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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

MAY - 1 2012



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

Dear Paul:

This letter is to inform you that the Secretary of Commerce has approved Framework Adjustment 47 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and has filed a final rule implementing the approved measures, effective May 1, 2012.

As you know, a proposed rule to implement Framework 47 published in the *Federal Register* on March 27, 2012 (77 FR 18176), with public comment ending on April 11, 2012. Three comments were received during the proposed rule comment period and considered in making the decision to approve Framework 47. A summary of the comments received and our response to these comments will be published in the final rule on May 2, 2012.

During the development of Framework 47, the Scientific and Statistical Committee (SSC) determined that projections from the 3<sup>rd</sup> Groundfish Assessment Review Meeting (GARM III) completed in 2008 were not a reliable basis for providing catch advice for fishing years (FYs) 2012-2014. As a result, the SSC recommended that the Council specify acceptable biological catches (ABCs) for FY 2012 only based on the ABCs that were previously adopted in Framework 44 or Framework 45 for those stocks last assessed at GARM III. Consistent with the SSC recommendations, the Council adopted the FY 2012 ABCs previously set in Framework 44 and Framework 45 in Framework 47. The Council also requested that the Northeast Fisheries Science Center (NEFSC) complete assessment updates for the stocks last assessed at GARM III in order to set catch limits for FYs 2013-2014.

As you are aware, the NEFSC completed stock assessment updates for 13 groundfish stocks on February 13-17, 2012; the final report for these updates was published on March 14, 2012. Both of these events occurred after the Council finalized and submitted Framework 47 to NMFS for approval. During development of Framework 47, both the Council and the SSC understood that the assessment updates would not be completed in time to be incorporated into Framework 47. There was no practicable way to incorporate this information into Framework 47 without reinitiating the Council process and delaying the action far beyond the start of FY 2012. Therefore, the Council appropriately set the overfishing levels and ABCs in this action based on the best scientific information available at the time it took final action and submitted Framework 47 to NMFS for approval.

Still, we would like to emphasize the importance of acting on this new information as soon as possible. The updated assessments for five stocks in particular (Georges Bank cod, Gulf of



w: Council, TN, FH (5/8)

Maine (GOM) haddock, Cape Cod/GOM yellowtail flounder, American plaice, and witch flounder) indicate that the FY 2012 ABCs adopted in Framework 47 are significantly higher than those suggested by the assessment updates. We realize that the Council has already started development of a management action that will incorporate the assessment updates in order to set catch limits for FYs 2013-2014 for the pertinent stocks. However, we recommend that, at its June 2012 meeting, the Council identify how and when the assessment updates will be incorporated and whether that process would affect any existing or planned management measures. As we previously recommended, the Council should incorporate the stock assessment updates as soon as possible, but no later than May 1, 2013.

During the development of Framework 47, there was also ongoing litigation on Amendment 16 to the NE Multispecies FMP. Oceana challenged Amendment 16 partially because it lacked sector-specific accountability measures (AMs) for stocks not allocated to sectors. On December 20, 2011, the U.S. District Court for the District of Columbia upheld most of Amendment 16, but found that the lack of reactive AMs (i.e., an AM that is triggered if a catch limit is exceeded) for those stocks not allocated to sectors violated the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Court remanded this single issue to NMFS and the Council for further action. The Council developed the Framework 47 AMs for these stocks before the Court decided this case, and therefore did not specifically address this litigation in Framework 47. When we proposed Framework 47, we asked for specific comments about the adequacy of sector-specific AMs in light of the Court's decision and remand. We considered the Court decision and public comments received when approving the AMs in Framework 47, and in determining additional action that is required to ensure the NE Multispecies FMP complies with the Court remand and the Magnuson-Stevens Act.

Framework 47 includes a measure that prohibits possession of Atlantic halibut by commercial vessels if the total annual catch limit (ACL) is exceeded. Because commercial groundfish vessels can only land one halibut per trip, and generally do not target this stock, a zero possession limit, by itself, will not likely create a sufficient incentive for vessels to avoid catching this stock if the total ACL is exceeded. Therefore, we have determined that the reactive AM for Atlantic halibut adopted in this action, by itself, is not adequate in light of the Court's remand. In addition, Framework 47 adopts zero possession as a proactive AM for Southern New England/Mid-Atlantic (SNE/MA) winter flounder and Atlantic wolffish. The Council concluded, before the decision in the Amendment 16 lawsuit, that prohibiting possession appears to have kept catch of these stocks within allowable catch levels, and that this is the preferred method for ensuring catch of these stocks does not exceed mortality targets. Although zero possession may be a sufficient proactive AM for these stocks, the Magnuson-Stevens Act requires reactive AMs. Therefore, the Council must develop reactive AMs as soon as possible for these two stocks in order to comply with the Court remand.

We recommend that the Council consider area closures or gear-restricted areas, similar to those adopted for windowpane flounder and ocean pout, as a reactive AM for Atlantic halibut, SNE/MA winter flounder, and Atlantic wolffish. To ensure that appropriate reactive AMs are developed and implemented as soon as possible for these stocks, we request that the Council make significant progress on this issue by its November 2012 meeting. In addition, we also request that the Council consider whether these measures could be applied retroactively to FY 2012. In other words, the Council should consider whether any reactive AMs developed in its

next management action, scheduled for implementation by May 1, 2013, should take into account ACL overages that may have occurred in FY 2012.

Despite our concerns regarding the reactive AMs in Framework 47, we are approving the reactive AM for Atlantic halibut because, should the total ACL be exceeded, it will provide some benefit to the fishery as a conservation measure and will alleviate perceived inequity between sector and common pool vessels. Similarly, we are approving the proactive AMs for SNE/MA winter flounder and Atlantic wolffish in this action because it removes a potential inequity for common pool vessels. The AMs for these stocks adopted in Amendment 16 (i.e., Trimester Total Allowable Catches), which would go into place if we disapproved the Framework 47 AMs, only apply to common pool vessels, even if the overage is caused by sector vessels. Because common pool vessels generally account for less than 10 percent of the total commercial catch of these stocks, there is a potential inequity in only applying the AM to common pool vessels. Until the Council is able to develop sufficient reactive AMs for these stocks, the measures adopted in Framework 47 will provide some conservation benefit and avoid disproportionately penalizing common pool vessels for catch by sector vessels.

If triggered, the Framework 47 reactive AMs for windowpane flounder, ocean pout, and Atlantic halibut would be implemented in Year 3 (2 years after the overage occurs). We recommend that these AMs be implemented as soon as possible after an overage occurs, when catch data, including final discard information, reliably show an overage of the catch limit, and not be restricted to implementation in Year 3. The Council recommended a Year 3 implementation because of concerns that final catch data for these stocks, which include catch from state waters and non-groundfish fisheries, as well as discard estimates, could not be reliably available in time to trigger the AM in Year 2, or earlier. As monitoring improves and discard estimates are more readily available for all components of the fishery, we anticipate that these reactive AMs can, and should, be implemented more quickly. Similar to our recommendation for developing reactive AMs for the stocks mentioned above, should the Council modify the timing of the AMs (i.e., implementation earlier than Year 3), we recommend that the Council consider whether these measures could be applied retroactively to FY 2012.

I appreciate the hard work that you and your staff put into the development of Framework 47 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,



Daniel S. Morris  
Acting Regional Administrator

cc: Rauch, Risenhoover, Karp, Cunningham, Odlin

