

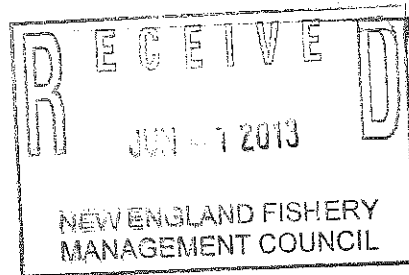
Correspondence

ASSOCIATED FISHERIES OF MAINE

PO Box 287, South Berwick, ME 03908

June 1, 2013

Mr. Terry Stockwell, Chair
Groundfish Oversight Committee
New England Fishery Management Council



VIA ELECTRONIC MAIL

Dear Terry:

The groundfish advisory panel (GAP) has met formally and informally on at least four occasions to discuss and develop recommendations on the pending Amendment 18 to the groundfish plan. You are convening the GAP on June 10 to again discuss, among other issues, Amendment 18.

For your convenience I have culled from the GAP meeting summaries, as well as from a letter dated June 2011 and signed onto by the majority of GAP members, the various, though consistent recommendations of the GAP relative to Amendment 18. Please see the pages that follow this cover letter. I hope you find this to be useful.

Sincerely,

M. Raymond
Maggie Raymond

Cc: Bill Gerencer, Chair, Groundfish Advisory Panel

Recommendations of the Groundfish Advisory Panel relative to Amendment 18

June 9, 2011 – several members of the Groundfish Advisory Panel¹ met and crafted a letter dated June 14, 2011 to the NEFMC containing the following recommendations:

- *The Council should make it a top priority to identify, modify and/or remove impediments to achieving optimum yield from the NE groundfish resource.*
- *With respect to concerns about excessive consolidation, we recommend that the Council conduct an analysis of an ownership cap on groundfish permits that would prevent disenfranchisement of current owners, encourage the consolidation that is still needed to reduce overcapitalization and increase economic viability, preserve sector prerogatives to maintain membership diversity, and protect against market power. We recommend this single focus in order to realize the quickest implementation possible, so that excessive consolidation, as yet to be defined, does not occur.*
- *The Council should, in consultation with its Groundfish Advisory Panel, establish a process for the formation of Community Fishing Associations (CFA). The process should define organizational standards, should require CFAs to establish goals and objectives consistent with the FMP, and should include a requirement for CFAs to report to the Council on progress towards meeting those goals.*
- *The Council should not impose restraints on the flow of allocation trades or leases between individuals, sectors, and/or vessel classes. Such restraints are incompatible with the fundamental concept that sectors themselves should decide when, how and by whom the sector's allocation should be utilized. Trade restraints would limit sectors' ability to pursue their own diversity goals, such as providing allocation to new entrants, or giving preference to owner-operators, specific vessel classes, and/or gear types.*

November 1, 2011 – Groundfish Advisory Panel meeting – (discussion of Council priorities recommends Amendment 18 at the bottom of the list)

Motion: The GAP recommends as Council priorities, in order of importance:

- 1) Prepare framework to address new assessment information for 9 stocks
- 2) Take action to eliminate all or part of rolling, seasonal and year round mortality closures
- 3) Develop a cost-effective sector monitoring plan, that includes options for electronic monitoring of discards (including a full retention policy for allocated stocks), phasing in industry cost-share over a 5-10 year timeframe.

¹ Balzano, Bouchard, Brown, Gerencer, Litsinger, Margesen, Odell, Parker, Raymond, Russo, Soule.

- 4) Develop options to move unused ACE between scallops/groundfish fleets and between groundfish commercial and recreation fleets
- 5) Increase rollover percentage
- 6) Address LAGC yellowtail AMs
- 7) Other effort controls including minimum fish sizes
- 8) Consider Amendment 18 on accumulation limits and fleet diversity including refining definition of fleet diversity
(Mr. Soule/Mr. Balzano)

Motion carried on a show of hands (12-0).

October 4, 2012 – Groundfish Advisory Panel Meeting

Motion to substitute: To set as groundfish priorities items 1, 4 and 5 and allocation of SNEMA winter flounder to sectors, allocate groundfish bycatch by the scallop fleet by a fixed percentage for all stocks and allocate a fixed percentage of groundfish stocks in state waters, fix the industry share of observer costs to a percentage of the total or a specific dollar amount and find a legal way to kill more elasmobranchs, revise the SNEMA winter flounder reference points to reflect recent productivity of the stock and to split Amendment 18 to prioritize an action to address accumulation caps by limiting the number of permits that an individual can own. (Ms. Raymond/Mr. Brown).

The motion to substitute the motion carried on a show of hands (7/1/1).

The main motion as substituted **carried** on a show of hands (7/2/0).

March 6, 2013 – joint Groundfish Committee/AP Meeting

“Amendment 18 should include:

- 1) Analysis of allocation of groundfish sub ACL and AMs to other fisheries including (if possible) state waters
- 2) Analysis of permit splitting so that individuals can acquire additional groundfish PSC without cost of entire suite of linked permits
- 3) Analysis of removing up grade restrictions so that fishermen can move permits to larger platforms to expand fishing range

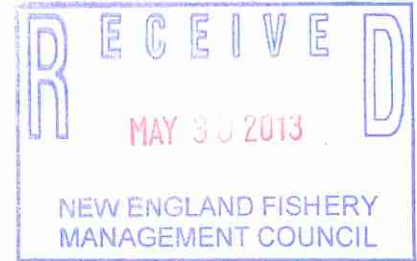
Agreed to by all but 1 GAP member in attendance



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

C.M. "Rip" Cunningham Jr., Chair
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950

MAY 29 2013



Dear Rip:

We recently received two emergency action requests from the Council which were the result of motions adopted during the Council's April meeting. The first asks for an increase to the fishing year (FY) 2013 white hake catch limit based on the results of the 56th Stock Assessment Review Committee assessment. As you are aware, we have already complied with this request by proactively incorporating a 15-percent increase to the white hake catch limit based on the assessment results using our emergency authority in conjunction with the Framework Adjustment 50 final rule. The second emergency request deals with the potential spillover of haddock between the Georges Bank and the Gulf of Maine broad stock areas.

We understand why the Council is requesting an emergency to account for the spillover of haddock between the Georges Bank and Gulf of Maine stocks because there is some indication that an interchange of haddock between the two stock areas may occur. However, there is insufficient data and analysis available to us at this time to justify an emergency action to implement a scientifically based adjustment that would account for this interchange in a way that does not undermine conservation objectives for these 2 stocks. In addition, because the Council has had the opportunity in the past to address this issue, it does not appear to meet our criterion that an emergency rule must address an unforeseen problem or event. Because of this, we cannot grant your request for an emergency action to address haddock spillover.

We are prepared, however, to work with the Council to address its recent motion tasking the Groundfish Plan Development Team and Scientific and Statistical Committee to further examine the potential for accounting for haddock spillover. This motion also requested suggestions on how adjustments to the haddock Acceptable Biological Catches could be informed by this examination for FYs 2013-15. We will work with both groups in the examination of this issue and, if management advice is sufficiently developed and justified, we will support considering a Council action to address spillover of haddock between the 2 stocks.

I look forward to discussing this further with the Council at the upcoming June meeting. If you have additional question in the interim, please contact my groundfish team lead in the Sustainable Fisheries Division, Susan Murphy, at (978) 281-9252.

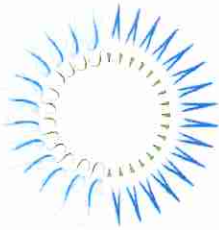
Sincerely,

John K. Bullard
Regional Administrator



cc: Council, OFC, CR, FH (6/30)

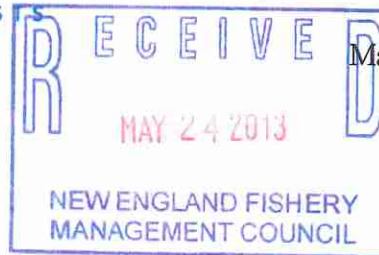
cc: Tom Nies, Executive Director, New England Fishery Management Council
Terry Stockwell, Chair, Groundfish Committee



THE
PEW
CHARITABLE TRUSTS

3

Mr. John K. Bullard, Regional Administrator
NOAA Fisheries
55 Great Republic Drive
Gloucester, MA 01930



May 23, 2013

Dear Mr. Bullard:

On behalf of The Pew Charitable Trusts, I write to provide additional comments on the urgent need to improve habitat protection in New England and to oppose developing plans to grant access to the groundfish closed areas. We have written previously on this subject in the context of the proposed rules for sector operations plans and for Framework Adjustment 48 to the Northeast Multispecies Fishery Management Plan (FMP) for groundfish.¹ In addition, you have received thousands of other comments from members of a diverse body of stakeholders who oppose diminishing habitat protection in New England at a time when improved habitat protection is so obviously needed and NOAA itself has established habitat protection as a national priority.² This letter makes four main points about protecting habitat and the existing groundfish closed areas:

1. The input you have received is overwhelmingly opposed to allowing increased fishing activity in the groundfish closed areas, places that we all share as public trust resources.³
2. The concept of "habitat" has been characterized by the Council in an overly narrow manner and this is undermining habitat protection in New England and processes that depend on it (e.g., stock rebuilding).
3. Any consideration of changes to the groundfish closed areas must be made as part of the Omnibus Essential Fish Habitat Amendment (OHA 2) and supported by a full analysis of a wide range of alternatives conducted as part of an environmental impact statement (EIS).
4. The recent committee advice to remove spawning and most juvenile habitat protection alternatives from the OHA2 will seriously undermine the objectives of the amendment if adopted by the Council.⁴

¹ Letter to Alison Murphy, NOAA-Fisheries, from Pew Charitable Trusts and the Conservation Law Foundation dated March 28, 2013: NOAA_NMFS_2013_0007_Sector_Plans_Pew_CLF_0328_2013 (1jx-84gi-fimp); Letter to Mr. John K. Bullard, NOAA Fisheries Regional Administrator, from Pew Charitable Trusts dated April 9, 2013: 2013NOAA_NMFS_2013_0050_FW48_Pew_comment_0409_2013 (1jx-84oj-3w0y).

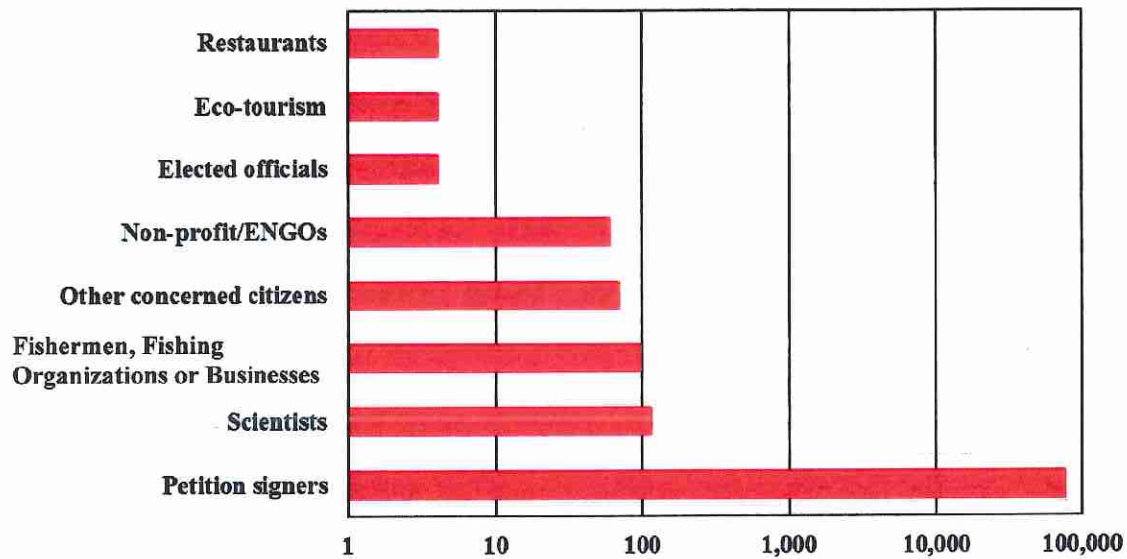
² National Fish, Wildlife and Plants Climate Adaptation Strategy, National Fish, Wildlife and Plants Climate Adaptation Partnership. 2012. Association of Fish and Wildlife Agencies, Council on Environmental Quality, Great Lakes Indian Fish and Wildlife Commission, National Oceanic and Atmospheric Administration, and U.S. Fish and Wildlife Service. Washington, DC, ISBN: 978-1-938956-00-3, DOI: 10.3996/082012-FWSReport-1.
<http://www.wildlifeadaptationstrategy.gov/pdf/NFWPCAS-Final.pdf>

³ As a steward, NOAA Fisheries has an obligation to conserve, protect, and manage living marine resources in a way that ensures their continuation as functioning components of marine ecosystems, affords economic opportunities, and enhances the quality of life for the American public. See NOAA Fisheries "Vision" Statement [NOAA Fisheries: About National Marine Fisheries Service, <http://www.nmfs.noaa.gov/what/mission.htm>].

⁴ Joint Habitat Committee and Groundfish Committee Meeting, May 17, 2013, Sheraton Harborside, Portsmouth, NH.

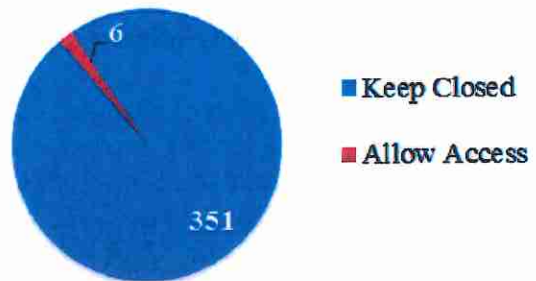
cc: Council, AA, FH, MB, HAB/GFC (5/24)

Comments in Favor of Keeping Closed Areas Closed



The vast majority of the 75,000 stakeholders commenting opposed access to closed areas. During the formal comment period on Framework 48, more than 75 thousand people submitted comments opposing the proposed opening of year-round closed areas to groundfish sector vessels, including over 100 scientists, 90 charter captains, recreational anglers and commercial fishermen, 60 non-profit organizations, and dozens of other concerned citizens, and businesses and community leaders (see bar graph above).

By comparison, only a half dozen of the comments received were in favor of allowing fishing vessels access to the closed areas.⁵ The pie chart to the right summarizes the respondents who signed original letters, exclusive of online petition signers. Even among these commenters the proportion supporting access to the closed areas was a minute fraction of the total.



NOAA Fisheries and the New England Council

(Council) have set a course for reducing the protection of Essential Fish Habitat (EFH).

In response to the Council, NOAA Fisheries has now paved the way for the elimination of five areas that have been protecting EFH from damaging fishing for many years, totaling some 5,000 square miles:

- Cashes Ledge Closure Area
- Georges Bank Closure Area I
- Georges Bank Closure Area II
- Western GOM Closure Area
- Nantucket Lightship Closed Area

⁵ This is our summary based on reading comments posted to www.regulations.gov; see also Federal Register / Vol. 78, No. 86 / Friday, May 3, 2013 / Rules and Regulations

As detailed in our previous letter (April 9, 2013), these areas include spawning habitat, places where juvenile fish feed and take refuge from predators, habitat that supports the growth of benthic animals that in turn provide food and shelter for fish, areas frequented by endangered marine species (i.e., whales and turtles)⁶ and refugia where fishery brood stock can escape fishing. These areas have value in part due to the long period of protection they've received during which recovery of bottom habitat has been possible though, to the best of our knowledge, this matter has received no substantive analysis or consideration in developing plans to eliminate these areas.

The *Findings, Purposes, and Policy*, of the Magnuson-Stevens Act state:⁷

“(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.”

“(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.”

As Congress recognized in 1996 when this language was added to the Act, the long-term protection of EFH is necessary to meet the goals of the Act including sustaining healthy populations of fish that can support fisheries in the United States. However, discussions at the New England Council have revolved around tailoring habitat protections to those few stocks that are most seriously depleted, provisions for lifting protection when stocks recover, and substituting a substantially smaller set of hard-bottom areas for the existing year-round closures. There is nothing in the Act indicating that protection of EFH is only required for overfished stocks or that EFH protections should otherwise be temporary. To the contrary, effective conservation of a diversity of habitats is a fundamental necessity for maintaining healthy ecosystems, fish populations and fishing communities.

With regard to the required the *Contents of Fishery Management Plans*, the Act states:

“(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.”⁸

Protection of the five existing groundfish closed areas is clearly practicable as they are already protected and have been for over two decades in some cases. Some might argue that it is no longer feasible to protect these areas because there are so few groundfish left, or because harvesting scallops is more important than protecting groundfish, but these are obviously not the criteria that Congress intended when the language on habitat protection was crafted for the reauthorization of the Act in 1996.

⁶ NMFS Endangered Species Act Section 7 Consultation Biological Opinion – Northeast Multispecies Fishery Management Plan, issued October 2010.

⁷ Magnuson-Stevens Fishery Conservation and Management Act, as amended, May 2007, Second Printing, 16 U.S.C. 1801, SEC. 2, 104-297.

⁸ Ibid at 16 U.S.C. 1853; MSA § 303; SEC. 303.

The interpretation of EFH and habitat protection being applied in New England is not consistent with the Act.

The Magnuson-Stevens Act (Act) requires protection for *those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.*⁹

However, the dialog around the groundfish closed areas, and the existing habitat protection areas, suggests that the groundfish closed areas are not needed for habitat protection *per se*. This is predicated on the incorrect notion that ocean habitat pertains only to the structure on the seafloor, and the idea that the only protections needed for fish or other animals in the water column itself can be achieved through gear modifications or restrictions. The belief that habitat impact is eliminated so long as gear does not contact the bottom is inconsistent with common scientific definitions of habitat and scientific studies on the impacts of fishing nets on fish.

Ecologists define habit as those places where a particular animal lives, during its various life stages. They recognize that the attributes that determine why animals use particular places are often complex, incompletely known, and change throughout the life of the individual (i.e., ontogeny). Consistent with these ideas, NOAA defines habitat as follows:¹⁰

The environment in which the fish live, including everything that surrounds and affects its life, e.g. water quality, bottom, vegetation, associated species (including food supplies).

The distribution of animals is well established as an essential guide to habitat areas, even for marine fishes in New England.¹¹ To their credit, the New England Fishery Management Council's (Council) Closed Area Technical Team (CATT) has made extensive use of the spatial distributions of juvenile and spawning fish in efforts to identify particularly important habitat for groundfish; a similar approach was taken when establishing many of the existing closed areas.¹² Ignoring what the fish themselves are telling us about which areas are important because it does agree with our simplistic understanding of where fish should be according to one or a few variables we choose to map (e.g., grain size on the sea floor) would be a substantial mistake. This biological work of the CATT should play a prominent role in any plan to improve habitat protection through the Omnibus Habitat Amendment.

Nevertheless, at the joint committee meeting last week, Council members recommend that the alternatives put forward by the CATT on juvenile fish be removed from the Omnibus EFH Amendment, designated considered but rejected. A move was also made to separate spawning areas from the OHA2. If these shortsighted recommendations are adopted by the full Council, these important alternatives will not be among those included in the draft for public comment and the amendment will offer little that

⁹ Sustainable Fisheries Act, Pub. L. No. 104-297, § 3, 110 Stat. 3559, 3561 (1996); 16 U.S.C. § 1802(10); Magnuson-Stevens Fishery Conservation and Management Act, As Amended, May 2007, Second Printing, Section 3, Definitions, 16 U.S.C. 1802, 104-297, page 6.

¹⁰ Fisheries Glossary - U.S. Department of Commerce, National Oceanic and Atmospheric Administration Revised Edition, June 2006.

¹¹ 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; Cook RR, Auster PJ (2005) Use of Simulated Annealing for Identifying Essential Fish Habitat in a Multispecies Context. *Conservation Biology* 19(3):876–886; Cook RA, Auster PJ (2012) The biodiversity value of marine protected areas for multi-species fishery management in the Gulf of Maine Aquatic Conserv: *Mar. Freshw. Ecosyst.*

¹² Murawski S 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.

could enhance the protection of Essential Fish Habitat in New England. The areas identified by the CATT, based upon the best scientific information available, show critical habitat actually being used by groundfish. In contrast, the places identified by the Habitat Plan Development Team (PDT) are those expected to be particularly vulnerable to fishing gear but are not directly linked to the biology of the groundfish we seek to support. Without the CATT areas, the prospects for improving EFH through the OHA2 are diminished.

To suggest that marine habitat is limited to just what is on the bottom is out of step with science and common sense. In the case of species that spend their life in the water column, Atlantic mackerel for example (e.g., a pelagic species; distributed in the water column, not on the bottom for the most part), we do not, of course, declare that they have no habitat. Indeed, the Essential Fish Habitat for mackerel is documented by NOAA Fisheries.¹³ Trawling nets through pelagic habitat will change the habitat, potentially making it less suitable for spawning, breeding, feeding or growth to maturity. The activity of fishing has an impact on the habitat that changes behavior and mortality, and thus makes it less suitable as habitat. This is also the case for the groundfish habitat in the closed areas. Many of the bottom-living groundfish (i.e., demersal fishes) live in the water column most of the time, albeit near the bottom in many instances. Studies published in peer reviewed scientific journals illustrate the impacts of fishing on groundfish habitat.

Spawning aggregations are disrupted by fishing gear whether it contacts the bottom or not. Scientific studies have demonstrated that both trawls and gill nets disrupt spawning aggregations of Atlantic cod.¹⁴ It should come as no surprise that trawling, or the placement of large stationary nets, would have an impact on fish spawning activities. Thus, the use of nets does degrade the spawning habitat – making the area less well suited to reproduction.

The survival of fish that escape from nets is poor (i.e., escapement or incidental mortality). Gear modification and innovation have enormous potential for reducing fishery impacts on habitat. Nevertheless, research indicates that the mortality we estimate from catch brought on board is an underestimate because many fish that are left behind in the water are compromised and many do not survive long. Studies suggest that mortality of escapees can be as high as 30% in the near-term, but is higher over periods of days or weeks during which impaired escapees succumb to stress or injury, and have an elevated predation risk.¹⁵ Mortality for some species escaping trawl nets, herring for example, can be very high (70%), and the mortality rate is relatively independent of mesh size; even individuals that pass through a net with an open codend have an elevated mortality.¹⁶ In addition to increased predation risk for juvenile fish caused by elimination of bottom hiding places by trawls,¹⁷ experimental studies demonstrate increased predation risk for juvenile fish due to trawl-induced stress among escapees

¹³ Essential Fish Habitat Source Document: Atlantic Mackerel, *Scomber scombrus*, Life History and Habitat Characteristics. NOAA Technical Memorandum NMFS-NE-141.

¹⁴ Dean M et al (2012) Disruption of an Atlantic Cod Spawning Aggregation Resulting from the Opening of a Directed Gill-Net Fishery. North American Journal of Fisheries Management 32(1):124–134; Morgan MJ et al (1997) An observation on the reaction of Atlantic cod (*Gadus morhua*) in a spawning shoal to bottom trawling. Can J Fish Aquatic Sci 54 (1):217-223.

¹⁵ Ryer CH, ML Ottmar, EA Sturm. 2004. Behavioral impairment after escape from trawl codends may not be limited to fragile fish species. Fisheries Research, 66: 261-269; Suuronen P. 2005. Mortality of fish escaping trawl gears. FAO Fisheries Technical Paper 478.

¹⁶ Suuronen P, DL Erickson, A Orrensalo. 1996. Mortality of herring escaping from pelagic trawl codends. Fisheries Research, 25: 305-321

¹⁷ Lindholm JB et al (1999) Habitat mediated survivorship of juvenile (0-year) Atlantic cod *Gadus morhua*. Mar. Ecol. Prog. Ser. 180:247–255; Gotceitas V, Brown JA (1993) Substrate selection by juvenile Atlantic cod (*Gadus morhua*), Oecologia, 93 (1): 31-37;

in members of the cod family (e.g., Alaska pollock) and other fishes.¹⁸ As a consequence, even modified nets that have higher escapement for juvenile fish can increase the mortality of the escaped fish, making the habitat less suitable for the growth and maturation of young fish. This effect must be taken seriously as we consider poor recruitment for groundfish and contemplate allowing trawling in closed areas.

NOAA Fisheries and some within the Council process have accepted the idea that closures should be used to protect “habitat” (i.e., the seabed) in areas vulnerable to fishing gear while impacts to fish will be handled through gear modification. This is an insidious dichotomy that will continue to hamper efforts to regain fish productivity and rebuild stocks. Fishing gear, trawls in particular, make the habitat poorer whether they contact the bottom or not. Areas that are used by juvenile fish, or for spawning, will be less suitable as habitat if they are trawled due to disturbance, stress, increased predation, and other forms of elevated mortality that NOAA Fisheries and the Council are not yet addressing.

Short-term impacts to bottom structure may have long-term consequences for recruitment.

The recovery time for bottom structure, much of it produced by living animals (i.e., benthic invertebrates such as amphipods, sponges, bryozoans, mollusks, corals, or crustaceans), is highly dependent upon the type of bottom, with rocky and deep muddy areas being the slowest to recover from bottom-tending fishing gear. Shallower sandy-bottom areas support a fauna that is adapted to natural disturbance and recovery can be substantially shorter (months instead of years). It is not correct, however, to conclude from this that fishing impacts to shallower areas are without consequence for fish. When juvenile groundfish first settle to the bottom they are particularly vulnerable, subject to predation and expending energy contending with strong currents. Sand-waves and invertebrate growth (e.g., amphipod and worm tubes) can provide vital shelter for small fish, and if these features are obliterated even for a period of weeks, growth and survival could be impacted.

Studies of soft-bottom habitat on the outer continental shelf off Southern New England provide support for the importance of bottom structure even in dynamic habitats. Juvenile silver hake, and other fish and invertebrates, are associated with amphipods and other biogenic structure on the seafloor. These studies suggest that during very early life stages, this structure is vital to fish for shelter from predators and for feeding.¹⁹ While it may be correct that these bottom features recover within a period of weeks, the seemingly short recovery time may be too long when viewed in the context of the early life history of groundfish like silver hake. If the absence of this structure, due to trawling, were to coincide with a period of heavy settlement, this could have a major consequence that would only be apparent later as reduced recruitment to the fishery. In the evaluation of the role of closed areas in places containing relatively soft bottom, these kinds of effects must be given serious consideration for the diversity of species under management and their associated principle prey.

¹⁸ Ryer CH (2002) Trawl stress and escapee vulnerability to predation in juvenile walleye pollock: Is there an unobserved bycatch of behaviorally impaired escapees? *Mar Ecol Prog Ser* 232:269-79; Ryer CH, Ottmar ML, Sturm EA (2004) Behavioral impairment after escape from trawl codends may not be limited to fragile fish species. *Fisheries Research* 66: 261–269.

¹⁹ Auster PJ et al (1997). Distributional responses to small-scale habitat variability by early juvenile silver hake, *Merluccius bilinearis*. *Environmental Biology of Fishes* 50, 195-200; Steves BP, Cowen RK (2000). Settlement, growth, and movement of silver hake *Merluccius bilinearis* in nursery habitat on the New York Bight continental shelf. *Marine Ecology Progress Series* 196, 279-290; Sullivan MC et al (2000). Spatial scaling of recruitment in four continental shelf fishes. *Marine Ecology Progress Series* 207, 141-154; Auster, P.J., R.J. Malatesta, S.C. LaRosa, R.A. Cooper & L.L. Stewart. 1991. Microhabitat utilization by the megafaunal assemblage at a low relief outer continental shelf site – Middle Atlantic Bight, USA. *J. Northw. Atl. Fish. Sci.* 11: 59–69. Auster, P.J., R.J. Malatesta & S.C. LaRosa. 1995. Patterns of microhabitat utilization by mobile megafauna on the southern New England (USA) continental shelf and slope. *Mar. Ecol. Prog. Ser.* 127: 77–85; Auster PJ, Lindholm J, Schaub S, Funnell G, Kaufman LS, Valentine PC (2003) Use of sand wave habitats by silver hake. *J Fish Bio* 62: 143-152.

Some continue to argue that the evidence for these kinds of habitat dependencies is not strong enough, that the relationship between habitat protection and groundfish production has not been rigorously demonstrated, or that allowing fishing everywhere is the best way to optimize catch per unit effort and this will be the best way to protect habitat. Given the history in New England, the poor status of many of our stocks, it is time to follow the best available ecological science from around the world and take a more precautionary approach to habitat conservation. Intact habitat is essential for all animals including groundfish and their prey, and is essential for restoring resilient ecosystems that have a chance of enduring the test of climate change. The burden of proof must be turned around on habitat protection in New England – managers must demonstrate that habitat is not necessary for a productive fishery before rolling back the progress toward a robust system of habitat conservation areas.

Concluding remarks.

Unfortunately, New England continues to lead the nation with the most stocks overfished and/or subject to overfishing – a dubious distinction.²⁰ Fish populations are producing fewer young fish, and populations are not growing as projected. The region shows unprecedented evidence of marine ecosystem decline and is experiencing additional stresses from a changing climate. Habitat protection is vital to recovery of stocks and restoring ecosystem resilience.

At the recently concluded *Managing Our Nations Fisheries Conference* (May 6-9, 2013), the importance of habitat protection to ecosystem-based approaches to fisheries management was a prominent theme.²¹ A paper presented by NOAA Fisheries Director of Habitat Conservation concluded:²²

“It is appropriate that habitat conservation is a major topic in the 3rd Managing our Nation’s Fisheries Conference, as the ecosystem functions, goods and services provided by conserving and restoring riverine, coastal and deep-water habitat play a critical role in sustaining fisheries and recovering protected species. Therefore it is imperative that we incorporate habitat conservation into any effort at ecosystem-based management.”

“...certain stocks appear to respond poorly and/or belatedly to rebuilding measures. These include certain demersal species (Atlantic cod), many rockfish stocks, diadromous species (such as salmon), stocks in the snapper-grouper and reef fish complexes, and deep-sea species. Many of these species are known to be tightly associated with particular habitats. For these species, controlling catch and fishing effort alone is not enough, and rebuilding plans need to address other factors such as habitat that may be bottlenecks to recovery.”

At the same time, managers in the New England region are poised to eliminate 5,000 square miles of protected ocean habitat, replacing the areas with smaller areas encompassing less habitat diversity. Additionally, many of the proposed replacement closures are as short in duration as possible (seasonal instead of year-round) and limited in geographic extent. This is the same kind of short-term thinking that resulted in the current poor state of fisheries in our region. It is time to recognize that our approaches to habitat protection have not been adequate. We must think more broadly, advancing beyond the way we have addressed problems in the past, and forge a path forward that results in the conservation and sustainable use of these natural resources.

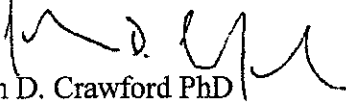
²⁰ NOAA Fisheries Status of Stocks 2012, Annual Report to Congress on the Status of U.S. Fisheries

²¹ Managing our Nation’s Fisheries 3 – Advancing Sustainability available at: www.cvent.com/events/managing-our-nation-s-fisheries-3/custom-17-94ddf325198f4501996ccc62aa396aa2.aspx

²² Sutter et al (2013) *Integrating Habitat in Ecosystem-Based Fishery Management*

Reducing the extent of habitat protection in New England is the wrong response and tens of thousands of stakeholders have said this loud and clear. This is a time for a cautious interpretation of all the available scientific information and for improvements in the protection of essential fish habitat. The future of habitat protection in New England must be based on a thorough analysis of the available science through an EIS as part of an integrated approach to enhanced habitat protection that supports whole ecosystems.

Sincerely,



John D. Crawford PhD
Officer - Science and Policy – U.S. Oceans, Northeast

cc:
Rip Cunningham, Council Chairman
Thomas A. Nies, Council Executive Director



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

May 23, 2013

Mr. John Bullard
Regional Administrator, Northeast Region
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear John:

Re: *78 Federal Register 26118*: Interim Final rule on Northeast Multispecies Fishery Framework Adjustment 48

Dear John:

The Proposed Rule for Framework Adjustment 48 (*78 Federal Register 18188*) proposed a change to Eastern U.S./Canada quota monitoring that would have modified the regulations to reflect a practice that was being followed by the National Marine Fisheries Service since the implementation of Amendment 16 in May, 2010. The Proposed Rule would have attributed catches of cod and haddock to either Eastern or Western Georges Bank (EGB or WGB) based on fishing locations as determined by vessel trip reports. This differed from the attribution method the Council adopted in Framework 42 (FW 42), which attributed all cod and haddock caught on a trip to EGB if any part of the trip fished in that area. FW 42 adopted this approach to minimize the probability that misreporting of catch locations would occur.

On April 4, 2013, I wrote a letter opposing this change for several reasons. First, the change had not been explicitly adopted by a Council action and was not consistent with the Amendment 16 regulations that were reviewed by the Council and deemed consistent with Amendment 16. Second, at the time the letter was written, there were concerns that misreporting of EGB cod was an increasingly important issue. The proposed change appeared to create a regulatory loophole that made it easier to misreport EGB cod and haddock. The Interim Final Rule for FW 48 (*78 Federal Register 26118*) made note of the Council's comments and disapproved the proposed change.

The monitoring requirements in the Interim Final Rule appear to have caught the industry by surprise. Some misinterpreted a discussion at the April Council meeting to mean that the proposed change would be adopted and the FW 42 approach would not be used. Vessel operators are having a difficult time with the FW 42 catch attribution approach, as it is preventing them from harvesting EGB haddock at a time when there is no competition from Canadian fishermen and prices are high.

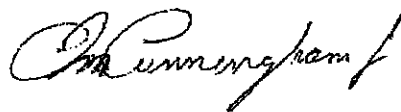
Since that letter was written, additional information has become available that indicates a different approach to catch monitoring may be warranted. First, discussions held at the Council meeting in April and the Groundfish Committee meeting in May suggest I may have misinterpreted the Council's intent for monitoring catches in this area. Second, the Groundfish Plan Development Team (PDT) performed a number of analyses to determine the extent of possible catch misreporting. In summary, the PDT concluded that there was some evidence of differences in fishing behavior between the EGB and WGB areas, and between observed and unobserved trips. Some of the analytic results were consistent with a hypothesis of misreporting, and some were not. The PDT concluded the analyses were inconclusive in determining if misreporting is occurring. The PDT said, however, that given the small quotas for EGB cod, the incentive to misreport is clear. The PDT noted that the FW 42 catch attribution approach might help reduce the possibility of an overage of EGB quotas but would still rely on accurate reporting of fishing locations.

Given this new information, I suggest that NMFS consider possible modifications to catch attribution for trips that fish in the EGB area. There are several steps that could be taken. First, NMFS might implement catch monitoring as described in the FW 48 proposed rule. This might be justified by Section 4.2.3.5.3 of Amendment 16, which indicates all available information will be used to attribute catches to the appropriate stock area. Second, as a partial solution, rather than reconcile catches with all available information annually as adopted by the Interim Final Rule, catches could be reconciled on a more frequent basis. A third approach would be to recognize that the catch attribution regulation is one that is not truly a reporting requirement. As such, a sector could request an exemption from this measure. Sectors might need to provide measures that would minimize the opportunity to misreport EGB catches. Given the importance of this issue to sectors, this approach would need to be publicized and adopted as quickly as possible. Fourth, if NMFS considers that the catch attribution method is a reporting requirement and not eligible for a sector exemption, then the measure could be changed using the authority found in Section 4.2.3.8.1 of Amendment 16.

In addition, as noted by the PDT, there are administrative measures that need to be considered to reduce the opportunity to misreport EGB catches. For example, the requirement that vessels fishing in the EGB area report catches daily could be reinstated, as could the requirement that fishermen specifically declare intent to fish in the EGB area (as opposed to a broad-based declaration that allows fishing in all areas). Alternatively, the requirement that vessel operators report their catch when leaving a broad reporting area could be adopted as authorized by Amendment 16. This measure was developed to reduce the opportunity to misreport in all areas, but NMFS modified its implementation to require only one report at the end of a trip. Additionally, VMS activity could be routinely compared to VTRs and vessel operators could be contacted when the VMS indicates likely fishing activity in areas that are not included in VTRs.

Please consider these comments on the interim final rule and contact me if there are any questions.

Sincerely,



C.M. "Rip" Cunningham
Chairman



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



John Haran, Manager
Northeast Fishery Sector 13
205 Rockland Street
Dartmouth, MA 02748

Dear Mr. Haran:

Thank you for your April 23, 2013, letter requesting a change to the start date of the Northeast multispecies fishing year from May 1 to June 1. As I continue to challenge my staff to find additional flexibility for industry in light of small Northeast multispecies quotas recently implemented, I appreciate any such ideas from industry that we may consider.

Your rationale for changing the fishing year start date is interesting, but it is a topic that must be discussed and agreed to by the New England Fishery Management Council (Council) before we could approve such a request. Given this, I am forwarding your original letter, as well as this response, to the Council for their consideration.

Should you have any questions in the meantime, please feel free to contact me or my staff.

Sincerely,

John K. Bullard
Regional Administrator

cc: New England Fishery Management Council

cc: Council, FH, RF, GF Ctr (5/21)



Sector 13
John Haran
205 Rockland St.
Dartmouth, MA 02748

4/23/2013

NOAA
John Bullard
55 Great Republic Drive
Gloucester, MA 01930

This past winter was cold and miserable. The month of February was the worst, especially for the fishing fleet in the Northeast. Boats either did not fish or sought refuge in ports other than their homeport, while evading storms. It was one storm after another for the whole month. This bad weather translated into very little fish being landed for the month and a lot of quota that will be left over for FY 2012. Sector 13 is anticipating a decrease of 10% or more in some species that will not be landed this fishing year compared to last year.

Sector 13 believes moving the starting date for the fishing year from May 1st to June 1st would be a boon to fishermen. This transition could be accomplished in one of two ways; one week a year for four years or all at once. This new date for the fishing year to start would allow fishermen to catch more of their quota and do it in a safer way. The June 1st date would afford them the opportunity to receive more money for their fish, while diminishing the "derby effect" that occurs every year during the last week of April.

Your consideration of this alternative, which Sector 13 considers viable, would be appreciated. Please contact me if you have any questions or need any more information.

Sincerely,



John Haran
Sector13, Manager
508 993 8225
Sector13@comcast.net

APR 29 2013



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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, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

May 24, 2013

Dr. William Karp
Science and Research Director
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

Dear Bill:

I am writing to convey two requests from the New England Council.

On April 24, 2013, the Council passed the following motion:

"{To} request that the Council send a letter to NEFSC to: 1. establish a research track to map changes to spawning sites and general distribution of all groundfish and explore what these changes mean to long term yield from the fishery; and 2. that ecosystem reference points be a term of reference in all future groundfish assessments."

The motion **carried** unanimously.

The Council also passed a related motion:

"{The Council} request{s} that the appropriate group (SSC or NEFSC) initiate calculations for a new set of groundfish reference points for the current regime. Once these calculations are complete, have the SSC calculate new ABCs and ACLs as the new reference points become available."

The motion **carried** on a show of hands (15/1/1).

These two new motions are similar in nature to other motions approved at previous Council meetings. For example, in January the Council asked for new reference points for several groundfish stocks in light of changes to predator/prey relationships and changing environmental conditions, a request you responded to on April 4, 2013. The consistent theme in these motions is a sense that a broader consideration of ecosystem issues is needed in our assessment and management system. Clearly you are sensitive to this concern and I look forward to working with you to incorporate it into our process.

The Council appreciates that the NEFSC has been tasked with several other Council requests, such as cod stock structure, investigation of mixing rates between haddock stocks and a scallop survey peer review. Please let me know if I can help prioritize your responses to these requests.

Sincerely,

A handwritten signature in black ink that reads "Thomas A. Nies". The signature is written in a cursive style with a prominent loop at the end of the last name.

Thomas A. Nies
Executive Director

cc: Mr. John Bullard, Regional Administrator, Northeast Region
Dr. Jake Kritzer, SSC Chair

David T. Goethel
23 Ridgeview Terrace
Hampton, NH 03842

3

May 24, 2013

Mr. John Bullard
Regional Administrator
NOAA/NMFS
55 Great Republic Drive
Gloucester, MA 01930



Dear John,

I am writing to you to inform you of trends that have become apparent in the new fishing year. The first trend none of us can solve, but it is disturbing just the same. The people selling their boats, and in some cases permits, are the handful of younger owners in the fleet. This is disturbing to me because these are the people we will need most to transfer the knowledge of fishing as my generation retire or die. This is not unexpected, however, as all the exiting owners have expressed similar sentiments. First, they believe groundfish management is completely dysfunctional and will never be fixed. Second, they are carrying mortgages on vessels and permits which they can no longer pay. Older people are more likely to have less debt, plus they are basically unemployable in this economy and have no choice but to stay.

The second trend, which is helping to drive the first, is the exorbitant price of leased fish. Prices being offered on inshore stocks are currently in excess of the landed value. For example live weight GOM cod are being leased for \$2.00-2.40 per pound (approximately \$2.40-2.80 landed weight), GOM haddock \$1.50, CC-GOM yellowtail \$1.20-1.30, and witch flounder \$1.25-1.40. Contrast this with average landed value of yellowtail from the Cape Ann Seafood exchange for May 24, 2013 which was .99 cents per pound. The problem is being further exacerbated by people selling entire allocations as blocks. This means one has to take the entire amount and suite of species regardless of what you need or can afford. The result is numbers entirely outside the range of small boats.

Many people will say the system is working fine. I would respond, how can that be? We are not talking about a handful of people trading small amounts of fish to balance portfolios. We are talking about wholesale extortion of our hardworking captains and crews who actually fish, by those that do not. In short this makes loan sharks look like a bunch of amateur pikers.

As a solution, I would suggest you install price controls on leased fish retroactive to May first. I would further suggest a maximum price of 50 cents per pound live weight for all species. No one

cc: Council, GF, CFE, FH, RF (5/30)

understands how price controls distort a free market better than me, but government has a history of stepping in to prevent profiteering in markets. This, to me, is a classic example of such a case.

I have addressed this letter to you, John, because I believe only interim action can stop this issue while the council does amendment 18. Absent immediate action amendment 18 will be irrelevant. Many captains and crews face dire circumstances. They can fish out their gifted allocations in a matter of days and then starve for the rest of the year as self-employed captains and crews cannot collect unemployment. The alternative is to lease fish at these prices and still starve. For example last year with yellowtail at 60 cents per pound, I issued a crewman a check for a week's work of \$5.84 as his share after the customary charges for fuel, ice, leased fish and fish shipping and handling had been deducted from the gross. With yellowtail at \$1.25 I will be sending myself and the crew a bill.

Amendment 16 unleashed the basest human emotion, greed, on the fishery and made it government sanctioned. That same government, through you, can halt that trend by installing price controls. With fewer active commercial fishing vessels than highly endangered Right Whales, I would think some action could be taken to protect the hardworking men and women who feed this nation's families. Surely humans deserve at least as much protection as Right Whales.

I eagerly await your response to this time sensitive issue.

Sincerely,

A handwritten signature in blue ink that reads "David T. Goethel". The signature is written in a cursive style with a large, prominent 'D' and 'G'.

David T. Goethel

NEFMC member, New Hampshire



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



John Haran, Manager
Northeast Fishery Sector 13
205 Rockland Street
Dartmouth, MA 02748

Dear Mr. Haran:

Thank you for your April 23, 2013, letter requesting a change to the start date of the Northeast multispecies fishing year from May 1 to June 1. As I continue to challenge my staff to find additional flexibility for industry in light of small Northeast multispecies quotas recently implemented, I appreciate any such ideas from industry that we may consider.

Your rationale for changing the fishing year start date is interesting, but it is a topic that must be discussed and agreed to by the New England Fishery Management Council (Council) before we could approve such a request. Given this, I am forwarding your original letter, as well as this response, to the Council for their consideration.

Should you have any questions in the meantime, please feel free to contact me or my staff.

Sincerely,

John K. Bullard
Regional Administrator

cc: New England Fishery Management Council



cc: Council, FH, RF, OF Cte (5/21)

Sector 13
John Haran
205 Rockland St.
Dartmouth, MA 02748

4/23/2013

NOAA
John Bullard
55 Great Republic Drive
Gloucester, MA 01930

This past winter was cold and miserable. The month of February was the worst, especially for the fishing fleet in the Northeast. Boats either did not fish or sought refuge in ports other than their homeport, while evading storms. It was one storm after another for the whole month. This bad weather translated into very little fish being landed for the month and a lot of quota that will be left over for FY 2012. Sector 13 is anticipating a decrease of 10% or more in some species that will not be landed this fishing year compared to last year.

Sector 13 believes moving the starting date for the fishing year from May 1st to June 1st would be a boon to fishermen. This transition could be accomplished in one of two ways; one week a year for four years or all at once. This new date for the fishing year to start would allow fishermen to catch more of their quota and do it in a safer way. The June 1st date would afford them the opportunity to receive more money for their fish, while diminishing the "derby effect" that occurs every year during the last week of April.

Your consideration of this alternative, which Sector 13 considers viable, would be appreciated. Please contact me if you have any questions or need any more information.

Sincerely,



John Haran
Sector13, Manager
508 993 8225
Sector13@comcast.net

APR 29 2013



3

New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

May 8, 2013

Mr. John Bullard
Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear John:

On April 24, 2013, the Council passed the following motion:

"{To} recommend the Council request NMFS implement by Emergency Action a measure that will attribute up to 10% of GB haddock quota to the GOM haddock quota and up to 10% of the GOM haddock quota to GB haddock quota."

The motion **carried** on a show of hands (13/4/0).

Consistent with the Council motion, I ask that an Emergency Action be adopted to adjust the Georges Bank and Gulf of Maine haddock quota for FY2013 by the appropriate amount to account for spillover from the Georges Bank haddock stock into the Gulf of Maine. Enclosure (1) provides additional rationale for this request.

Thank you for considering this request. Please feel free to call me with any questions.

Sincerely,

Thomas A. Nies
Executive Director

Enclosure (1): Justification for an emergency action to adjust the FY 2013 Gulf of Maine and Georges Bank haddock Annual Catch Limits (ACL)

Enclosure (1)
Emergency Action Request
to
Adjust the FY 2013 Georges Bank and Gulf of Maine Annual Catch Limits

The Council requests that the Georges Bank and Gulf of Maine haddock Annual Catch Limits (ACL) for FY 2013 be modified to account for spillover from Georges Bank into the Gulf of Maine. This change should be adopted as an emergency action, consistent with the provisions of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The Council requested this action by a less than unanimous vote on April 24, 2013.

Emergency Criteria

National Marine Fisheries Service Instruction 01-101-07 identifies the criteria which must be met in order to justify an emergency action. The following discussion explains how this request meets the requirements of this instruction.

1. Results from recent, unforeseen events or recently discovered circumstances

The GB haddock stock assessment was last updated in 2012 (with a terminal year of 2010). The assessment indicated a potential large year class in 2010. The 2012 Eastern Georges Bank haddock assessment also supported the existence of the large 2010 year class; recent catches also confirm the large year class on GB. Neither assessment considered migration between GOM and GB. The Council requested NMFS implement an interim action for GOM haddock to reduce (rather than end) overfishing in 2013, pursuant to MSA 304(e)(6). A response was received on January 24, 2013, less than a week before the final vote on haddock ACLs. The request for interim action was denied; if it had been approved the GOM haddock ACL would have been increased, thus reducing impacts of any spillover. This denial was an unforeseen event, and the information was received too late to modify the ACLs included in the specifications action. In 2003, the large GOM haddock stock did not exhibit an increase in size concurrent with the GB stock. This provided recent evidence that movement between the two stocks might be minimal in 2013. Under these circumstances, spillover was not accounted for in setting haddock ACLs. The large disparity between the two estimated stock sizes in 2013 prompted a reevaluation of the literature, which indicated the trend over a longer time series indicates the two stocks are normally synchronous. Based on recapture results, GB haddock move into the GOM and vice versa (Brodziak et al. 2008). However, further analysis is required to directly estimate movement rates. Needler (1930) showed seasonal migrations (inshore, shallow waters in spring and offshore in winter) were made by haddock; site fidelity was suggested by the tag recaptures. Other migration pathways were noted between GOM and the Bay of Fundy (Schroeder, 1942 and Grosslein, 1962). Movement from the GOM to GB was observed by McCracken (1960). The magnitude of migration has not been quantified in any of the tagging studies but historical movement between regions has been shown. Based on age estimates, Colton (1955) suggests that the GB population is supported by recruitment on GB and surrounding areas. The ACLs need to be adjusted to account for movement between the two stocks.

While the Council directed its Groundfish Plan Development Team and Science and Statistical Committee to further investigate this mixing issue to determine the appropriate rates to use, that work will not be completed in time to affect fishing activity in the early part of the fishing year.

2. Presents serious conservation or management problems in the fishery

Haddock is primarily caught in the Northeast Multispecies fishery. Fishermen using trawls, sink gillnets, and longline gear both target haddock and also catch this species while targeting other groundfish stocks. Most commercial fishing takes place within sectors, a catch share system that allocates specific portions of the quota to fishermen organized into fishing sectors. Considering the low estimated stock size in the Gulf of Maine, any migration from Georges Bank will greatly affect the actual stock size in the Gulf of Maine. A key element of the sectors system is that when a sector catches its quota of a stock, it cannot fish for other stocks in that area. If the ACL for a stock is mis-specified because it is based on insufficient information, it is possible that the stock can constrain catches of other species. This is the concern with not accounting for spillover in the haddock quota. A mis-specified ACL will constrain groundfish fishing activity unnecessarily at a time when reduced catch levels for many stocks are expected to dramatically reduce commercial and recreational fishing activity. This presents a serious management problem for the fishery.

3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance public notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process

The haddock ACL can be readily adjusted through emergency regulations. This would allow the change to be effective early in FY 2013. This would enable fishermen to plan fishing operations for the year and to use the additional haddock catch in a rational manner. The normal rulemaking process, on the other hand, would delay incorporation of migration into the revised ACL until later in the fishing year. It may even delay the change until fall or early winter, preventing smaller vessels that are limited by weather conditions from taking advantage of the increase.

Emergency Justification

There are four situations that may justify an emergency action. This action is not needed to address either an ecological or public health situation. It is, however, needed to address both an economic and social situation. On September 13, 2012, the Secretary of Commerce declared a commercial fishery failure in the Northeast groundfish fishery for FY 2013. This declaration was made in anticipation of reductions in catch limits that were expected. These catch limits were indeed adopted by the Council at its January, 2013 meeting. The National Marine Fisheries Service and the Council explored alternatives to mitigate the effects of the catch reductions. Adjusting the haddock catch limits will provide increased opportunities to fishermen that will help mitigate other catch reductions. This will help prevent losses to both industry participants and fishing communities. The adjusted haddock ACLs will translate into immediate increases in fishing revenues that will prove beneficial to fishing communities.

References

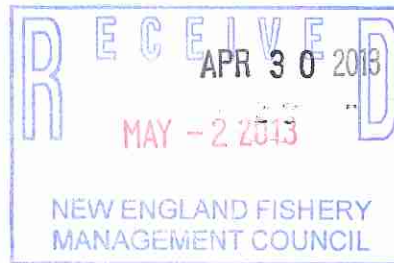
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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

C.M. "Rip" Cunningham Jr., Chair
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950



Dear Rip:

I'm writing to let you know the Secretary of Commerce has partially approved both Framework Adjustments 48 and 50 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). The rules implementing the approved measures become effective on May 1, 2013, with one exception, and will be published in the *Federal Register* soon. We are also implementing three concurrent emergency actions to be effective with the frameworks. We have also partially approved 17 sector operations plans and contracts for fishing year (FY) 2013, providing allocations to these sectors and granting 23 regulatory exemptions. The measures will also become effective May 1, 2013. The following is an overview of the disapproved measures, changes from proposed measures, and emergency measures being implemented:

Framework 50 disapproved measures

- Council's recommended Georges Bank (GB) yellowtail flounder catch limit

Framework 48 disapproved measures

- Creation of a separate GB yellowtail flounder sector discard strata
- At-sea monitoring cost sharing
- Delay of industry at-sea monitoring cost responsibility
- Changes to gear stowage requirements for trawl vessels

Changes from the proposed rules

- The proposed change to the Eastern U.S./Canada monitoring provision was withdrawn
- A 2-month delay in effectiveness for the Framework 48 reduction in minimum commercial fish sizes
- Updated white hake status determination implemented

Emergency actions

- GB yellowtail flounder catch limit
- Reduction of the allowable Gulf of Maine (GOM) cod unused Annual Catch Entitlement (ACE) fishing year (FY) 2012 to FY 2013 carryover amount
- Increase to the white hake catch limit

The following provides a summary of the basis for the disapproved measures, clarifications and emergency rules. A more detailed background and rationale for the disapproved measures, clarifications, and emergency rules is outlined in each respective rule.



cc: Council, RF (5/3), CBK, FH, PMF, GF Cte

Disapproved Measures

GB yellowtail flounder (Framework 50). The Council's recommended GB yellowtail flounder catch limit of 1,150 mt was disapproved because it was inconsistent with the best available scientific information as required by National Standard 2, and would not prevent overfishing as required by National Standard 1. The Council's catch recommendation was inconsistent with the advice from the Transboundary Resource Assessment Committee (TRAC) and would produce a fishing mortality rate in excess of the reference fishing mortality rate. Furthermore, the Scientific and Statistical Committee's recommendation for a 1,150-mt acceptable biological catch (ABC) was accompanied by the important caveat that this catch level should serve as a "backstop measure only," with no directed fishery. The Council's recommendation contained no specific measures to create a bycatch-only fishery or otherwise reduce GB yellowtail flounder bycatch in FY 2013.

Separate GB yellowtail flounder discard strata for discard rate calculation (Framework 48). This recommended measure was disapproved because it is inconsistent with or may lead to inconsistency with National Standard 5 concerning the need for efficiency in utilizing fishery resources, and National Standard 7 concerning minimizing costs and avoiding unnecessary duplication. We determined, based in part on public comments, that this measure would complicate and increase the cost and burden of monitoring, potentially increase uncertainty of catch estimates, and do so without any measurable benefits for sectors.

At-sea monitoring cost sharing (Framework 48). This measure was disapproved because it is inconsistent with the Anti-Deficiency Act and other appropriations laws and policies that prohibit Federal agencies from obligating or using Federal funds that have yet been appropriated or authorized. We expressed concerns about this approach when it was being developed. Specifically, Framework 48 proposed to require NMFS to pay for some portion of the costs of at-sea activities, such as logistical costs generated by deployment, which are outside its statutory obligations under the Magnuson-Stevens Act. We believe cost sharing could be viable if restructured, and may be worth pursuing in a future action. As you know, we are already working with both the New England and Mid-Atlantic Councils to pursue cost-sharing options for the herring and mackerel fisheries.

Delay sector at-sea monitoring cost responsibility (Framework 48). We disapproved this measure as we did in Framework 45 because it is inconsistent with the requirements of the FMP, National Standard 1, and section 303(a)(1) of the Magnuson-Stevens Act mandating that overfishing is ended or prevented. We stated numerous times during the discussion and development of this recommendation, delay of sector responsibility of at-sea monitoring would be highly problematic. Sole reliance on our appropriations to determine an at-sea monitoring coverage rate does not ensure that coverage will be sufficient to monitor sector annual catch entitlements (ACEs) or to meet the purpose and goals for sector monitoring described in Amendment 16 and Framework 48. In turn, insufficient monitoring would undermine the effectiveness of annual catch limits (ACLs) and sector ACEs, which are integral to preventing overfishing and facilitating rebuilding of groundfish stocks as required by the Magnuson-Stevens Act.

We are sensitive to the cost associated with monitoring programs and are again providing full funding for FMP-required coverage in FY 2013. We are also exploring options to provide assistance for FY 2013 sector exemption programs that require 100-percent coverage. Despite this 1-year reprieve, the Council must recognize that the Federal funding options are finite. The Council will need to develop options that shift at-sea monitoring costs to industry beginning in FY 2014. As previously stated, we are working closely with both Councils to develop potential cost sharing mechanisms and we are committed to developing electronic monitoring.

Trawl gear stowage when transiting closed areas (Framework 48). This measure was disapproved because it is inconsistent with section 303(a)(1) of the Magnuson-Stevens Act regarding rebuilding and ensuring the long-term sustainability of fish stocks and fisheries, section 303(a)(7) of the Magnuson-Stevens Act regarding minimizing the adverse effects of fishing on habitat, and National Standard 9 regarding minimizing bycatch of certain stocks or protected species. After reviewing the Council's recommendation, we share concerns with the U.S. Coast Guard that eliminating trawl gear stowage requirements for only groundfish vessels would undermine enforcement of the prohibition on fishing in closed areas and undermine these provisions of the Magnuson-Stevens Act. Although we disapproved this measure in Framework 48, we are concerned about the safety risks of the existing trawl gear stowage requirements. There is a need to address the issue for all vessels. We intend to initiate a regulatory amendment, working with both Councils, to consider modifications to the gear stowage requirements to address safety concerns, including the VMS/Enforcement Committee's recommendations.

Changes from proposed rules

Eastern U.S./Canada monitoring (Framework 48). After receiving clarification of Council intent through comments on Framework 48, we withdrew our proposed change to the regulations. As a result, we will use the current regulatory language at § 648.85(a)(3)(ii)(A) as the basis for our monitoring. We will attribute all catch of cod, haddock, and yellowtail flounder caught on a trip that fishes both inside and outside of the Eastern U.S./Canada Area to the U.S./Canada total allowable catches (TACs) inseason. For final catch accounting, we will use all available information, as required by Amendment 16, to determine whether any common pool sub-ACLs or sector ACEs have been exceeded. This will be a change from the apportionment based on fishing location method we have used since Amendment 16 was implemented. We are soliciting additional comment due to implementation questions that we have regarding discard rate application.

Minimum fish size reduction delay in effectiveness (Framework 48). Because these measures were not finalized until the start of the fishing year, and based on conversations with state marine fishery agencies, we understand that it will not be possible for all states to implement the Framework 48 change in minimum fish sizes for May 1. We are delaying the effectiveness of the minimum fish size changes in Federal waters until July 1 to allow the states to come into compliance with the reduced minimum fish size measures. We will work with states and industry to ensure that everyone is aware of what minimum fish sizes apply and when.

Like the Council, we are also concerned that the reduction in minimum fish sizes could lead to a shift in behavior by some fishermen, who may target small fish to the detriment of conservation

objectives. We will work with the Council and develop catch monitoring to ascertain if smaller fish are being targeted in a way that compromises these objectives.

Emergency rule measures

GB yellowtail flounder (in conjunction with Framework 50 final rule). Because we disapproved the Council's recommendation, the FY 2013 GB yellowtail flounder ABC of 1,150 mt established in Framework 47 would become effective had no additional action been taken. Because this was higher than the TRAC recommendation and would likely result in overfishing, we took emergency action under section 305(c) of the Magnuson-Stevens Act to implement a shared ABC of 500 mt to ensure consistency with the Magnuson-Stevens Act requirements and the FMP. This results in a U.S. TAC of 215 mt.

GOM cod carryover (in conjunction with Framework 50 final rule). As indicated in correspondence sent to the Council on March 1, 2013, the FY 2013 total potential catch (total fishery level annual catch limit + carried over catch) for GOM cod exceeds the overfishing limit (OFL). To better ensure that overfishing will not occur on this overfished stock, we used emergency authority to reduce the Amendment 16-provided carryover. The maximum of 10 percent for unused FY 2012 ACE was reduced to a maximum of 1.85 percent to reduce total potential catch to a level below OFL.

In a related issue, we used our section 305(d) authority under the Magnuson-Stevens Act to clarify how to account for carryover in 2013 and 2014 and beyond for all groundfish stocks caught by sector vessels. As explained in detail in framework the clarification for FY 2013, as a transitional clarification, and FY 2014 and beyond are designed to ensure that carryovers are consistent with National Standard 1 guidelines, and safety and management needs and concerns of the fishing industry.

These clarifications are justified under section 305(d) of the Magnuson-Stevens Act, that NMFS which allows the Secretary to implement regulations necessary to ensure that FMPs are carried out in a way that is consistent with the Act and other applicable law. Nevertheless, we have published the final section 305(d) carryover clarifications as an interim final rule to solicit additional public comment. The interim final measures are slightly changed from those proposed, and would not become effective until May 1, 2014. We encourage the Council to consider developing its own measures regarding carryover. We are prepared to work closely with the Council over the next year, should the Council choose to develop an alternative approach for FY 2014 and beyond. Should it not do so, our interim final approach will ensure carryover can be administered in a manner consistent with Magnuson-Stevens Act requirements and guidance.

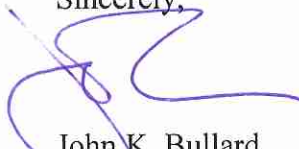
White hake catch limit increase (in conjunction with Framework 50 final rule). Consistent with the Council's April request and the catch advice from the February 2013 benchmark stock assessment (SARC 56), we used our emergency authority to increase the white hake catch limit for FY 2013. We are hopeful that having approximately 15 percent more white hake catch available than was proposed in Framework 50 will provide some level of additional income to the industry. We understand that it will not offset the potential impacts of the reductions to other

species. The SARC 56 status determination criteria for white hake were adopted in the Framework 48 final rule.

I must take a moment to address the submission timing of both Council actions for our review and implementation¹. We were able to complete these actions for May 1 implementation through nothing less than extraordinary efforts from our dedicated staffs. The exceptional circumstances that arose from late submission this year must not become the standard practice of the Council. The compressed schedule for these actions affected the quality of the review and rulemaking processes, required shortened public comment periods, and waivers of the Administrative Procedure Act cooling-off period to ensure measures could be effective by May 1. Moving forward, submission of future groundfish actions after January 15 cannot be guaranteed to be implemented for the start of the fishing year. Adequate review, rulemaking, and public process are essential, and even more so in complex and controversial actions that are the norm for groundfish. Of course we will work with the Council to try and avoid timing complications and will work diligently to review and implement Council actions when they are submitted to us. The upcoming discussion at the Northeast Region Coordinating Council is timely, as I expect some of the process and timing concerns will be discussed at length.

If you have questions over the information in this letter or the final rules, when published, please contact George Darcy, Assistant Regional Administrator for Sustainable Fisheries. He can be reached at (978) 281-9315.

Sincerely,



John K. Bullard
Regional Administrator

Cc: Dr. Bill Karp, Director, Northeast Fisheries Science Center
Tom Nies, Executive Director, New England Fishery Management Council
Terry Stockwell, Chair, Groundfish Committee

¹ The formal submission of Framework 48 on February 26 provided 64 days for the agency to review the action and conduct rulemaking prior to May 1. For Framework 50, the agency had 40 days to review and conduct rulemaking.

Email received from Interested Party, Jim Ford

----- Forwarded message -----

From: **Jim Ford- F%2FV Lisa Ann II**

Date: Wednesday, May 8, 2013

Subject: Yellowtail Discards

To: john.bullard@noaa.gov

Cc: pat fiorelli <pfiorelli@nefmc.org>, hank <shsector@gmail.com>, David Leveille <dlevmcse@gmail.com>, Amy VanAtten <avanatte@mercury.wh.who.edu>, cpbouch <cpbouch@aol.com>, george darcy <George.Darcy@noaa.gov>, nefsector5 dan <nefsector5@gmail.com>, Lou Goodreau <LGoodreau@nefmc.org>, jackie odell <jackie_odell@yahoo.com>, Johanna Thomas <jothomas@edf.org>, "James A. Odlin" <trawlers@maine.rr.com>, Lorelei Stevens <Lscomfish@comcast.net>, tom mathews <tmathews@legalseafoods.com>, Michael and Lori <cbat@comcast.net>, monica.allen@noaa.gov, clark II - <sandfish52@aol.com>

NOAA, Council:

As the year goes on with such low limits on Yellowtail something needs to be done as far as vessels that fish inside of 70.15. Discards need to be separate from the inshore and offshore vessels. I myself fish west of 70.15 and catch yellows on a regular basis, most of the people in my sector (SHS) fish east of 70.15 and get charged with my yellowtail discard when they do not catch any yellowtail at all. It also works going the other way, I'm charged way more dabs and reds than I catch or discard. With these low quotas I hope that you can make some changes so that all of can continue to make a living and not make things harder for other fishermen that don't have the quota that they do not catch, but are charged for discard. Cod is also a problem, inshore we are seeing a lot of undersize cod the past few months (this is good) but the offshore vessels are charged with our discard when they don't see the amount of small cod discard as we do., please try to look at a solution to this problem. The recreational party/charter are seeing a pile of small under size cod and haddock since this opened up, also good sized fish, which is also good for our future. Please take the time to work this out, so assumed discard can be only applied to boats east or west of 70.15 to get better science and more accurate numbers. I am going to try my hardest to continue to make a living fishing, but I am getting to the point that I am pretty scared that I might not be able to continue with such low limits and high cost of quota.

Thank you for your time.

Jim Ford F/V Lisa Ann II



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

C.M. "Rip" Cunningham Jr., Chair
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950




Dear Rip:

I am pleased that Amendment 18 to the NE Multispecies Fishery Management Plan is once again on the Council's docket and development is proceeding. This is a very important action and one that I believe needs to move as quickly as possible to address at least the critical issue of capping accumulation of ownership and control of catches in this fishery. To that end, I encourage the Council to consider narrowing the immediate focus of the amendment to this issue. I encourage the Council to address this issue as quickly and as simply as possible. I recognize there are many other issues that the Council may need to address in the longer term, but acting quickly to address accumulation could potentially provide the industry greater stability while the Council works on those other issues.

As we have stated in the past, the agency stands ready to provide assistance to the Council during the amendment development process. I look forward to the future Council discussions on accumulation limits and fleet diversity.

Sincerely,


John K. Bullard
Regional Administrator

Cc: Tom Nies, Executive Director, New England Fishery Management Council
Terry Stockwell, Chair, Groundfish Committee

cc: Council, CBK, FH, RF, GA CK (4/9)



