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New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
C.M. "Rip" Cunningham, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: August 16, 2012
TO: Council
FROM: Paul J. Howard, Executive Director
SUBJECT: Summary of July 30, 2012

The Executive Committee met on July 30, 2012 at the Sheraton Colonial Hotel in Wakefield, MA. Messrs. Cunningham, Odlin, Grout, Stockwell, Dempsey, Morris, Darcy and Martin and Ms. McGee participated in the meeting. Messrs. Howard, Kellogg and Nies and Meses. Roy and Fiorelli attended from the Council staff. Sam Rauch of NOAA participated as did Dr. Bill Karp of NEFSC and John Bullard, future Regional Administrator of NOAA/Northeast. Mr. Vito Giacalone, and Meses. Jackie Odell and Maggie Raymond were members of the audience. The committee discussed the following agenda items:

1. Discuss timelines and management actions: Mr. Howard reviewed the draft timelines, which had not changed since the June Council meeting, and which the committee approved with a few minor edits.

2. Discuss issue of legal guidance at Council/committee meetings; additionally discuss penalties for lobbying: Mr. Howard suggested a process for requesting legal guidance from NOAA General Counsel. It was suggested that during committee and Council meetings, motions would be made to request legal advice which would be confirmed via an email or memo asking NOAA General Counsel for legal advice. The PDT chair will inform the Executive Director of the motion and the Executive Director would follow-up with General Counsel. This will provide a record of an official request. Mr. Morris also suggested that when a request is submitted to NOAA General Counsel, it would be best to report on the issue at the following Council meeting.

Mr. Howard stated that it is an appropriate time to look at what constitutes lobbying and any associated penalties. He suggested that General Counsel Martin present an update to the NEFMC about lobbying. Mr. Martin reviewed recent lobbying concerns and violations of lobbying activities. Mr. Dempsey added that a review of instances of individual Council members using their personal funds to lobby members of Congress would also be helpful. Mr. Martin also stated that state employees are not subjected to federal anti-lobbying statutes. General Counsel will make a presentation at the September Council meeting.

3. Discuss draft comment letter on Confidentiality Proposed Rule: Mr. Kellogg reviewed the draft letter and the committee agreed to send the letter as written. ***See Encl (1).***

4. *Review draft letter to the Secretary to consider a groundfish fishery failure:* Mr. Howard reviewed the draft letter to Acting Secretary Rebecca Blank and suggested including the break-even analysis. With the exception of a several edits, the committee agreed to send the letter. *See Encl (2).*

5. *Brainstorm the future of groundfish in 2013 and beyond, especially mitigation alternatives for low ACLs:* Mr. Rauch stated that cod carryover can work on status quo, however, if more was wanted, it would require Council action. Mr. Martin added that if there is any change to allow a larger carryover it would have to be done in a Council action. Mr. Odlin stated that there would be 30-50% discard rates by the end of next year. Mr. Stockwell thought the Council should look at mitigation measures and suggested allocating all staff to work this issue.

Mr. Odlin asked whether it was time for an industry buyout. Mr. Dempsey believed that catch advice must be considered at highest levels and that there is a pattern of inaccurate catch advice. Mr. Cunningham stated that the data stream flowing into the models is a constant and that it must be accurate. Dr. Karp stated that the major concern seems to be related to the survey-related data stream. It was agreed that the groundfish ACLs in 2013 will be extremely low and the impacts extremely serious.

6. *Discuss NMFS U.S./CA letters re Georges Bank Yellowtail flounder:* Mr. Morris stated that it has been several years since the U.S./CA agreement was approved and that this was a good time to examine how well it is working. Mr. Nies reviewed a chart showing historic U.S. shares of transboundary stocks. Mr. Odlin stated that if we changed to a system of rolling shares, the U.S. would receive less that it does now. Mr. Nies stated that catch recommendations originate with the TMGC and are considered by the Council. The Council then submits them to NMFS. He explained that if there is a disagreement over the recommendations, it needs to be resolved by the Steering Committee. Mr. Morris inquired about replacing Jim Odlin on the TMGC Committee because of his departure from the Council on August 10. Mr. Cunningham suggested choosing from industry members serving on the Groundfish Advisory Panel. A decision about a replacement is still pending.

7. *Discuss priorities for possible rollover of herring specs and new sturgeon and groundfish actions, including additional support from NMFS:* Mr. Howard suggested assigning additional staff to help with pending groundfish actions to address the groundfish closed area work in time to make a decision this year which would take effect next year.

Ms. McGee asked about support from SMAST and Mr. Nies stated that they have already provided support. Mr. Stockwell stated that additional help is needed on groundfish and recommended rolling over the herring specs and using the herring staff to support the groundfish work. Mr. Nies stated that additional staff assistance would be needed prior to the September Council meeting if the Council is going to choose alternatives in November. It was agreed that the initial priority discussion would be held in September and priorities would be finalized in November.

The committee agreed to stay the course with herring. Andy Applegate and Dave Thomas and possibly a third Council staff member, along with staff from NMFS and the NEFSC will work together to look at groundfish closed areas as part of a groundfish action. The Groundfish Committee may also suggest additional action following their August 2 meeting.

8. *Discussion on response to FSF letter to Bill Karp concerning the yellowtail assessment:* Mr. Stockwell reviewed the letter and felt that the main issue in the letter was more a science issue

than a Groundfish Committee issue. Dr. Karp stated that the outcome of the report from the TRAC was based on a U.S./CA assessment although it was a difficult exercise. He added that the NEFSC recognizes potential for climate change to be involved in decline of Georges Bank yellowtail flounder. Dr. Karp suggested the possibility of a workshop next year to look at retrospective patterns in assessments. Mr. Rauch and Mr. Morris suggested that NMFS and the Council PR staff work together to develop a strategy to inform the broader community.

9. Discuss the Ad hoc Sturgeon Committee: Mr. Howard reviewed the list of committee members and stated that the draft Biological Opinion (BiOp) will be reviewed by the committee once it is received. Mr. Morris stated that the BiOp will be delayed until November and that the Council will be given adequate time to review the BiOp and comment on it before it is finalized.

10. Discussion on limiting the time of speakers/Council members during the public comment period at NEFMC meetings: Mr. Stockwell suggested the possibility of using a timer to limit the amount of time for speakers; however, the Chair felt it is his responsibility to moderate the length of time of any speaker at Council meetings.



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August 1, 2012

Mr. Karl Moline, NMFS
Fisheries Statistics Division F/ST1, Room 12441
1315 East West Highway
Silver Spring, MD 20910

RE: Confidentiality of Information: MSRA

Dear Mr. Moline:

On behalf of the New England Fishery Management Council, I am submitting comments on the proposed rule for confidentiality of information required under of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA). The Council's comments follow each relevant section of the proposed rule cited below.

Supplementary Information that is not included in the text of the regulations

Page 30490; paragraph 3. ...*there would be no "submitter" of observer information created for administration of the observer program and it would be treated as internal program information. As such, this information would not be subject to disclosure to the permit holder under the written authorization exception or under FOIA.*

Comment [based on Enforcement Committee discussion]: The Council agrees that the permit holder should not be considered the submitter of administrative information including field notes; however, the permit holder should have access to this information and there should be an appeal process to correct any inaccuracies. The immediate correction of any misstatements, misunderstandings or typographical errors and the ability to file a formal appeal will help prevent unwarranted investigations and legal actions. The Council agrees that the permit holder should be considered the submitter of observer information collected for scientific and management purposes as long the permit holder has opportunity to correct any inaccuracies in that information.

§ 600.10 Definitions

(3) Business of any person does not include the following observer information related to interactions with species protected under the Marine Mammal Protection Act and the Endangered Species Act: the date, time, and location of interactions, the type of species, and the gear involved provided that information regarding gear would not constitute a trade secret under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

ENCLOSURE (1)

Comment: [based on Enforcement Committee discussion]: The Council is concerned about possible disclosure to the public of information that would identify an individual fishing operation with protected species interactions. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) §402(b) does not distinguish between observer information that pertains to protected species interactions and other data needed to manage fisheries submitted to meet MSRA requirements; however, the Council recognizes that the Endangered Species Act may supersede the MSRA provisions in the case of species listed as threatened or endangered. The proposed regulation to allow the public release of the interactions could expose permit holders to legal actions and create incentives for avoiding observer coverage. Also, NMFS should consider alternatives to current methods for aggregating data, such as the “rule-of-three”, when there is little or no chance they would result in releasing information about individual operations.

The Council is not concerned about the disclosure of confidential information to members of technical teams that develop biological opinions, marine mammal or endangered species stock assessments, ESA consultations, etc. and whose members have signed non-disclosure agreements with NMFS.

§ 600.415 Access to information

Comment: U.S. Coast Guard (USCG) access to information is covered under section 402 (b)(1)(a) of the Magnuson Act, which includes Federal employees responsible for enforcement. Section 600.415 should specifically mention that, in addition to NOAA and state enforcement agencies, the USCG would have access to confidential information without a written request.

Section 600.425 Release of confidential information

(a) NMFS will not disclose to the public any confidential information except when:

(b) Information is required to be submitted to the Secretary for any determination under a limited access program. This exception applies to confidential information that NMFS has used, or intends to use, for a regulatory determination under a limited access program.

Comment: As stated in the Supplementary Information to the proposed rule, prior landings data for initial allocation determinations would not be releasable to permit holders *where a Council is merely considering developing a limited access program. In that case, there would be insufficient facts to support a conclusion that information was submitted to NMFS for it to make a determination under a limited access program.*

The NEFMC has been advised by the NMFS Northeast Regional Office that under the proposed definition of a “determination”, prior landings information would be releasable only after a Council submitted an FMP or plan amendment to NMFS and NMFS published a Federal Register notice stating it will use prior landings to allocate fishing privileges. This exception would not apply while a Council was considering developing a limited access program. In other words, permit holders who have acquired other pertinent landings history but without specific authorization from the original “owner” of the landings history, would not be able to find out their potential allocations under different management alternatives until the comment period on the proposed rule or implementation of the action.

This provision would severely hamper the development of management actions such as limited access, effort controls or catch shares that are even partially based on catch history. Stakeholder groups and advisory panels would be very reluctant to support the development of these types of actions unless permit holders had a full understanding, during the development phase, of potential the impacts on their fishing operations.

The regulations also should clarify at which stage the exception applies in cases where there is an ITQ referendum requirement. Would a permit holder who is eligible to participate in the referendum be provided with a complete allocation determination prior to participation in the referendum, including any historical landings by prior owners within the allocation qualification period, or would that information only be available after the publication of a proposed and/or final rule for the management program (and after passage of a referendum)?

(d) Necessary for enforcement of the Magnuson-Stevens Act, or any other statute administered by NOAA; or when necessary for enforcement of any State living marine resource laws, if that State has a Joint Enforcement Agreement that is in effect.

Comment [based on Enforcement Committee discussion]: The release of confidential information in Notices of Violations (NOVAs) should be avoided to the greatest extent possible.

General comment on release of confidential information:

Basic information needed by managers to determine the effectiveness of proposed and approved fishery management measures needed to meet MSRA requirements should not be subject to data confidentiality requirements. For example, if there is only one business entity in a fishery as is the case in the Atlantic deep-sea red crab fishery, the Council still needs catch, landings, catch by management area, revenue and other information to make adjustments to the management system. Additionally, this information must be available for public meetings and documents.

If you have any questions, please contact Chris Kellogg on my staff.

Sincerely,



Paul J. Howard
Executive Director



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C. M. "Rip" Cunningham, Jr., *Chairman* | Paul J. Howard, *Executive Director*

August 6, 2012

The Honorable Rebecca Blank
Acting Secretary of Commerce
1401 Constitution Ave, N.W.
Herbert C. Hoover Building, Room 5838
Washington, DC 20230

Dear Acting Secretary Blank:

I am writing on behalf of the New England Fishery Management Council to inform you of the serious economic conditions threatening the New England groundfish industry. Significant losses of fisheries income, jobs and related business failures are already occurring and will continue into 2013 and beyond if we are to continue to rebuild and maintain this fishery. These conditions have been the result of unanticipated changes to earlier scientific advice provided to the Council and have triggered significant catch reductions in order to meet Magnuson-Stevens Act requirements.

As a result of an assessment of the Gulf of Maine cod stock, completed in December 2011, NOAA/ National Marine Fisheries Service, in consultation with the New England Council, reduced the allowable catch of Gulf of Maine cod to 6,700 metric tons for fishing year 2012. This is a 39% reduction from the 2010 catch of 11,000 metric tons. Based on current information, the 2013 catch will have to be lowered further to a range between 1,500 and 5,000 metric tons. This circumstance will be devastating to the fishing communities that are already struggling.

Additionally, an updated assessment for Gulf of Maine haddock, another key stock for both the commercial and recreational fishery, revealed that overfishing is occurring even though recent catches have been below their respective quotas. Accordingly, the Council will have to reduce the Gulf of Maine haddock catch limit by about 70% to end overfishing in 2013.

An updated assessment of Georges Bank cod will also lead to reduced quotas in fishing year 2013. Catch projections from this assessment under two rebuilding strategies show reductions in 2013 catch compared to 2011 ranging from about 10 to 41%¹. Further, advice from the U.S./Canada Transboundary Resource Assessment Committee stock assessment of Georges Bank yellowtail flounder convened recently points toward a 55% allowable catch reduction from 1,150 metric tons in 2012 to only 500 metric tons in 2013.

ENCLOSURE (2)

NMFS has provided the Council and the public with the following preliminary estimates of reductions in the annual catch limits (ACLs):

Stock/Species	Change: FY2012 to FY2013 ACLs	Change: FY2011 commercial catch to FY2013 ACL
Georges Bank cod	-70	-57
Gulf of Maine cod	-72	-76
Gulf of Maine haddock	-73	-64
Georges Bank yellowtail flounder	-51	-94
Cape Cod/Gulf of Maine yellowtail flounder	-45	-28
American Plaice	-69	-39

To provide a concrete example of potential impacts of catch limit reductions, from 2007 to 2010, when groundfish landings decreased 21%, inflation-adjusted groundfish revenues decreased 10%, the number of crew positions dropped 15% and the number of vessels landing any groundfish decreased 32%ⁱⁱ.

In 2010, 450 commercial vessels landed fish with a dockside value of \$105 million while on trips landing groundfish. These vessels provided 2,277 crew positions, and their operations supported substantial shore-side employment and economic activity in both large and small coastal communities. An analysis referenced in the attached letter from the Commonwealth of Massachusetts estimated that only about 55% of vessels exceeded their financial break-even point (not including capital costs) on their groundfish trips in 2010.

In other words, a substantial reduction in the landings of key groundfish stocks will have a major impact on revenues, vessels, employment and economic activity in fishing communities that is largely proportional to the decrease in landings. Sudden reductions in landings of several key stocks of over 50% would almost surely result in many business failures and the loss of hundreds of jobs in an industry that has already been weakened by mandated reductions in groundfish catch limits

Additional dimensions to this problem include the following:

- When the annual catch limit for a single stock such as cod, haddock, yellowtail flounder or most other groundfish stocks is reached, fishing for all other stocks in the area must end.
- The cost of leasing quota for stocks that are in short supply will be extremely high and might be beyond the reach of many small-boat owners.
- Segments of the groundfish industry, particularly boats that fish inshore, also will be subject to restrictions that protect marine mammals and Endangered Species Act-listed species. Most notable in the near term are the pending Atlantic sturgeon and current harbor porpoise conservation programs, both of which will impose area-based closures, gear restrictions or other measures that directly limit the operations of groundfish fishermen. These measures, particularly closures of large areas to fishing, whether due to lack of quota or to protect non-target species, frequently cause effort displacement, increasing pressure on all species and habitat, and concentrating competing fishing operations in smaller, and often less-productive open areas.
- The cost of fuel which is a very high percentage of fishing trip costs, ranging from 43% to 59%, is expected to remain near inflation-adjusted 15-year highs.

- In smaller communities where much fishing is based, there are fewer alternatives for employment and resources to lessen economic hardship. Impacts on small boats in the Gulf of Maine will be magnified because they depend so heavily on cod for a major share of their income and it is not feasible for them to fish offshore. Also smaller, inshore commercial operations have very limited access to capital to lease quota or relocate their operations.
- The allocation of Georges Bank yellowtail flounder between the groundfish and scallop fleets is already the subject of controversy and Secretarial intervention, because it is a major constraint on the catch of scallops and other groundfish.
- Although Georges Bank haddock are abundant, the low catch limits for cod, yellowtail and windowpane will limit the amount of haddock that U.S. vessels will be able to catch in 2013. These pressures on large groundfish boats fishing on Georges Bank could cause them to compete for quota in other areas, including Southern New England and in the Gulf of Maine, which will increase the price of quota available to inshore vessels.
- Gulf of Maine party and charter boats also depend very heavily on cod, haddock and pollock for almost all of their catch. Based on information included in Northeast Multispecies Amendment 16, most groundfish party and charter boat fishing trips (85% in 2007) took place in the Gulf of Maine. At that time 153 boats carried 59,865 people on 2,838 trips in the Gulf of Maine on which groundfish were caught. The large reductions in the cod catch limit as well as a reduction in the Gulf of Maine haddock catch limit will have a devastating impact on this important component of the fishing-related economy in New England.
- Even low catch limits for the commercially unimportant stock of windowpane flounder will continue to constrain the groundfish and possibly the scallop fishery on Georges Bank in 2013 and beyond.

Finally, greatly reduced fishing opportunities in 2013 will follow several years of reduced catch levels and loss of employment in the groundfish industry that are documented in the attached letters to former Secretary Bryson from the Governors of Maine, Massachusetts and New Hampshire. Further reductions in landings of the key stocks of cod, haddock and yellowtail flounder will likely cause many marginal fishing operations to fail financially. Until now, these operations have provided coastal communities with a buffer to job losses resulting from the recent recession.

In closing, I ask that you consider the Magnuson-Stevens Act, Section 312(a) that provides for Fisheries Disaster Relief and authorizes funds to mitigate negative outcomes such as those I have described above.

The imminent commercial fishery failure is due to two of the three statutory criteria needed to justify this finding. The conditions we are facing are due to unknown causes; the Council and the industry have reacted appropriately to the need to rebuild fishery stocks, yet our best efforts are not achieving the anticipated results. They are also in part the result of man-made causes beyond the ability of the Council to address through conservation and management measures because the current legal and policy framework does not provide the flexibility needed to adapt to the revised perception of stock status.

The Council and the user groups with whom it collaborates are extremely concerned about what promises to be a very dire future for the fishing industry despite our combined efforts to respond appropriately to rebuild groundfish stocks.

We hope you find this letter useful as you deliberate on a response. Meanwhile, should you have any questions about the information I have provided, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "C.M. Cunningham, Jr.", written in a cursive style.

C.M. "Rip" Cunningham, Jr.
Chairman

attachments

ⁱ Northeast Fisheries Science Center. 2012. Assessment or Data Updates of 13 Northeast Groundfish Stocks through 2010. US Dept. Commerce, Northeast Fish. Sci. Center Ref. Doc. 12-06; 789 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at <http://www.nefsc.noaa.gov/nefsc/publications/>

ⁱⁱ Kitts A, Bing-Sawyer E, Walden J, Demarest C, McPherson M, Christman P, Steinback S, Olson J, Clay P. 2011. 2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2010 – April 2011). US Dept Commer, Northeast Fish Sci Cent Ref Doc. 11-19; 97 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at <http://www.nefsc.noaa.gov/nefsc/publications/>