

Additional Correspondence



Groundfish Committee Chair Terry Stockwell
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950



November 5, 2012

Dear Chairman Stockwell,

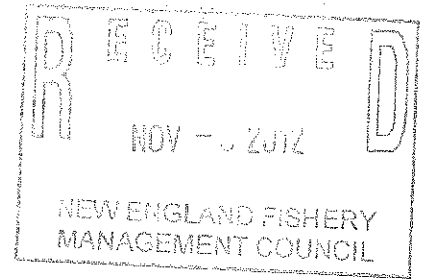
I'm writing today to request that the New England Fishery Management Council (NEFMC) insert language into framework 48 to allow the Port Clyde Community Groundfish Sector (PCS) to change its name to the Maine Coast Community Sector. The board of directors voted unanimously to change the name of the sector through a conference call on October 18, 2012 and it is on their behalf that I make this request. We have been informed by NMFS staff that in order for this change to officially take place, the name must be amended through a council action. It is our hope that this request can be reflected in Amendment 48.

In the aftermath of the Amendment 16 process, fishermen from the small community of Port Clyde came together to form a sector to ensure that their needs as small boat, community based fishermen were protected. Soon after developing the Port Clyde Community Groundfish Sector it became apparent that there were many more small communities and inshore fishermen throughout Maine who had similar needs and the membership of PCS quickly outgrew its name. Sector members now hail from Kittery to Mount Desert Island and it is our hope that our new name, Maine Coast Community Sector, better reflects the membership and focus of this sector.

If you have any questions or concerns please feel free to contact me,

Sincerely,

Ben Martens
Sector Manager



November 7, 2012
 Mr. Eric Schwaab
 Acting Assistant Secretary for Conservation and Management
 National Oceanic and Atmospheric Administration
 U.S. Department of Commerce

Dear Mr. Schwaab

We are writing to you express our serious concern about the course that NOAA fisheries and the New England Fishery Management Council have set for opening large portions of the groundfish closed areas in the Northeast, outside of the habitat amendment process and without a full Environmental Impact Statement.

With support from NOAA Fisheries the Council is moving ahead with a plan to open areas now closed to commercial fishing.¹ This is being pursued as a response to the groundfish crisis. The plan is intended to offer relief to fishermen in the face of declining stocks. While this plan is well intentioned, we believe that it is the wrong response and that it could result in a significant ecological setback. There is scant scientific basis for concluding that opening these areas will benefit the fishing community over the long-term. To the contrary, scientific information from these areas and from similar closures in other temperate regions suggests that maintaining closed areas to protect adults of reproductive age and improving habitat protection that enhances feeding and growth, especially for juveniles, is warranted in the face of dwindling stocks. The plan is predicated on a number of incorrect assertions and ignores the long history of these areas.²

There is little question that the region's ecosystems are compromised and that the shortages of groundfish are just one of the manifestations of this. The fish are less abundant, they are smaller, and recruitment is poor for many of them including Atlantic cod, the iconic species of New England. The ecosystems that provide us with our marine resources and support our communities have been fundamentally changed by years of excessive fishing with too little regard for ecological interactions and habitat impacts. In 2009 NOAA's Status Report for the Northeast U.S. Continental Shelf Large Marine Ecosystem concluded that the system has been experiencing ecosystem overfishing.³ Like all animals, fish need food, opportunities for reproduction and growth, and cover from

¹ New England Fishery Management Council News Brief, September 28, 2012; those portions of the groundfish areas not also designated *habitat areas* would be accessed by sector vessels via revised operations plans.

² Murawski et al 2000. Large-scale closed areas as a fishery-management tool in temperate marine systems: the Georges Bank experience. *Bulletin of Marine Science*, 66(3): 775-798, 2000; Halliday RG 1988. Use of seasonal spawning area closures in the management of haddock fisheries in the Northwest Atlantic. *NAFO Sci. Coun. Studies*, 12: 27-36

³ Ecosystem Assessment Program. 2009. Ecosystem Assessment Report for the Northeast U.S. Continental Shelf Large Marine Ecosystem. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 09-11.

predators - that is, they need intact habitats. Under the current circumstances development of ecosystem-based management and habitat protection is critically important and should be enhanced not reduced. The new stresses added by a changing climate point to additional precaution including improvements to habitat protection.

In response to the crisis the Council has already suspended work on ecosystem based fisheries management (identified as a Council priority in 2009 and again in 2011) and will substantially decrease habitat protection if the groundfish areas are opened, since the groundfish areas, while not technically designated as habitat closures, do protect habitat. While not yet final, the plan will likely reduce the combined area protected from trawling by approximately 57% percent. There is a promise of additional new habitat protection under the yet to be completed Omnibus Habitat Amendment 2 (OHA), but what that amendment will ultimately produce is presently unknown, although options being considered include substantially less area and focus only on hard bottom habitats.

NOAA Fisheries supported the Council in its decision to combine the analysis of the groundfish closed areas with its ongoing OHA process in 2011. This was the right decision because New England needs an integrated, ecosystem-informed, approach to habitat protection. The groundfish areas have been protecting habitat for nearly two decades and were intended to protect places used by groundfish, i.e. habitat areas.⁴ Regardless of the original intent and siting methods, it is essential to thoroughly analyze the ecological supporting role that these areas are playing now before opening them or otherwise substituting new areas for them. The full suite of closure areas must be analyzed as an ensemble within the EIS for the OHA in order to make good, science-based, habitat decisions for the region.

We would like to briefly comment on a short list of misconceptions that are frequently cited as part of the rationale for opening the groundfish areas, some of them by NOAA Fisheries in the Northeast:

(1) *Groundfish closed areas are no longer necessary because we operate under a new quota management system (i.e., input controls are no longer needed).*⁵ While it could be true that, with a perfect implementation of quota-based management, quotas might not be exceeded without closed areas, it is not true that closed areas would no longer be necessary. First, quota management systems (i.e., catch shares) clearly do not achieve all

⁴ Auster PJ et al (2001). Fish species and community distributions as proxies for seafloor habitat distributions: the Stellwagen Bank National Marine Sanctuary example (Northwest Atlantic, Gulf of Maine). *Environmental Biology of Fishes* **60**:331–346.

⁵ NOAA Fisheries Regional Administrator addressing, September 19, 2012: *I commend you for coming here and dealing with this issue and potentially reopening areas that were closed for a method of managing Groundfish that we have left behind for a new management method.*

fishery management objectives under all circumstances.⁶ Second, closed areas protect the targeted species, other species, and habitat; the habitat is used by many species, including spawning places, and species that serve as food for groundfish. The closed areas were put in places known as high abundance areas for spawning adults and juveniles. These closed areas have ecological functions beyond controlling mortality and this is supported by the available scientific information.⁷ The habitat value of these areas will be degraded rapidly with the resumption of bottom trawling. This will include damage to structure that is important for juvenile groundfish, loss of older females important for population rebuilding, and impacts to invertebrates that fish eat.

(2) *We have proven that closed areas do not work – if they worked we would not be in the current groundfish crisis.* This statement reflects an overly simplistic analysis of a complex issue. It may be that some of the benefits of the closed areas have been overwhelmed by overfishing throughout the region, by some of the fishing still permitted in these areas, and by degrading the ecosystem overall, but that in no way “proves that the closed areas do not work.” The statement about closed areas is not supported by the best peer reviewed science, which indicates that groundfish closed areas do export fish to the fishery as expected, and that some species are more abundant and larger inside closures.⁸ The benefits of closed areas in similar temperate ecosystems abroad are also well known.⁹

(3) *The work of the Council’s habitat committee shows that the closed areas are in the wrong places.* It has been said repeatedly that the work of the habitat committee, with its Plan Development team (PDT), shows that the groundfish areas are in the wrong places. The siting of the groundfish areas was informed by the distribution of fish (biological data). The EFH approach that the council has been developing since 2004, the Swept Area Seabed Impact Model (SASI), uses different criteria to identify places judged to be vulnerable to bottom tending mobile gear. Given these differences, it is not surprising that the SASI approach identifies different areas, areas that are primarily hard bottom. There is no basis for concluding that these areas are anymore “correct” than those covered by the groundfish areas. The peer reviewers of the SASI approach concluded that the

⁶ Melnychuk MC et al (2012) Can catch share fisheries better track management targets?. *Fish and Fisheries*, 13: 267–290. doi: 10.1111/j.1467-2979.2011.00429.x; Essington TE et al (2012) Catch shares, fisheries, and ecological stewardship: a comparative analysis of resource responses to a rights-based policy instrument. *Conservation Letters* 5: 186–195

⁷ Tamsett A et al (2010). Dynamics of hard substratum communities inside and outside of a fisheries habitat closed area in Stellwagen Bank National Marine Sanctuary (Gulf of Maine, NW Atlantic). *Marine Sanctuaries Conservation Series ONMS-10-05*. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Silver Spring, MD. 53 pp; Brown BK et al (2010) Effects of excluding bottom-disturbing mobile fishing gear on abundance and biomass of groundfishes in the Stellwagen Bank National Marine Sanctuary, USA. *Current Zoology* 56 (1): 134-43.

⁸ Murawski et al 2005. Effort distribution and catch patterns adjacent to temperate MPAs. *ICES Journal of Marine Science*, 62: 1150-1167; Brown BK et al (2010) at note 6.

⁹ Roberts CM, Hawkins JP (2012) establishment of fish stock recovery areas. Prepared for the European Parliament's Committee on Fisheries; Svedäng H (2010) Long-term impact of different fishing methods on the ecosystem in the Kattegat and Öresund. Prepared for the European Parliament's Committee on Fisheries.

approach is not sufficient by itself for determining the biological or economic consequences of opening existing closed areas or closing new areas.¹⁰

NOAA Fisheries and the New England Council are on the precipice of a monumental decision – a decision that would allow fishing in huge areas that have been protected from the most damaging forms of fishing for many years. The plan contemplated is clearly a major federal action that will significantly affect the quality of the human environment.¹¹ There has not been sufficient analysis to know whether or not opening these areas can provide the fishery relief that is the intent of this proposal. There has not been sufficient consideration of the ecological function of the current areas nor how they are contributing to the status of groundfish or anything else. We urge you to look at the existing areas in the context of an integrated system of habitat areas that can provide the ecological support that the region needs to sustain fishermen and fisheries, and to move the region toward ecosystem-based management. The groundfish closed areas should be thoroughly examined within the context of the OHA, including a comprehensive EIS. The risks associated with opening these areas without a proper analysis are very high.

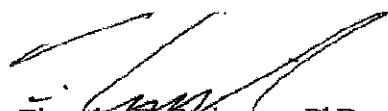
Sincerely,



Peter J. Auster, PhD
Research Professor Emeritus
Department of Marine Sciences &
Northeast Undersea Research Technology &
Education Center
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& Senior Research Scientist
Sea Research Foundation - Mystic Aquarium



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Les Kaufman, PhD
Professor of Biology
Boston University Marine Program
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¹⁰ SSC meeting March 30, 2011, Boston, MA – Peer Review Report, Dr. Patrick Sullivan; Sullivan P, Cournane JM, Holland DS, Langton R, Lipton D (2011) Swept Area Seabed Impact (SASI) Model Peer Review On Behalf of the New England Fisheries Management Council Providence, RI – February 15-17, 2011

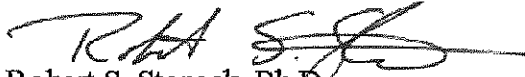
¹¹ NEPA, The National Environmental Policy Act of 1969, as amended



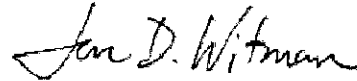
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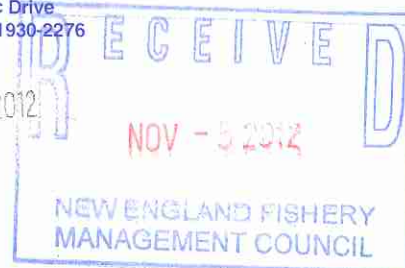
cc Samuel D. Rauch III (Acting), Assistant Administrator for Fisheries
John Bullard, NOAA Fisheries Regional Administrator, Northeast Region
Rip Cunningham, Chair New England Fisheries Management Council



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

Mr. C.M. "Rip" Cunningham, Jr., Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

NOV - 2 2012



Dear Rip:

We have determined that the status of Southern New England/Mid-Atlantic yellowtail flounder under the Northeast Multispecies Fishery Management Plan (FMP) has changed as a result of the Northeast Fisheries Science Center (NEFSC) Stock Assessment Workshop/Stock Assessment Review Committee Process (SAW/SARC 54) findings and recent review of SAW/SARC 54 findings by the Council's Scientific and Statistical Committee (SSC) and the NEFSC. As a result, we are providing the Council with official notification of these stock status changes for this species.

- Southern New England/Mid-Atlantic yellowtail flounder is no longer experiencing overfishing, is no longer overfished, and is rebuilt.

Any time a stock achieves rebuilt status, it is good news. However, concern remains over the uncertainty associated with the biomass-related stock status determinations. The determination that the stock is rebuilt resulted from an assessment approach that was favored only slightly by the SARC 54 peer review panel and subsequently endorsed by both the SSC and NEFSC. The approach in question made use of a more recent recruitment scenario for the stock, and this recent recruitment scenario assumes a change in stock productivity that is causing the stock's biomass, at any given level, to produce fewer new fish than previously thought. This, in turn, lowers the projected maximum sustainable yield the stock is expected to be capable of producing.

The Council should continue to monitor this stock closely and to be cautious in its management approach, given the uncertainty associated with the stock's biomass status. Should the stock demonstrate higher productivity for a number of years, it may be necessary to revisit the assessment and the recruitment information utilized.

If you have any questions regarding this letter, please contact my staff in the Sustainable Fisheries Division at (978) 281-9315.

Sincerely,

George H. Day

for John K. Bullard
Regional Administrator

Cc: Dr. William Karp, Director, Northeast Fisheries Science Center
Carrie Selberg, Acting Director, Office of Sustainable Fisheries



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

RE: Proposed Rule for Cape Cod Spiny Dogfish Exempted Fishery (RIN 0648-BC50)

Dear Director Howard,

Thank you for the opportunity to comment on the Proposed Rule for the Cape Cod Spiny Dogfish Exempted Fishery.

On behalf of a number of Members of the Georges Bank Cod Fixed Gear Sector, I submitted a proposal to NMFS in December 2011 to approve an Exempted Fishery given that it can be clearly shown that targeted spiny dogfish trips interact with very little (<5% in most cases) groundfish.

While we would have preferred that NMFS propose to implement the areas the data identified and justified as qualifying for an Exempted Fishery status, we support the proposed Area and **strongly recommend that NMFS implement Alternative 2.**

Given the resurgence in the spiny dogfish population, lengthier seasons are becoming more and more common. In fact, the season has been extended nearly four months between 2011 and 2012, and is anticipated to last through Christmas. Both the ASMFC and MAFMC have proposed an increase in the overall spiny dogfish quota next year, which may likely result in a fishery that extends into the spring of 2014. Shutting down the Exempted Fishery mid-season will likely cause conflict and confusion within the industry, and degrades industry attempts at stable business planning that could result in a substantial loss of revenue. Near-real time data can be utilized by NMFS to monitor groundfish catch as appropriate.

Furthermore, **we strongly recommend that NMFS revise the Area in question to include the portion of Cape Cod Bay south of 42-degrees 3-minutes** (latitude equivalent to Race Point, Provincetown, MA). 100% of the data collected by NMFS for this area demonstrate less than 5% groundfish catch. It represents one of the most well-defined data clusters of "groundfish absence" in the entire data set.

Thank you for your consideration of these comments and recommended improvements to this Exempted Fishery.

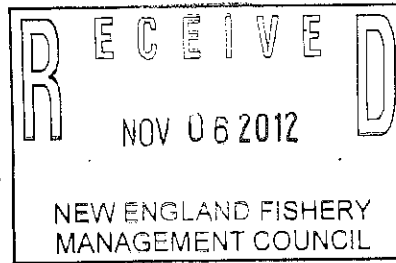
Sincerely,


Eric Brazer, Jr.
Manager, GB Cod Fixed Gear Sector

*This letter is submitted on behalf of Members of the Fixed Gear Sector, and should not be considered as formal position of the Fixed Gear Sector Board of Directors.



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



11/5/2012

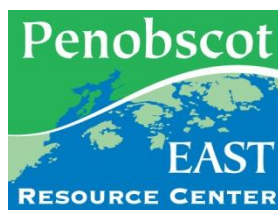
RE: Cape Cod Spiny Dogfish Exempted Fishery – Proposed Rule (RIN 0648-BC50)

To Whom It May Concern,

I support Alternative 2 for the Cape Cod Spiny Dogfish Exempted Fishery – opening the Area to all gear types all year round. With a likely increase in quota next year, there's a very good chance that the season will extend into January (it's already predicted to last through December this year when it closed in August last year). The Exempted Fishery season shouldn't be inconsistent with the fishing season.

Additionally, NMFS needs to modify Alternative 2 to include all of Cape Cod Bay south of 42 degrees 3 minutes. The data shown in the NMFS EA shows that every trip in Cape Cod Bay had less than 5% groundfish catch. This area is clearly identifiable and justified using NMFS data.

Thank you.
Greg Walinski, f/v Alicia Ann, Harwich, MA



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Rip Cunningham, Chair
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

November 8, 2012

Dear Rip and members of the council,

I want to thank the council's executive committee for drafting a priority list that places groundfish Amendment 18 "above the line." The New England groundfish industry has overwhelmingly demonstrated their support for this action at recent scoping hearings, yet it has languished for nearly a year while the council developed and finalized Framework 48. With this latter action nearly complete, now is the time to restart the Amendment 18 development with a focus on setting accumulation limits on individual quota ownership, and developing the best ideas from the mix to address fleet diversity – potentially including greater protections for inshore fishing grounds, and quota-set asides for new entrant fishermen as stocks rebuild.

Accumulation caps and fleet diversity

Catch share programs around this country and around the world have put in place fleet diversity protections, including accumulation caps. In 2011, National Marine Fisheries Service held the Catch Shares and Commercial Fishing Communities Workshop, identifying the problem that catch shares accumulate catch privileges on the most efficient vessels; in the hands of the most profitable owners; and move them to those ports or regions where the most efficient operators run their fishing businesses.

The unanswered question that we've faced in New England is – is this a problem or not? Right now, the success of our sector system is mixed. Boats in the 30 to 50 foot category have seen a 39% percent, fleet-wide revenue increase over the past 3 years. During the same time, boats over 75 feet have seen an 82 percent increase in revenue. The big boats achieved this increase with nearly the

same number of trips in 2009, '10, and '11, adding roughly a day to their trips overall. During that time, the number of active groundfish boats across all vessel sizes in the fleet dropped by over 1 quarter. So, in one sense sectors have achieved a stated goal by enabling consolidation within vessel size categories. However, the consolidation has been disproportionate. Small boats have cannibalized other small boats, but big boats have also cannibalized small boats. The big boats have benefited the best under this system by far.

We could evaluate the system by asking how the fleet is faring today. But, it may be even more important to look to next year, the year after, or five years down the road. Knowing that the most efficient operations are cleaning up now, it's fairly easy to predict who will come out on top in five years, and who may not still be around after a year or two of very low catch limits. Once we've lost this diversity, it won't come back.

We're told that sectors are not a LAPP, so we don't need accumulation caps. However, while we may be freed from some of the regulatory steps necessary for other catch share programs, we're still talking about catch shares, and we know that consolidation will still happen, regardless of the acronym attached to our system.

Supporting accumulation caps means supporting sectors – strengthening our sector system so that it can survive until long after our beleaguered stocks recover. The council needs to prioritize Amendment 18 this year, and develop strong proposals that enable fleet diversity across vessel size classes, geographic ports, and gear types.

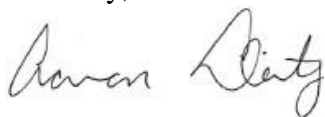
Closed areas

Fishermen will need any assistance that they can get in the next year or years of low catch limits. However, council members need to ensure that any action taken in the short term will not hinder long term progress – and ideally improve stock health so that this fishery becomes more profitable.

Recent work by Graham Sherwood at the Gulf of Maine Research Institute showed a greater abundance of large resident cod in all of the year round closed areas except the Jeffreys Ledge Closure. If this finding is in fact true, then closed areas do offer value in that they harbor some of most fecund fish in the region – the most successful breeders that are essential for producing large year classes of fish needed to recover our stocks.

Fishermen's access to fish in any of the closed areas should be considered only if fishermen can add value to our scientific understanding of the role of these closed areas in protecting large fish. This may be best achieved through an experimental fishing permit through the Regional Office, or in direct partnership between a sector and a valid research institution. However, simply opening closed areas to status quo fishing at a time when our stocks are in poor shape would miss an important opportunity for industry-based research – a win-win for fishermen and fisheries science.

Sincerely,



Aaron Dority
Sector Manager, Northeast Coastal Communities Sector
Downeast Groundfish Initiative Director, Penobscot East Resource Center