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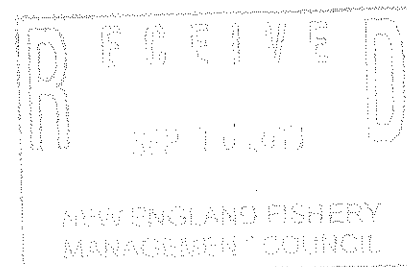
Additional Correspondence



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

SEP 16 2013

Ernest F. Stockwell, III, Acting Chairman
 New England Fishery Management Council
 50 Water Street
 Newburyport, MA 01950



Dear Terry:

I would like to provide input on several topics the Groundfish Oversight Committee (Committee) is considering for Framework Adjustment 51 (FW 51) and Amendment 18.

Framework 51

Haddock Spillover. The PDT and SSC were unable to provide a specific numeric value or provide spillover adjustment advice. Given this, there is currently no technically supportable rationale for adjusting the two haddock stock area catch limits. I understand that some type of risk evaluation or other management-based adjustment may be considered within the framework adjustment process. Any such adjustment would require an analysis and explanation for our consideration in the review and potential approval process. The Gulf of Maine (GOM) haddock stock is approaching an overfished condition and management needs to proceed cautiously. Ultimately, any measure that would result in overfishing the GOM haddock stock would not be approvable, given our statutory requirements under the Magnuson-Stevens Act.

Full-Retention Program. Many of the concerns we have previously raised regarding effective monitoring of a full-retention program still exist. We feel strongly that a full-retention regulated groundfish fishery would require very high levels of at-sea monitoring to be considered for approval given the need to ensure all species are retained. It is economically impossible for either the industry or the agency to fund a very high or 100-percent at-sea monitoring program, and electronic monitoring has not yet been sufficiently developed to provide a reasonable substitute. Unlike when this topic was considered in Framework Adjustment 48, considerable national, regional, and Council efforts are underway to further advance electronic monitoring to a useable state. I understand that some are hopeful that electronic monitoring may be a suitable monitoring alternative for consideration at some point during the 2014 fishing year (FY). However, we do not expect electronic monitoring and the associated data handling protocols to be available any sooner than FY 2015. I recognize this is a low priority for the framework, but wanted to relay in writing our concerns about implementing electronic monitoring in conjunction with a full-retention program in FW 51. I believe it would be wise to defer full-retention development until at least next year, given the status of electronic monitoring and available resources.

Georges Bank Yellowtail Flounder Small-Mesh Fishery Accountability Measure. We believe that this issue needs to be a priority for inclusion in FW 51, given that a sub-annual catch limit



(ACL) has been established for the small-mesh fisheries. We understand that the whiting and Mid-Atlantic mackerel advisors recently met and that staff are working to develop options for accountability measures. These measures should be included in FW 51 so that they are in place and available for use if reliable information indicates the sub-ACL for FY 2013 has been exceeded. At the August 2013 Groundfish Committee meeting, my staff discussed the timing issues associated with AMs for the small-mesh fisheries in question. Yearly information from these fisheries would not be available until September following the end of the fishing year. However, available reliable information, i.e., audited observer data, could be used to determine if an overage had occurred, and an AM could be enacted for FY 2014. If reliable information is not available before the end of the fishing year, the AM could become effective at the start of the next fishing year.

Amendment 18

Recently, I have received some comments in opposition to the amendment. I continue to believe that Amendment 18 is an important action, worthy of the Council's time and effort. I encourage the continued analyses and development and eagerly await the report from Compass Lexecon on excessive shares in the groundfish fishery.

Permit Splitting. I do have concerns about potential alternatives under consideration involving options to split limited access groundfish permits from other limited access permits and to modify the limited access vessel baseline and upgrade provisions. You may recall that an amendment was implemented in 1999 that, among other things, prohibited permit splitting, made consistent all the associated baselines for limited access permitted vessels, and established the "10/10/20" upgrade provisions (i.e., 10 percent maximum upgrade in length and tonnage, 20 percent in horsepower). While management in groundfish has changed substantially in recent years and some of the permit constraints may not be as relevant as they once were, the remaining fisheries in the region are managed largely as they were when the consistency amendment was put in place.

Permit splitting has implications well beyond just the multispecies fishery management plan. Permit splitting is currently prohibited in all limited access fishery management plans, so an omnibus amendment would be necessary to revise all plans to allow multispecies permits to be severed from other permits. If the Committee feels strongly about the potential utility of permit splitting, I'd encourage them to support an omnibus amendment, collaboratively developed with the Mid-Atlantic Council, as part of the upcoming priorities discussion.

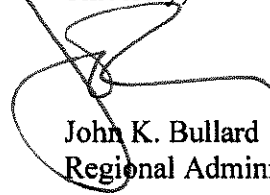
Vessel Permit Baseline and Upgrade Provisions. NMFS is currently developing a vessel upgrade provision omnibus amendment for both the New England and Mid-Atlantic Councils' consideration. The agency has committed to taking the lead on this action, with the understanding that the scope would be limited to removing tonnage as an upgrade criteria and removing the one-time upgrade provision. Should the Council wish to expand the scope of the amendment, it would not be appropriate or possible for the agency to take the lead on the development. If expansion were recommended by the Committee, we would recommend discussing an omnibus baseline amendment with the Mid-Atlantic Council and in the Council's priorities discussion for the upcoming year. My staff intend to present an update on the baseline

amendment to the Council during your September meeting. I encourage the Committee and Council to receive the report from my staff before developing any additional baseline-related options.

For both permit splitting and vessel permit baseline and upgrade changes it is unclear how inclusion of these topics may meet the Amendment 18 goals and objectives. While they may well do so, the rationale has not been clearly established by the Committee. I am concerned that splitting permits and revising or eliminating vessel baselines could, without adequate additional measures, hasten consolidation or impact fleet diversity.

My staff will be happy to discuss these issues with you during the September 17, 2013, Committee meeting or at any other opportunity of your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'John K. Bullard', is written over a circular stamp or seal.

John K. Bullard
Regional Administrator

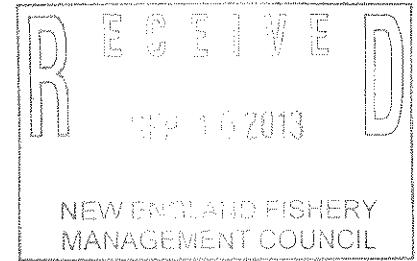
Cc: William A. Karp, Director, Northeast Fisheries Science Center
Thomas A. Nies, Executive Director, New England Fishery Management Council



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Ernest F. Stockwell, III, Acting Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

SEP 13 2013



Dear Terry:

During the August 14, 2013, Groundfish Oversight Committee (Committee) my staff committed to providing additional clarification about unused sector annual catch entitlement (ACE) carryover for fishing year (FY) 2014 and beyond. Recall we put in place an interim approach for FY 2013 to address a unique situation and was put forward as a transition to a more long-term solution. This transitional approach has been challenged in court.

As part of Framework Adjustment 50 rulemaking we implemented clarification, through our Magnuson-Stevens Act section 305(d) authority, of how carryover accounting would be handled beginning in FY 2014. This clarification was deemed necessary to ensure that the carryover provisions are carried out in a manner consistent with Magnuson-Stevens Act requirements and provisions. The Framework 50 measures were recently finalized¹.

Under the clarification, sectors may continue to carryover up to 10 percent of the previous fishing year's unused ACE as has been the case since the expanded sector program was put in place. What has changed is how we will track and account for carried over ACE, when used. There are two components involved. First, we will determine a *de minimus* level of carryover that, if used, would not be expected to cause the sector sub-annual catch limit (ACL) to be exceeded. This *de minimus* level, which is intended for an end-of-year safety buffer, will not count against a sector's ACE. We are still determining what approach to use for the *de minimus* carryover level and will share that analysis with the Plan Development Team and announce the final amount through notice-and-comment rulemaking this fall. Second, unlike previous years, we will count carryover used above the *de minimus* amount against a sector's ACE for the purpose of determining accountability if the total species/stock level ACL is exceeded. If the total ACL is not exceeded, we will not count carryover used against ACE for accountability measure (AM) determination. This is a fundamental change in catch monitoring, as we have, for the FYs 2010-2013, not counted carryover catch against sector's ACE for the purpose of determining if overages have occurred. We've provided some example scenarios at the end of this letter to illustrate how the clarified carryover system will function.

This approach is designed to allow carryover at the sector level as long as the overall ACL is not exceeded. This allows each sector to assess the consequences of using carryover in a given year. If a sector decides to use all of its carryover in a given year and the overall ACL for that

¹ Framework Adjustment final rule 78 FR 53363; August 29, 2013, effective September 30, 2013.



particular stock is exceeded, the sector would be subject to a strict AM equal to a one-for-one reduction in its subsequent year ACL. If a sector uses its carryover but the overall ACL is not exceeded, then the sector reaps the full benefit of the carryover, and the overall objective of not harvesting a stock above its overall ACL is achieved. Thus, the benefits of a carryover are maintained on a year-to-year basis, but not without strict AMs being triggered if the overall ACL is exceeded.

To better understand this approach, the preamble to the final rule for Framework 50 used the term “total potential catch,” which equals the total ACL + full 10-percent carryover for each sector in a given fishing year. Whereas the total potential catch in any given year may exceed the ACL for a stock on paper, the reality is that the ACL and ABC for a stock are still in force in that there are AMs that will be triggered if the ACL is exceeded. For FY 2013 we examined the likelihood that the total potential catch would be realized and concluded such risk was small. Historically, sectors have often under-harvested available sub-ACLs for most stocks, and other fishery components have similarly not fully utilized catch limits. When under-harvest occurs in year 1, there may be some increase in the stock in year $t+1$ that, while not specifically quantified through a stock assessment framework, helps reduce the risk of overfishing. This is the key element on which we are being litigated, under the argument that such an approach is inconsistent with both the National Standard 1 guidelines and the Magnuson-Stevens Act.

As previously mentioned, we will provide the Council and the public more information on what we propose as *de minimus* this fall through both analysis and rulemaking. The key element of the *de minimus* amount is that its utilization would not, by itself, cause the sector sub-ACL to be exceeded. It would be considered part of the management uncertainty and, as such, in the future the Council may wish to consider whether additional buffers between ABC and ACLs are necessary.

To account for leased and traded ACE, the sector that leased and used carryover as either landed or discarded pounds (i.e., lessee) would be responsible if an AM is triggered, not the sector providing the leased or traded carryover ACE (i.e., lessor).

The clarification also added language that allows the Council to request that we adjust carryover, if needed, through Administrative Procedure Act rulemaking. We envision that, if needed, this could logically be conducted through a specification framework or other framework action. This was included to respond to the situations where quotas substantially decrease and the carryover amount, if taken, would exceed the overfishing limit. It is our hope that by including this provision, the need for emergency rulemaking to prevent overfishing can be avoided in the future, should a situation similar to the FY 2012 to 2013 quota change occur again.

The Framework 50 proposed rule, interim final rule², responses to comments, and analytical appendix prepared for the framework’s Environmental Assessment provide detailed explanations and rationale for the clarification. No comments were received directly related to the technical components of the clarification. I encourage the Council to review those documents, as they provide a great deal of information. If changes to the carryover approach are desired by the

² Framework Adjustment 50 proposed rule 78 FR 19368; March 29, 2013. Interim final rule 78 FR 26118; May 3, 2013.

Council, they would need to be developed and recommended through the Council process. We would be happy to work with you, should you choose to pursue modification of the existing carryover program.

My staff from the Sustainable Fisheries Division are available to answer any additional questions you may have after reading this letter. Please direct questions to Susan Murphy, Groundfish Team Supervisor, or Mike Ruccio. Both can be reached at (978) 281-9315.

Sincerely,



JS John K. Bullard
Regional Administrator

Cc: William A. Karp, Director, Northeast Fisheries Science Center
Thomas A. Nies, Executive Director, New England Fishery Management Council

Example carryover scenarios and applicable accountability measures.

The following examples use Gulf of Maine (GOM) haddock (all weights in metric tons):

FY 2013 sector sub-ACL	Potential maximum carryover (10%)	FY 2014 sector sub-ACL	FY 2014 total ACL
186	19	218	323

Scenario 1: Maximum carryover of 10 percent is brought forward from FY 2013 (19 mt). The carryover is fully utilized in FY 2014. The sector sub-ACL of 218 mt is exceeded but the total ACL of 323 mt is not exceeded.

Under this scenario, other components in the fishery did not use their full allocation, so sectors benefit from the under-harvest as a way to offset the carryover used (up to the full 19 mt). There would be no overage repayment AM imposed on sectors, even though the sector sub-ACL was exceeded by the use of carryover. Because no sector-level AM is evoked, the *de minimus* amount does not come into play. As an example, final FY 2014 catch might look something like this:

FY 2014 sector catch: 237 mt (186 + 19 carryover)	FY 2014 total fishery catch: 320 mt	Sector AM applied?
Note: 218 mt sub-ACL exceeded	Note: 323 mt total ACL not exceeded	No

Scenario 2: Maximum carryover of 10 percent is brought forward from FY 2013 (19 mt). The carryover is fully utilized in FY 2014. The sector sub-ACL is exceeded, as is the total ACL.

Under scenario 2, sectors would be responsible for their contribution to the total fishery-level ACL overage, including any carryover used, excluding the *de minimus* amount. This example assumes that the full ACL overage was wholly the result of the 19 mt available as carryover causing the overage. It is possible that fishery components other than sectors could contribute to a stock-level overage. In such cases, sectors would only be held accountable for their contributions to the overage. Again, as an example:

FY 2014 sector catch: 237 mt (186 + 19 carryover) Note: 218 mt sub-ACL exceeded	FY 2014 total fishery catch 340 mt Note : 323 mt ACL exceeded	Sector AM applied? Yes, up to the sector sub-ACL overage amount, excluding <i>de minimus</i> amount. Roughly 18.8 mt repayment assuming 1 percent permitted as <i>de minimus</i> .
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In other potential scenarios where the total ACL is exceeded but the sector sub-ACL is not, there would be no AM imposed on sectors, consistent with the fishery management plan provisions. This would be true even if some sectors had brought forward and used carryover. This would mean that some sectors underutilized the available allocation and the underage was sufficient to offset the amount of carryover used by other sectors, such that the sub-ACL was not ultimately exceeded.

July 18, 2013

Thomas A. Nies
Executive Director
New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950

Dear Tom:

We are writing in response to your July 9, 2013 letter where you request our assistance in identifying fishermen who can provide first-hand experience on juvenile and spawning groundfish aggregations in small working group meetings to be made by appointment with Council staff. You state in your letter that such first-hand experience is important to making the Habitat Omnibus management action successful. You note the Council is interested in engaging individuals that have not provided their input to the Council. Lastly, you note the information collected by those individuals that we identify for you will be used by the Council's technical team to:

- Refine area boundaries, seasons and appropriate management measures
- Improve analyses in the amendment by providing:
 - Feedback on how areas and measures may influence fishing operations;
 - Ideas on how to evaluate economic effects, practicability, redistribution of effort
- Identify potential implementation issues

Since the Northeast Fishery Sectors are currently engaged and participating in the Habitat Omnibus process via the members' policy representative - the Northeast Seafood Coalition (NSC) - we felt compelled to respond to your letter together. NSC has been active in this process for over the past five years on our behalf, to review, consider, and comment on the alternatives and complex policy issues associated with this Amendment process. Our Sectors are focused on meeting the myriad of reporting requirements, quota management and fishermen's operational needs. This is what our governance and staff structure is designed to accomplish. At this late juncture in the development of the Habitat Omnibus Amendment, we must respectfully defer participation to the organization we have designated to represent our fishing members and continue to work with them to put forth our collective input to this process.

As a general comment, we're perplexed by this uncommon effort to go outside the normal public process to seek fishermen feedback in a small - closed door meeting format. Typically, fishermen's information has been considered bias or ad-hoc and given little or no weight when fishermen have felt their information was critical to the well-being of the fishery. Why now?

Furthermore, this effort seems to be greatly misaligned with the realities fishermen and fishing businesses in our Sectors are currently facing. The transition to hard total allowable catches in

the groundfish fishery and the unpredictable stock assessments that have led to unstable and fluctuating Annual Catch Limits (ACL) have placed fishing businesses in a state of crisis. We are in turmoil and there are no meaningful mitigation measures in place to address the ACL reductions that went into place on May 1 and no discussions on how to improve the management responses to wildly fluctuating assessment results. Time is of the essence for the fishing businesses in our Sectors. These businesses and the Sector management infrastructure, which was approved and endorsed by the Council, are now in jeopardy. The Council should be prioritizing these immediate issues and needs and seeking input from the fishing industry on how to remedy this disaster.

Sincerely,

Joseph Orlando
President, Northeast Fishery Sector II

Richard Burgess
President, Northeast Fishery Sector III

Vito Giacalone
President, Northeast Fishery Sector IV

Christopher Brown
President, Northeast Fishery Sector V

Mike Walsh
President, Northeast Fishery Sector VI

William McCann
President, Northeast Fishery Sector VII

Felicio Lourenzo
President, Northeast Fishery Sector VIII

Carlos Rafael
President, Northeast Fishery Sector IX

Kevin Norton
President, Northeast Fishery Sector X

Jayson Driscoll
President, Northeast Fishery Sector XI and
Sector XII

Thomas Williams
President, Northeast Fishery Sector XIII

Cc: Northeast Seafood Coalition Board of Directors