and economic objectives established in the FMP.

Only one of the Amendment 16 proposed measures was disapproved on the grounds that it was not consistent with National Standards 1 and 9 and other provisions of the FMP: The Gulf of Maine (GOM) Sink Gillnet Pilot Program. This pilot program would have allowed vessels on a fishery-wide basis to target haddock while using 6-inch mesh gillnets, which is less than the minimum mesh size currently required, from January through April. As I stated in my earlier letters to the New England Fishery Management Council (Council), this pilot program was analogous to special access programs (SAP) under the FMP, as it would have provided "access to limited, specific regulated multispecies or other fisheries that would otherwise be prohibited" (NEFMC, 2003: 62). Contrary to assertions in the Amendment 16 Final Environmental Impact



Statement (FEIS) (NEFMC, 2009: 136), nothing in Amendment 13 suggests that a SAP was intended to only facilitate access to closed areas or allow the use of Category B days-at-sea (DAS). According to Amendment 13, SAPs are intended to facilitate the targeting of healthy stocks, without compromising efforts to end overfishing or rebuild overfished stocks by using selective gear or fishing when interaction with stocks of concern (i.e., stocks that must have fishing mortality reduced to end overfishing or rebuild the overfished stock) are minimized. Although recent Council actions have adopted SAPs based upon peer-reviewed research, this is not a formal criterion for the approval of SAPs. However, such research helps identify the expected impacts of proposed measures. Public comments received on Amendment 16 supported the use of peer-reviewed research prior to the approval of any new or revised SAPs.

Research cited in the Amendment 16 FEIS to support this pilot program has several limitations that preclude it from supporting the proposed pilot program. First, the research was not conducted throughout the season proposed for this pilot program (January through April); research trips were only conducted in March and May. Secondly, research trips were conducted in an area not accessible to NE multispecies vessels (the Western GOM Closure Area), so catch rates by experimental vessels are not directly comparable to those expected under this pilot program. Finally, and most importantly, the catch of the target species (haddock) was too low to evaluate the selectivity of gillnets for haddock adequately, while the catch of cod and pollock was too high to reasonably conclude that this pilot program would not have an adverse impact on these overfished stocks. During this experiment, only 71 haddock were caught, while 264 cod and 873 pollock were caught. The report concludes that “bycatch of cod is likely to be a challenge for a directed springtime haddock fishery on this portion of Jeffreys Ledge,” that “make(ing) a regulatory change based upon this study alone (is) unwise,” and that “further work must be done on avoiding cod bycatch if a haddock gillnet fishery is to be reestablished in this area” (Marciano, *et al.*, 2005). Researchers suggest that gear modifications that raise the webbing of gillnets several feet off the bottom would enhance the selectivity of gillnet gear and promote the objectives of this pilot program. While this work was reportedly conducted in 2006, a final report of such work has not been made available, and, thus, its results have not been used to enhance the effectiveness of the proposed pilot program.

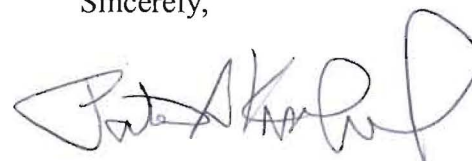
As this research demonstrates, gillnets are effective at catching both pollock and cod, stocks that require reductions in fishing mortality to rebuild. Section 7.2.1.3.1.4 of the FEIS indicates that, if the catch rates of these species remain the same or increase under the proposed pilot program, mortality on these species may increase. While the FEIS also indicates that mortality might decrease if catch rates decrease, the FEIS does not provide any evidence that catch rates of cod and pollock would actually decrease as a result of using smaller mesh in this program. The research used to support this pilot program and recent landings data indicate that haddock catches by gillnet gear in the GOM are minimal in January and February, and peak in March. However, large amounts of both cod and haddock are regularly landed in January and February. This suggests that this pilot program, as proposed, would encounter larger amounts of cod and pollock early in the proposed season, while haddock catch rates would not increase until later. As a result, the proposed pilot program could either maintain or increase catches of these species compared to current measures, particularly considering the proposed use of smaller mesh, as also suggested in the FEIS (NEFMC, 2009: 533). Thus, this program could undermine rebuilding programs for these stocks without substantially increasing the catch of haddock.

Based upon the above information, NMFS determined that the proposed pilot program was inconsistent with National Standards 1 and 9 because it could increase catch and fishing mortality, and may lead to excessive discards of overfished stocks of GOM cod and pollock. Moreover, it is inconsistent with the NE Multispecies FMP provisions, including the SAP provisions outlined in Amendment 13 and Objectives 3 (constrain fishing mortality to levels compliant with the Sustainable Fisheries Act), 4 (prevent overfishing), and 10 (minimize bycatch) of the FMP. Therefore, this pilot program is disapproved under Amendment 16. The Council could revise the proposed pilot program in a future action to better reflect months when low catch rates of cod and pollock correlate with high catch rates of haddock (i.e., March and April) to maximize opportunities to increase the catch of haddock without unnecessarily increasing mortality on cod and pollock. It also appears that elements of this program could be used to increase access to haddock on a smaller, more controlled scale by sector vessels without unnecessarily compromising efforts to eliminate overfishing and rebuild overfished stocks of cod and pollock. Therefore, NMFS would support efforts to approve such opportunities for sectors through another means, and will work with the Council to explore such possibilities.

NMFS remains concerned with other issues related to measures, or lack thereof, in Amendment 16. Although Amendment 16 includes a process to specify annual catch limits for all stocks, not all stocks are covered by specific accountability measures (AMs). Several stocks (Southern New England/Mid-Atlantic winter flounder, ocean pout, windowpane flounder, and wolffish) are not specifically allocated to sectors and would not be covered by specific sector AMs under Amendment 16. In addition, ocean pout, windowpane flounder, and Atlantic halibut would not be subject to the common pool hard total allowable catch AM beginning in 2012. Because the Secretary is restricted by the Magnuson-Stevens Act to only approve, disapprove, or partially approve an amendment to an FMP, NMFS cannot insert specific AMs for these stocks into Amendment 16 and cannot disapprove based on the lack of specific AMs. While NMFS anticipates that other measures in Amendment 16 should be sufficient to prevent overfishing on these stocks, to ensure compliance with the Magnuson-Stevens Act, the Council should develop appropriate AMs for these stocks as quickly as possible through a future action.

I appreciate the hard work that you and your staff put into developing Amendment 16. This has been a monumental endeavor that has made great strides in promoting sustainable groundfish fisheries in New England.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Patricia A. Kurkul', written in a cursive style.

Patricia A. Kurkul
Regional Administrator

Citations:

Marciano, David, Rosen, Shale, Pol, Michael, and Szymanski, Mark. 2005. Testing the selectivity of gillnets to target haddock in the Gulf of Maine. NOAA Fisheries Cooperative Research Partners Program, contract EA 133F-04-SE-0821.

New England Fishery Management Council [NEFMC]. 2003. Amendment 13 to the Northeast Multispecies Fishery Management Plan, including a Final Supplemental Environmental Impact Statement and an Initial Regulatory Flexibility Analysis. Vols I and II, submitted Dec 1 2003.

New England Fishery Management Council [NEFMC]. 2009. Amendment 16 to the Northeast Multispecies Fishery Management Plan, including a Final Environmental Impact Statement and an Initial Regulatory Flexibility Analysis. Submitted October 16, 2009.