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Dockside Monitoring Discussion Paper

Groundfish Plan Development Team

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and considered draft at this time.**

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Overview

On April 7, 2016, the Groundfish Committee unanimously passed the following motion:

Move that the Committee task staff and/or PDT, as appropriate, to develop a draft white paper and report to the Council at the June meeting on monitoring strategies (ASM, shoreside, electronic, etc.) that would primarily contribute to accuracy and secondarily precision of groundfish catch reporting.

The white paper should include a review of existing shoreside monitoring programs as well as past Council decisions on dockside monitoring with respect to achieving accuracy and precision in reporting of groundfish bycatch and landings as well as funding sources for the programs.

This draft document responds to the second component to the motion by considering dockside monitoring and management goals for monitoring in Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP) as modified by subsequent actions. Amendment 16 implemented at-sea monitoring (ASM) and dockside monitoring (DSM), to “assure that sector ACEs are not exceeded...”¹ The at-sea monitoring program remains in place today, but the groundfish dockside monitoring program has been discontinued through Framework 48. This document provides background information to summarize the development and implementation of the Groundfish Dockside Monitoring Program, including the refinements (Framework 45) and termination of the program (Framework 48). This document also reviews existing shoreside monitoring programs as case studies.

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 - 6.3 Case Study #3: MA DMF Portside Sampling Program
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¹ New England Fishery Management Council. Oct. 16, 2009. *Amendment 16 to the Northeast Multispecies FMP*. http://s3.amazonaws.com/nefmc.org/091016_Final_Amendment_16.pdf

6.5 Cast Study #5: Fisheries and Oceans Canada Maritimes Region Groundfish Dockside Monitoring Program

7. PDT Discussion: Preliminary Considerations for a Groundfish Dockside Monitoring Program

1. Development of Amendment 16 and the Groundfish Dockside Monitoring Program

During the development of Amendment 16, the Gulf of Maine Research Institute (GMRI) provided research support to inform sector management and policies. In 2008, GMRI hired Archipelago Marine Research, the largest observer service provider for Western Canada, and Pacific Fisheries Management Incorporated to provide feedback on reporting and monitoring needs for the groundfish sector program. Archipelago Marine Research and Pacific Fisheries Management Inc., developed a report for GMRI that suggested several monitoring options for management consideration (McElderry et al., May 2008).²

The McElderry et al., (2008) report suggested that if dockside monitoring is used for groundfish monitoring, that these reports should be used to calculate landings, and dealer reports should be used to calculate landings on trips without dockside monitoring coverage. However, the group also point out that: “the proposed system overlaps with monitoring systems that the National Marine Fisheries Service (NMFS) currently runs and, if implemented, ...would create redundancy, as NMFS would need to continue to maintain monitoring systems in a variety of other fisheries.”³ The McElderry et al., (2008) report did not provide a recommendation to resolve this redundancy.

Archipelago Marine Research and Pacific Fisheries Management Inc. recommended that, for roving monitors, monitoring every offload may not be necessary (e.g., monitoring offloads to trucks then to dealers for same trip is duplicative). Instead, the idea would be to keep the probability of monitoring these offloads sufficiently high to facilitate compliance with regulations.

Archipelago Marine Research and Pacific Fisheries Management Inc. recommended a centralized data management system for consistency in data collection methods for all sectors, particularly when multiple service providers are used. The group also recommended that the centralized data system hold all reporting information from multiple sources (i.e., dockside data, dealer data, Vessel Trip Report (VTR) data).

GMRI held a group meeting on July 2, 2008 to discuss groundfish monitoring and reporting, with sector managers, environmental groups, New England Fishery Management Council (NEFMC) staff and members, NMFS staff, and Northeast Fisheries Science Center staff. Based

² McElderry, Howard and Turriss, Bruce. May 2008. *Evaluation of Monitoring and Reporting Needs for Groundfish Sectors in New England Phase II Report*. Archipelago Marine Research Ltd. and Pacific Fisheries Management Incorporated.

³ Ibid.

on the meeting outcome report regarding dockside monitoring, the group of attendees concluded that a monitoring and reporting program should be efficient and transparent, and build upon existing monitoring programs administered by NMFS (i.e., avoid redundant monitoring/data collection). In addition, data should be available real-time, and address accountability. The meeting report also concluded that dockside monitoring at 100 percent coverage is necessary for enforcement and stock assessments, with adjustment in coverage levels for less active ports.⁴

Based on the outcome of the meeting, the following issues remained unresolved⁵:

1. *The details of how to do dockside monitoring in smaller, less-used ports.*
2. *Who should do dockside monitoring?*
 - a. *Single contractor for the whole northeast?*
 - b. *Government establishes standards and then sectors select contractors from an approved list?*
 - c. *Local law enforcement officials involved?*
 - i. *Local people certified to do monitoring on behalf of the contractor*
 - ii. *NMFS staff were concerned about legal issues associated with using local law enforcement officials as dockside monitors, including conflicts associated with the potential for industry funding of local, state, or federal enforcement agents*
3. *How to pay for dockside monitoring.*
4. *How monitoring and reporting will mesh with existing efforts.*

2. Overview of Amendment 16's Proposed Monitoring Measures

The current rules for monitoring in the groundfish fleet were adopted in Amendment 16, Framework 45, Framework 48, and Framework 55 to the Northeast Multispecies Fishery Management Plan (FMP). Amendment 16 required sector operation plans to include detailed strategies for monitoring, reporting, and enforcing catch and landings for all members within the sector. These detailed plans would ensure that sector members:

1. Land all legal-sized fish under FMP management; and
2. Do not exceed the ACE allocations by developing and implementing a dockside monitoring program, used in conjunction with an observer program, to report catch information:
 - o Landings by species, reported by stock, statistical area, and gear type
 - o Discard estimates applied to landing events by gear type

An observer program would be used in conjunction with a dockside monitoring program to achieve monitoring goals for the sector system. Amendment 16 defines an observer as “any

⁴ Good Group Decisions. July 2, 2008. *Monitoring and Reporting Discussion: Meeting Report.*

⁵ Good Group Decisions. July 2, 2008. *Monitoring and Reporting Discussion: Meeting Report.*

person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.”⁶

Amendment 16 stated that: “[t]he primary goal of observers or at-sea monitors for sector monitoring is to verify area fished, catch, and discards by species, by gear type. This data will be reported to the sector managers and to the NMFS. Electronic monitoring may be used in place of actual observers or at-sea monitors if the technology is deemed sufficient for a specific trip based on gear type and area fished.”⁷ For trips without an observer onboard, an assumed sector-specific discard rate would apply, unless another monitoring program (deemed adequate by NMFS) is used to accurately report discard rates. An assumed sector-specific discard rate is based on the discard estimates derived from at-sea samplers.

Dockside monitors would certify dealer-reported landings by verifying accuracy of dealer-reported weights by observing offload activity. In 2010, dockside monitoring would cover 50 percent of trips for each sector, and for 20 percent of trips for each sector in subsequent years. Amendment 16 states that sectors should be able to demonstrate to NMFS that an adequate industry-funded monitoring system is in place to monitor a sector’s Annual Catch Entitlement (ACE) by 2012 fishing year.

Amendment 16 stated that the following elements should exist for the sector dockside monitoring program: (1) List of ports that vessels within the sector plan to land fish; and (2) Pre-sail and pre-land hails to inform portside sampler deployment.

3. Summary of Public Comments on Amendment 16

A summary of comments related to Amendment 16 are addressed in this section, including the comments related to the proposed rule. The comments related to the proposed rule are also summarized in the Federal Register notice for the final rule (Refer to Appendix 2). A public hearing document and a Draft Amendment 16 with Draft Environmental Impact Statement was made available to the public. Comments received during the public hearings and submitted written comments are also summarized in this section.

Eleven individual commenters, five Congressional representatives (Delahunt, Hodes, and McGovern, Pingree, Michaud), one form letter with over 500 signatures (Jessica Lane et. al), and one form letter with over 8,800 signatures (Diane Luera et. al) supported the establishment of a comprehensive monitoring system. Many commenters, including Congressmen Delahunt, Hodes, and McGovern, the Cape Cod Commercial Hook Fishermen's Association, the Port Clyde Sector, the Island Institute, PEW, and one individual, supported a monitoring program for the sectors and common pool vessels. These commenters noted concerns regarding equity among

⁶ New England Fishery Management Council. Oct. 16, 2009. *Amendment 16 to the Northeast Multispecies FMP*. http://s3.amazonaws.com/nefmc.org/091016_Final_Amendment_16.pdf

⁷ New England Fishery Management Council. Oct. 16, 2009. *Amendment 16 to the Northeast Multispecies FMP*. http://s3.amazonaws.com/nefmc.org/091016_Final_Amendment_16.pdf.

the groundfish vessels, and the need to account for catch by both sector and common pool vessels.

For dockside monitoring coverage levels, two options were available for public comment, one option for 100 percent DSM coverage, and another option for less than 100 percent DSM coverage. Environmental Defense Fund (EDF), PEW, Conservation Law Foundation (CLF), MA DMF, one form letter with 174 signatures (David Butman et. al.), one individual, Island Institute, Ocean Conservancy, Port Clyde Sector, and Cape Cod Commercial Hook Fishermen's Association and one of its affiliates supported 100 percent dockside monitoring and 100 percent at-sea monitoring of the fishery. The Hook Gear Sector and the Georges Bank Fixed Gear Sector supported relatively high levels of DSM coverage.

The Associated Fisheries of Maine supported less than 100 percent DSM coverage, and suggested that the DSM requirement be waived if the SBRM coverage was able to achieve the Coefficient of Variation (CV) standard. Several commenters opposed the 100 percent DSM coverage, including two individual commenters representing the groundfish fishery. Several commenters expressed concern regarding the high monitoring costs, including thirteen individuals and the Penobscot East Resource Center. The Northeast Coastal Communities Sector supported a threshold for dockside monitoring coverage in ports with relatively low groundfish landings, to reduce dockside monitoring costs. Three commercial fishermen, the Associated Fisheries of Maine, and the Sustainable Harvest Sector proposed a removal of dockside monitoring requirements for trips monitored at sea.

Three commenters supported daily reporting requirements, including one state agency (MA DMF) and two fishing industry groups (Lunds Fisheries and Garden State Seafood Association). Garden State Seafood Association, Penobscot East Resource Center, Hook Gear Sector, Georges Bank Fixed Gear Sector, Cape Cod Commercial Hook Fishermen's Association, Associated Fisheries of Maine, Lunds Fisheries, Ocean Conservancy, CLF, EDF, and MA DMF supported Option 2, area-specific reporting requirements, in which catch data is attributed to the stock area.⁸ This option would improve the accuracy of location information used to attribute landings by area. The monitoring and reporting system uses location of catch from vessel-trip reports.

During the development of Amendment 16, timely monitoring of the catch by location was difficult because vessel operators were required to submit their reports up to fourteen days following the end of each month. Vessel trip reporting instructions were modified on December 5, 2014, and northeast multispecies permit holders are now required to submit their reports weekly, on the Tuesday following the previous fishing week.⁹

⁸ New England Fishery Management Council. April 15, 2009. Draft Amendment 16 to the Northeast Multispecies FMP.

⁹ National Marine Fisheries Service. December 5, 2014. Fishing Vessel Trip Report (VTR) Reporting Instructions. http://www.greateratlantic.fisheries.noaa.gov/aps/evtr/vtr_inst.pdf

The proposed measures also stated that an assumed discard rate would apply for sectors, unless a sector's operations plan describe how discards would be monitored, reported, and enforced. Options for calculating assumed discard rate includes Option 1, which calculates an assumed discard rate based on the most recent stock assessment to calculate gear-specific discard rates (if available); and Option 2, which calculates an assumed discard rate using observer data from the previous year to calculate gear-specific discard rates. The Cape Cod Commercial Hook Fishermen's Association and the Associated Fisheries of Maine supported Option 2, Area-specific reporting requirements for calculating sectors and common pool assumed discard rates. Several group commenters (EDF and PEW) support Option 1. The Cape Cod Commercial Hook Fishermen's Association supported timely monitoring of discards. The Ocean Conservancy and CLF supported Option 3, which accounts for discards by non-sector vessels.

MA DMF expressed concerns regarding the enforcement of catch limits under the sector system with insufficient incentives for compliance with minimized state and Federal law enforcement. EDF also supported clear enforcement provisions. One groundfish fisherman raised concerns regarding the need to wait for a dockside monitor prior to catch offloading, and suggested a six-hour hail is sufficient notice.

4. Overview of Implementation of Amendment 16's Measures

Amendment 16's final rule revised the dealer reporting and record keeping requirements, to "require dealers to provide a copy of any dealer weigh-out documents or dealer receipts for a particular offloading event to dockside/roving monitors, allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor."¹⁰

Accurate catch monitoring is important for fishery managers, and also ensures all sectors are held to the same standards regarding catch accounting. Amendment 16's final rule "requires sectors to develop mechanisms to adequately monitor catch and discards by participating vessels. One of these mechanisms is an independent third-party dockside/roving monitoring program that observes offloads by sector vessels to ensure that landings are accurately reported. This dockside/ roving monitoring program is required starting in FY 2010, and will be funded by sectors, unless otherwise specified by NMFS. Dockside monitors observe offloadings directly to a dealer, while roving monitors are used to monitor offloads to a truck for later delivery to a dealer."¹¹

¹⁰ "Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16; Final Rule," 68 Federal Register 75 (9 April 2010), pp. 18262-18353. http://s3.amazonaws.com/nefmc.org/fA16final_rule.pdf

¹¹ "Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16; Final Rule," 68 Federal Register 75 (9 April 2010), pp. 18262-18353. http://s3.amazonaws.com/nefmc.org/fA16final_rule.pdf

At-sea monitoring and/or electronic monitoring would be used “to verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring sector ACE utilization.”¹² The manner in which discard estimates are derived may differ annually, and is based on the availability of data to determine a discard rate by fish stock and gear type. The level of coverage necessary would meet the CV standard established under the SBRM. At the time of implementation of Amendment 16, electronic monitoring was not yet approved for use in monitoring catch.

The final rule specified the types of monitoring programs that would be used to monitor catch by sectors. There is general consistency between the proposed measures in Amendment 16 and the final rule. However, the language in the final rule is more prescriptive regarding the utility of the dockside monitoring program, compared to the language in the Amendment/Environmental Impact Statement (EIS). Amendment 16 and EIS for the action states that: “[s]ector operations plans will specify how a sector will monitor its catch to assure that sector catch does not exceed the sector allocation. At the end of the fishing year, NMFS will evaluate catch using IVR, VMS, and any other available information to determine whether a sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan.”¹³

5. Summary of Modifications to the Groundfish Dockside Monitoring Program (2010-2011)

5.1 Framework 45 – Changes to the Sector Dockside Monitoring Program

Framework 45 removed the requirement for the industry to fund the sector dockside monitoring program for the 2011 and 2012 fishing years. Instead, NMFS would fund the program for up to 100 percent of sector trips, subject to availability of funds. The rationale for removal of the requirement for industry to fund DSM is based on the utility of the data, which is minimal when considering other data sources collecting similar information, including vessel trip reports and dealer reports. However, the industry saw benefit in continuing the program with agency support to cover the dockside monitoring program costs.

“Dockside monitoring was adopted by Amendment 16 to verify the accuracy of landings by commercial fishing vessels. The requirement was imposed immediately for vessels fishing in sectors and in FY 2012 for common pool vessels. Because this measure did not replace dealer reporting or VTRs, it did not produce a new data stream that assists the assessment and management of the fishery. Eliminating the requirement will reduce monitoring costs to industry, avoid duplication of effort, and will not reduce the

¹² Ibid

¹³ New England Fishery Management Council. Oct. 16, 2009. *Amendment 16 to the Northeast Multispecies FMP*. http://s3.amazonaws.com/nefmc.org/091016_Final_Amendment_16.pdf

availability of landings information. If the cost is to be covered by NMFS, the industry sees some benefit in continuation of the program.”¹⁴

The final rule for Framework 45 stated that: “For FY 2011, NMFS estimates that it has sufficient funding to cover approximately 100 percent of sector trips that are not assigned an observer or at-sea monitor. NMFS will specify coverage levels for FY 2012 based upon available NMFS funding.”¹⁵

Sector vessels were required to submit a trip-end hail that included the following information: “Vessel permit number; vessel trip report serial number, or other applicable trip ID specified by NMFS; landing state; landing port city; dealer name/offload location; estimated arrival date and time; estimated offload date and time; second offload port city and state (if applicable); and total amount of groundfish and nongroundfish species kept.”¹⁶ This end hail reporting requirement was intended to allow enforcement to efficiently ensure compliance with regulations, but was not used by dockside monitors.

Framework 45 altered the 2010 Dockside Monitoring Program by requiring monitors to inspect fish holds: “based on further evaluation of the performance of the dockside monitoring program and consideration of concerns expressed by enforcement personnel, this action now requires that dockside monitors inspect the fish holds for any trip that is assigned a dockside/ roving monitor beginning in FY 2011. This requirement [was intended to] enhance the enforceability of existing provisions and minimize the incentives to underreport/misreport the amount of regulated species landed.” However, prior to developing protocols and training for dockside monitors to board vessels, NMFS responded to safety concerns raised by the NEFMC on samplers inspecting a fish hold, and “determined that retaining the vessel trip-end (pre-landing) hail requirement currently provides an efficient and effective means for observation and enforcement of vessel landing requirements through unannounced observation of vessel offloads at the discretion of law enforcement, which could include inspection of the hold.”¹⁷

Summary of Public Comments on Framework 45’s Final Rule, Sector Dockside Monitoring Program

A commercial groundfish industry group raised concerns regarding the utility of the DSM program, and suggested ways to improve the program. The group suggested reducing costs by

¹⁴ New England Fishery Management Council. Jan. 21, 2011. Framework 45 and EA to the Northeast Multispecies FMP. http://s3.amazonaws.com/nefmc.org/110120_Final_FW_45_Resubmit.pdf

¹⁵ “Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework 45; Final Rule,” 79 Federal Register 76 (25 April 2011), pp. 23042-23076.

¹⁶ New England Fishery Management Council. Jan. 21, 2011. Framework 45 and EA to the Northeast Multispecies FMP. http://s3.amazonaws.com/nefmc.org/110120_Final_FW_45_Resubmit.pdf

¹⁷ “Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework 45; Interim Final Rule,” 138 Federal Register 76 (19 July 2011). <https://www.gpo.gov/fdsys/pkg/FR-2011-07-19/pdf/2011-18012.pdf>

only requiring roving monitors to observe offloads once (rather than observing offloads from vessel to truck and also observing that offload from truck to the dealer). The group also suggested that dockside monitoring data should be allowed for use in weekly sector catch reports. NMFS responded that a streamlined and electronic format for data reports collected through dockside monitoring could improve use of the data, and noted that dockside monitoring data could not replace the official record of landings collected through dealer reports.

Several group commenters (New England Hook Fisherman's Association (NEHFA), Penobscot East Resource Center (PERC), PEW Charitable Trusts) and a commercial fisherman suggested an exemption from dockside monitoring requirements for vessels fishing with Handgear A and B permits, or those vessels fishing under the small vessel exemption permit. NMFS responded that the final rule allows for such exemption for common pool vessels, not sector vessels.

Several commenters raised safety concern regarding the requirement for dockside monitors to inspect the fish hold, recommending that this task should be accomplished using NMFS Office of Law Enforcement, rather than a data collector. In addition, these commenters raised concern regarding the need to obtain insurance coverage for liability and harm, in the event that a sampler injured himself/herself while performing fish hold inspections.

Several group commenters (NEHFA, PERC, PEW Charitable Trusts) expressed the need to provide appropriate monitoring to minimize the incentive to misreport and underreport catch. As clarified in the comment response, "the dockside/roving monitoring data are primarily used for enforcement purposes, not catch monitoring."¹⁸ NMFS planned to provide dockside monitoring coverage (based on available funding) for trips neither covered through SBRM coverage nor ASM coverage. Refer to Appendix 3.

5.2 Framework 48 – Changes to the Sector Dockside Monitoring Program

Framework 48 proposed to discontinue the requirements for the dockside monitoring program:

"In 2011, NMFS made the determination that dockside intercepts by enforcement personnel were sufficient to monitor sector landings and reprioritized financial support for dockside monitoring to alleviate general sector operating costs."¹⁹

Framework 48 discontinued the Dockside Monitoring Program starting in the 2013 fishing year. The program was discontinued because the information collected through the dockside monitoring program duplicated information collected by dealers, and eliminating the requirement to collect duplicative information would reduce vessel operational costs in the future. To aid its

¹⁸ "Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework 45; Final Rule," 79 Federal Register 76 (25 April 2011), pp. 23042-23076. http://s3.amazonaws.com/nefmc.org/FW45final_rule.pdf

¹⁹ "Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework 48; Proposed Rule," 57 Federal Register 78 (25 March 2013), pp. 18188-18219.

enforcement activity at the docks, NMFS maintained certain sector reporting requirements initially intended to support the dockside monitoring program, namely the requirement for sector vessel operators to submit trip start and end hails.

“Dockside monitoring increases the operating costs of sectors. Landings information is already provided through the dealer reporting system. As long as unreported landings do not occur, the dealer reports can be used to monitor sector landings and there is little advantage to having dockside monitors verify these reports. By eliminating the program, sector operating costs are reduced and redundant accounting is avoided.”²⁰

Framework 48 also clarified that “[t]he primary goal of observers or at-sea monitors for sector monitoring is to verify area fished, catch, and discards by species, [and] by gear type. Electronic monitoring may be used in place of actual observers or at-sea monitors if the technology is deemed sufficient for a specific trip based on gear type and area fished.”²¹

Public Comments on Framework 48’s Changes to the Sector Dockside Monitoring Program

Sector representatives, one environmental group, and one state agency commented on dockside monitoring program changes in the Framework 48 proposed rule. Some commenters supported retaining trip hail information for enforcement purposes. Sector representatives and one environmental group supported eliminating the dockside monitoring program, due to program inefficiencies (increased monitoring costs with minimal data utility and redundancy in data collection). One state fishery agency questioned whether NMFS believed the current monitoring of landings would be sufficient given the proposed termination of the dockside monitoring program. Refer to Appendix 4.

6. Case Studies

The following section identifies a few case studies that summarize past and current dockside monitoring programs. If there is interest in a dockside monitoring program to monitor groundfish fishing activity, these case studies can provide some insight into other information collected from dockside monitoring programs in other fisheries, and the utility of data collected by other dockside monitoring programs. However, the goals for a groundfish dockside monitoring program should be clearly articulated.

²⁰ New England Fishery Management Council. (Feb. 26, 2013). Framework 48 and EA to the Northeast Multispecies FMP. http://s3.amazonaws.com/nefmc.org/130307_FW48_Figures_Repaired.pdf

²¹ New England Fishery Management Council. (Feb. 26, 2013). Framework 48 and EA to the Northeast Multispecies FMP. http://s3.amazonaws.com/nefmc.org/130307_FW48_Figures_Repaired.pdf

6.1 Case Study #1: Groundfish Dockside Monitoring Program (2010-2011)

A. **Objective:** The purpose of the DSM Program in 2010 was to verify accurate dealer reporting. Dealer reports are one source of data used to determine a sector's in-season catch relative to the annual catch entitlement, providing the majority of landed weight information. VTRs provide non-dealer landings (e.g., catch retained for bait and home consumption), statistical areas fished, gear used, and are used to attribute catch, by gear type.²²

B. **Monitoring Tasks:**

- Take copies of all VTRs filled out for the trip, with all information available (no blocked cells).
- Record whether or not the scales are certified by the dealer's state.
- Observe and record whether ice and box weights are tared by the dealer before the catch is added. If the dealer does not tare the box and ice, the dockside monitor must obtain the estimated weight of the ice and box from the dealer and record that weight in his/her report.
- Ask the captain whether all fish have been offloaded, and whether any are being retained for personal use. The dockside monitor must record the captain's estimate of weight of each species being retained for home use or retained on the vessel and record the reason(s).
- Either the dockside monitor or dealer must record the weight of offloaded fish, by species (and market class, if culled), in a report. This report must be signed by the dockside monitor, and the monitor must keep a copy of the signed report.
- Provide accurate and complete data to the sector manager and/or any dockside monitor-designated third party, within 24 hours of the completion of the DSM event.
- Send copies of the VTR(s), the dealer receipt(s) if separate from the dockside monitor's report, and the dockside monitor's report to the sector manager or any dockside monitor -designated third party.
- Keep a copy of his/her report, which must be electronically stored by the DSM vendor.
- Inspect fish hold (Modification made in Framework 45 Final Rule, but disallowed shortly thereafter, in Framework 45 Interim Rule). This measure was disallowed, due to safety concerns regarding samplers inspecting the fish hold (Refer to Appendix 8).
- Refer to Appendix 7 for Dockside Monitoring Program Standards.

²² Labaree, Jonathon. August 2012. *Sector Management in New England's Groundfish Fishery: Dramatic Changes Spurs Innovation*. Gulf of Maine Research Institution.
http://www.gmri.org/sites/default/files/resource/sector_management_in_new_england.pdf

Summary of Program Logistics for 2010 Groundfish Dockside Monitoring Program:

- Notification to vessel regarding coverage requirement at end of trip when trip end hail is sent to service provider, and not sooner.
- Hail start and end times reported by vessels, to allow for sampler to arrive at location for sampling. Service providers notify vessels of coverage requirements when sending confirmation in response to trip end hail reported by vessel operator.
- Offloading of fish may not begin until sampler is present, if selected for coverage.
- Fish is sometimes offloaded at different dealers, with a large amount of lag time in between, which may increase costs in some instances (e.g., when sampler must observe offload to truck, and also observe the offload from the truck to the dealer).
 - For example, state regulations affect when fluke can be offloaded
 - Another example is that lobsters are typically offloaded first, and at a different dealer (in order to land live lobsters).

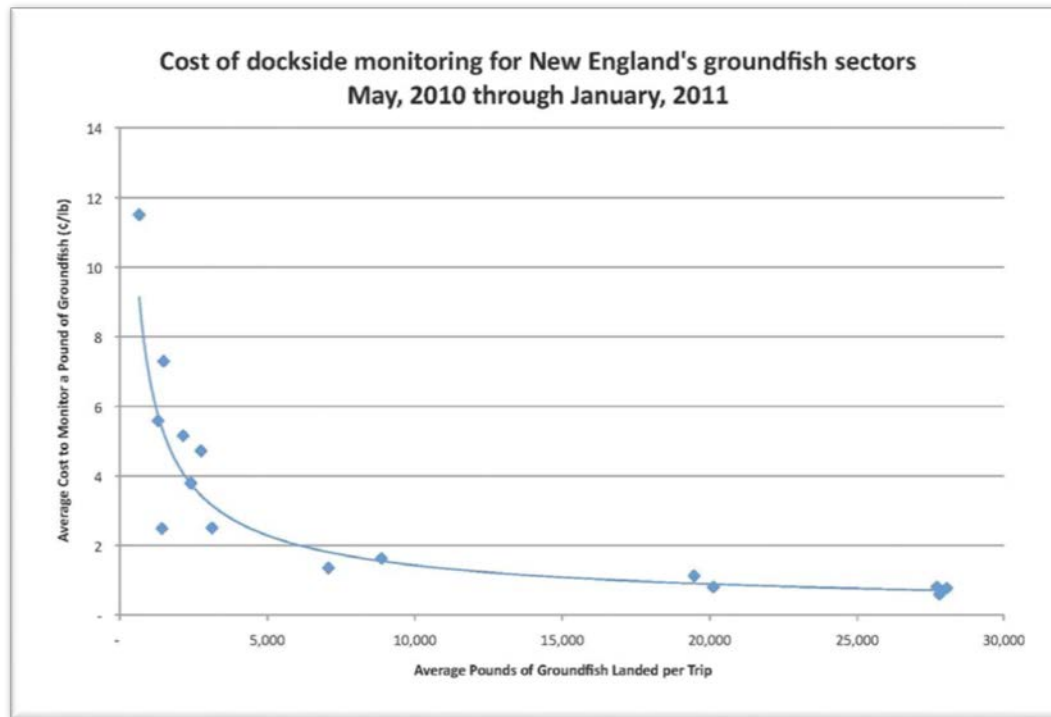
Fish hold inspections likely require additional insurance, which may also increase the costs (in the past, service providers were required to obtain appropriate insurance in case of injury/harm to samplers when inspecting fish holds).

C. Program Funding (includes cost information):

Program cost information for the groundfish dockside monitoring program is provided below, based on analysis prepared by GMRI. For the 2010 fishing year, 50 percent of all trips were monitored. For the 2011 fishing year, the monitoring coverage began at 100 percent of trips without at-sea/observer monitoring, and was reduced to 50 percent. GMRI administered the dockside monitoring program through a grant, which was used to reimburse vessels for dockside monitoring costs.

- Average per pound cost for all sectors ranges from \$0.06/lb. to \$ 0.12/lb., and was inversely related to volume (i.e., the more fish landed per trip, the lower the cost for DSM on a cost per pound basis; Refer to Figure 1).
- The average cost per trip across ports ranged from \$97 - \$212.
- The 2010 DSM Program was funded by a NMFS grant to GMRI.

Figure 1 - 2010 Groundfish Sector Dockside Monitoring Cost Information (cost per pound of fish landed)



Source: CINAR Report, Funding Sector Operations and Dockside Monitoring in Fishing Year 2011.

- D. **Data Utility:** Dockside monitoring activity helped assure accurate dealer reporting of landings information (real-time monitoring of compliance with accurate dealer reporting). Hail information was used by NOAA Office of Law Enforcement to facilitate enforcement of regulations at the docks.

6.2 Case Study #2: Elements of the Archipelago Dockside Monitoring Services for the Pacific Region's Groundfish Fishery²³

- A. **Objective:** The objectives for the monitoring program include verification procedures and methods to ensure integrity of data, and the ability to correct for deficiencies in the reported data. In British Columbia, Fisheries and Oceans Canada currently utilizes four service providers to fulfill dockside monitoring requirements. Archipelago Marine Research is the approved DSM provider for the Pacific Region's groundfish fishery managed by Fisheries and Oceans Canada. There is no regional annex for the Pacific Region's dockside monitoring program.²⁴

²³ Archipelago Marine Research. 2016. *Dockside monitoring Independent, Third-Party Verification of Landed Catch*. <http://www.archipelago.ca/fisheries-monitoring/dockside-monitoring/>

²⁴ Based on electronic mail communications with the Pacific Region's monitoring programs coordinator in July 2016.

B. Monitoring Tasks:

- Species Verification (identify, record weight, record count);
- Electronic reporting of landings information;
- Retain copies of fish log information, hail information, and other relevant information;
- Obtain fish samples and tag information for use in assessments;
- Monitor compliance with regulations for the fishery, including a fish hold inspection and on-deck inspection for remaining fish after offload is complete²⁵;
- Apply fish tags to all retained halibut; and
- Record and track individual quotas in-season for management purposes.

C. Program Funding (includes cost information):

Dockside monitoring in the British Columbia groundfish fishery's catch share program is paid for by the industry. In the groundfish fishery, 100 percent dockside monitoring is required. Costs are reported in Canadian dollars, which almost matched US currency during that time period. Based on estimates provided in report by Archipelago Marine Research in 2008, costs range from \$65 to \$500 per trip for groundfish fisheries (includes industry and government support for DSM program). In British Columbia, the groundfish fleet is comprised of approximately 300 vessels and is valued at approximately \$140 million dollars. The value of landed catch on groundfish vessels is approximately \$40,000 per trip.

D. Data Utility: Enhanced regulatory compliance and protection of sustainable commercial fisheries. Dockside monitoring data is considered the primary source of landings data used to inform fisheries management. Biological data is also collected and used in stock assessments.

6.3 Case Study #3: Massachusetts Department of Marine Fisheries (MA DMF) Portside Sampling Program of the Atlantic herring fishery

A. Objective: Collect information on catch composition, biological information and samples, for the purposes of landings verification and use in stock assessments.²⁶

B. Monitoring Tasks:²⁷

- a. Collect subsamples of unsorted fish catch (beginning in 2012). Basket subsamples collected every five to seven minutes, on average.
- b. Record information on species composition and length frequency of fish
- c. Collect harvester-reported information on fishing effort (laptop, electronic VTR)

²⁵ Fisheries and Oceans Canada. 2010. *Atlantic Region Dockside Monitoring Program Policies and Procedures*.

²⁶ Massachusetts Division of Marine Fisheries. 2010. *2010 Annual Report*.

<http://www.mass.gov/eea/docs/dfg/dmf/publications/2010-dmf-annual-report.pdf>

²⁷ Armstrong, Mike; Hoffman, Bill; and Schondelmeier, Brad. *Portside Sampling and River Herring Bycatch Avoidance*.

https://www.greateratlantic.fisheries.noaa.gov/protected/riverherring/tewg/smast_madmf_portside_bycatch_program.pdf

- d. Refer to sample logs (Appendix #5).
- C. **Program Funding:** Portside sampling coverage increased in 2010 due in part to a grant provided by the National Fish and Wildlife Foundation.²⁸ MA DMF also receives funding from The Nature Conservancy and the Atlantic Herring Research Set-Aside Program. An Atlantic States Marine Fisheries Commission grant was used to support portside sampling efforts on small-mesh bottom trawl vessels in Rhode Island. At this time, the Atlantic Herring Research Set-Aside Program supports the majority of the sampling effort (subcontracted through SMAST, who receives the funding from quota-set aside).
- D. **Data Utility:** Information on river herring hotspots are used to inform the voluntary River Herring Bycatch Avoidance Program. All mid-water trawl vessels currently participate in the program, and the majority of small-mesh bottom trawl vessels in Rhode Island also participate in the bycatch avoidance program. Representatives of the state portside sampling program provide advice on feedback based on experience with portside sampling program, to inform management decisions regarding the development of frameworks/amendments related to fishery and bycatch concerns. Samples and length measurements from the Massachusetts and Maine portside sampling programs are used in the herring stock assessments for catch at age information and information on life history parameters. Collected samples also determine maturation stage of fish for spawning closure considerations.

6.4 Case Study #4: Maine Department of Marine Resources (ME DMR) Portside Sampling Program of the Atlantic herring fishery

- A. **Objective:** Compare and analyze sampling results from at-sea monitoring and portside sampling data. Trips covered by observers are sampled portside to compare results due to variations in sampling schemes. Portside sampling effort currently focuses on purse seine vessels, but also include midwater trawl vessels and small-mesh bottom trawl vessels. In the future, portside sampling efforts will focus on catch estimation for the herring and mackerel fisheries to comprehensively monitor these fisheries.
- B. **Monitoring Tasks:** Non-targeted fish are sorted and weighed. In some cases, a subsample of catch is weighed. Vessel trip report information is used to attribute landings by area and gear. All weighed fish are then measured for length information, and samples of fish are also taken. Refer to sample logs (Appendix 6).
- C. **Program Funding:** Funding is provided by the Atlantic Coastal Cooperative Statistics Program (ACCSP). Beginning in 2016, funding provided by ACCSP was reduced to only cover travel expenses. The state of Maine's general funds support the remainder of the program.

²⁸ NFWF 2016 Request for proposals can be found at (proposals due June 13, 2016):
<http://www.nfwf.org/fisheriesfund/Pages/2016-Electronic-Mo.aspx>

- D. **Data Utility:** Samples and length measurements are used in the herring stock assessments for catch at age information and information on life history parameters. Collected samples also determine maturation stage of fish for spawning closure considerations. Samples from portside sampling efforts are processed through the Maine Department of Marine Resources laboratory for catch sampling analysis and ageing.

6.5 Case Study #5: Elements of the Dockside Monitoring Services for the Maritimes Region's Groundfish Fishery

- A. **Objective:** To provide timely third-party verification of accurate landings information to monitor fishery effort for quota management purposes. To ensure compliance with fishery regulations.
- B. **Monitoring Tasks:** Dockside monitoring tasks for the Maritimes Region is based on Department of Fisheries and Oceans Canada National Dockside Monitoring Program Policy and Procedures, and the Maritimes Regional Annex.²⁹
- Species Verification (identify, record weight, record count);
 - Dockside monitors retain copies of fish log information, hail information, and other relevant information;
 - Monitor compliance with regulations for the fishery, including a fish hold inspection and inspection of other areas on vessel where fish is typically stored after offload is complete. Dockside monitors are required to sign harvester logs and certify that there is no additional fish in the fish hold; and
 - Certified data entry clerks enter landings information from logs of monitored and unmonitored trips, and submits the information using a landings database.
- C. **Program Funding:** There are approximately 1,000 groundfish vessels, and these vessels land fish in remote ports. There is 20% dockside monitoring for catch less than 5,000 pounds, or less than 150 pounds of halibut (there is a small total allowable catch for halibut).
- D. **Data Utility:** Enhanced regulatory compliance and protection of sustainable commercial fisheries. Dockside monitoring data is considered the primary source of landings data used to inform fisheries management.

7. PDT Discussion: Preliminary Considerations for a Groundfish Dockside Monitoring Program

The Groundfish Committee tasked the PDT with investigating the tools used to monitor the groundfish fishery, including the 2010-2011 dockside monitoring program. The DSM program was discontinued in the 2010 fishing year, due to unresolved problems with the program. If the

²⁹ Fisheries and Oceans Canada. November 2012. *Maritimes Region Dockside Monitoring Annex*.

intent is to reconsider a dockside monitoring program for the groundfish fishery in the future, the PDT recommends that the former program be modified, rather than simply reinstated as previously implemented, to achieve the goals of accurate and precise reporting of groundfish bycatch and landings. For example, such a program may require vessel operators to submit stock-specific hail requirements and fish hold inspections by the monitor. The following summarizes the PDT's preliminary discussion on the topic.

Addressing Unresolved Issues in 2010-2011 DSM Program:

1. *The details of how to do dockside monitoring in smaller, less-used ports.*

Canada's Regional DSM Program may be able to address this issue regarding coverage levels in smaller, less used ports. One region in Canada uses volume of vessel landings to classify a particular level of coverage. In this case, ports with very little fishing receive spot checks through the dockside monitoring program. Larger ports receive higher coverage

2. *How to pay for dockside monitoring.*

One of the measures in Framework 48 was disapproved due to legal constraints regarding cost sharing for monitoring in the fishery. Cost sharing responsibilities for industry-funded monitoring programs to address monitoring needs in excess of Federal mandates (i.e., distinct from Standardized Bycatch Reporting Methodology, Marine Mammal Protection Act, and Endangered Species Act requirements) are described in the Draft Environmental Assessment to the Industry-Funded Monitoring Amendment (May 2016; Refer to Appendix 1 for specific rationale regarding the disapproval).

“Department of Commerce General Counsel has advised NMFS that monitoring cost responsibilities can be allocated between industry and the government by delineating the sampling and administrative portions of the costs of monitoring. Industry would be responsible for costs directly attributable to the sampling portion of a monitoring program, and NMFS would be responsible for costs directly attributable to the administrative portion of the monitoring program...”³⁰

3. *How monitoring and reporting will align with existing efforts.*

This can be addressed by identifying a clear set of objectives for monitoring, and utility for data collected under new and existing monitoring programs.

Considerations for developing a groundfish dockside monitoring program

1. Objective(s) for dockside monitoring:

- a. If considering dockside monitoring for use in the groundfish fishery, what is its purpose?
- b. Examples:

³⁰ http://s3.amazonaws.com/nefmc.org/4e_Draft-Environmental-Assessment_May-27-2016.pdf

- Decreasing the uncertainty buffer between the Acceptable Biological Catch and Annual Catch Limit through improved accuracy and/or precision of landings data.
 - Improving enforcement of misreported landings.
 - Increasing the timeliness and accuracy of in-season quota monitoring for sectors.
 - Replacing or supplementing at-sea monitoring program.
 - Are there multiple objectives for consideration, to balance overall monitoring needs?
2. Articulate a clear sampling design to meet monitoring objectives.
 - a. Examples:
 - i. Stock-specific hail requirements.
 - ii. Inspection of fish hold, if used to monitor and improve catch accuracy.
 3. Who will pay for non-administrative dockside monitoring costs, if used in the future?
 - Industry
 - Dealer
 - Combination

Additional Considerations

- Consider whether a maximized retention program for all groundfish or a maximized retention program for all fish is appropriate:
 - Would samplers be able to record information on fish not harvested for regulatory reasons (i.e., sub-legal, no quota to land fish, etc.)?
- Consider existing information collection programs, to identify redundancy in data collections and improved efficiency of monitoring programs under consideration.
- Catch and discard weights by species, gear type, mesh size, fishing location, etc. Landings accuracy is not the only objective that can be satisfied by dockside monitors for the groundfish fishery. Monitoring of ACE usage is a broader objective identified in Amendment 16. An expanded dockside monitoring program could provide additional information to inform management. It may be worth exploring additional data collections that dockside monitors may be able to successfully collect, if there is interest in dockside monitoring for the fishery. More importantly, the utility of the data should be clearly articulated by both the NEFMC and NMFS prior to implementation, to ensure that the suite of monitoring options meet the FMP-specific goals.

The PDT is working to address the Committee's question regarding the potential impact of the previous DSM program on the accuracy and/or precision of landings data. The PDT raised

concerns that quantifying this relationship, if it exists, is difficult and a qualitative discussion might be completed by the PDT in the absence of sufficient data to examine the issue.

DRAFT

Appendix 1

Text from Greater Atlantic Region disapprovals regarding industry-funded monitoring

Excerpt from the Final Rule for Framework Adjustment 48 to the Northeast Multispecies FMP (78 FR 26118; May 3, 2013)

2. At-Sea Monitoring Cost-Sharing

To serve as a more long-term solution to the cost burden of at-sea monitoring to sectors, Framework 48 proposed a mechanism for sharing of at-sea monitoring costs between sectors and NMFS. Framework 48 proposed that the industry would only ever be responsible for paying the direct costs of at-sea monitoring, specifically the daily salary of the at-sea monitor. All other programmatic costs would be the responsibility of NMFS, including, but not limited to: Briefing, debriefing, training and certification costs (salary and non-salary); sampling design development; data storage, management and security; data quality assurance and control; administrative costs; maintenance of monitoring equipment; at-sea monitor recruitment, benefits, insurance and taxes; logistical costs associated with deployment; and at-sea monitor travel and lodging. This measure was intended to reduce the cost burden of at-sea monitoring to sectors and thereby increase their profitability.

NMFS has disapproved this cost-sharing measure because it is not consistent with other applicable laws as developed. Specifically, the Anti-Deficiency Act and other appropriations law prohibits Federal agencies from obligating the Federal government except through appropriations and from sharing the payment of government obligations with private entities. 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. As written, this measure would also have required NMFS and sectors to share payment of obligations defined as belonging to one or the other. For example, Framework 48 proposed to require NMFS to pay some costs related to at-sea activities, such as benefits and insurance for at-sea monitors, while sectors would pay other portions of at-sea costs, like the salary for at-sea monitors. Because such action would be prohibited under the law, NMFS has disapproved this measure in Framework 48.

Although this measure was not approvable as developed, NMFS shares the Council and industry's concern about the ability of sectors to bear the full costs of monitoring in future fishing years. NMFS believes this approach to cost sharing, which defines the items that NMFS versus sectors should be responsible for, could be viable if restructured and may be worth pursuing in a future action. NMFS is already working with the New England and Mid-Atlantic Councils' joint Herring/Mackerel Plan Development Team (PDT)/Fishery Management Action Team (FMAT) to pursue cost-sharing options such as this one for those fisheries for FY 2014. The Council could consider including the NE Multispecies FMP in this joint effort to develop a workable and consistent cost-sharing mechanism for the Northeast region.

Excerpt from the Final Rule for Amendment 5 to the Atlantic Herring FMP

1. Increased Observer Coverage Requirements

As described previously, the NEFSC determines observer coverage levels in the herring fishery based on the SBRM. Observer coverage in the herring fishery is currently fully funded by NMFS. Amendment 5 proposed increasing observer coverage in the herring fishery by requiring 100-percent observer coverage on Category A and B vessels. Many stakeholders believe this measure is necessary to accurately determine the extent of bycatch and incidental catch in the herring fishery. The Council recommended this measure to gather more information on the herring fishery so that it may better evaluate and, if necessary, implement additional measures to address issues involving catch and discards. The 100-percent observer requirement is coupled with a target maximum industry contribution of \$325 per day. There are two types of costs associated with observer coverage: (1) Observer monitoring costs, such as observer salary and travel costs, and (2) NMFS support and infrastructure costs, such as observer training and data processing. The monitoring costs associated with an observer in the herring fishery are higher than \$325 per day. Cost-sharing of monitoring costs between NMFS and the industry would violate the Anti-Deficiency Act. Therefore, there is no current legal mechanism to allow cost-sharing of monitoring costs between NMFS and the industry.

Throughout the development of Amendment 5, NMFS advised the Council that Amendment 5 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Some commenters claim that the \$325 per day industry contribution was not a limit, but a target, and that the Council intended the industry to pay whatever was necessary to ensure 100-percent observer coverage. NMFS disagrees, and does not believe the amendment specifies that the industry would pay all the monitoring costs associated with 100-percent observer coverage, nor does it analyze the economic impacts of the industry paying all the monitoring costs. The FEIS for Amendment 5 analyzed alternatives with the industry paying \$325 per day or \$1,200 per day (estimated sum of observer monitoring costs and NMFS support and infrastructure costs), but it did not analyze a range of alternatives that would approximate total monitoring costs. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring NMFS to pay for 100-percent observer coverage would amount to an unfunded mandate. Because Amendment 5 did not identify a funding source to cover the costs of increased observer coverage, the measure is not sufficiently developed to approve at this time. Therefore, NMFS had to disapprove the 100-percent observer coverage requirement. With the disapproval of this measure, this action maintains the existing SBRM observer coverage levels and Federal observer funding for the herring fishery.

Recognizing funding challenges, Amendment 5 specified status quo observer coverage levels and funding for up to 1 year following the implementation of Amendment 5, with the 100-percent observer coverage and partial industry funding requirement to become effective 1 year after the implementation of Amendment 5. During that year, the Council and NMFS, in cooperation with the industry, were to attempt to develop a way to fund 100-percent observer coverage.

During 2013, a working group was formed to identify a workable, legal mechanism to allow for industry-funded observer coverage in the herring fishery; the group includes staff from the New England and

Mid-Atlantic Councils and NMFS. To further explore the legal issues surrounding industry-funded observer coverage, NMFS formed a working group of Northeast Regional Office, NEFSC, General Counsel, and Headquarters staff. The NMFS working group identified an administrative mechanism to allow for industry funding of observer monitoring costs in Northeast Region fisheries, as well as a potential way to help offset funding costs that would be borne by the industry, subject to available funding. This administrative mechanism would be an option to fund observer coverage targets that are higher than SBRM coverage levels. The mechanism to allow for industry-funded observer coverage is a potential tool for all Northeast Region FMPs, but it would need to be added to each FMP through an omnibus amendment to make it an available tool, should the Council want to use it. Additionally, this omnibus amendment could establish the observer coverage targets for Category A and B herring vessels.

In a September 20, 2013, letter to the Council, NMFS offered to be the technical lead on an omnibus amendment to establish the administrative mechanism to allow for industry-funded observer coverage in New England and Mid-Atlantic FMPs. At its September 2013 meeting, the Council considered NMFS's offer and encouraged NMFS to begin development of the omnibus amendment. At this time, NMFS expects to present a preliminary range of alternatives for the omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

Additionally, other Amendment 5 measures implemented in this action help improve monitoring in the herring fishery. These measures include the requirement for vessels to contact NMFS at least 48 hr in advance of a fishing trip to facilitate the placement of observers, observer sample station and reasonable assistance requirements to improve an observer's ability collect quality data in a safe and efficient manner, and the slippage prohibition and the sampling requirements for midwater trawl vessels fishing in groundfish closed areas to minimize the discarding of unsampled catch.

The same measure that would have required 100-percent observer coverage, coupled with a \$325 contribution by the industry, would have also required that: (1) The 100-percent coverage requirement be re-evaluated by the Council 2 years after implementation; (2) the 100-percent coverage requirement be waived if no observers were available, but not waived for trips that enter the River Herring Monitoring/Avoidance Areas; (3) observer service provider requirements for the Atlantic sea scallop fishery apply to observer service providers for the herring fishery; and (4) states be authorized as observer service providers. NMFS believes these additional measures are inseparable from the 100-percent observer coverage requirement; therefore, NMFS had to disapprove these measures too. With the disapproval of these measures, the existing waiver and observer service provider requirements remain in effect.

Excerpt from Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish FMP (79 FR 10029; February 24, 2014)

1. Increased Observer Coverage Requirements

Currently, the NMFS Northeast Fisheries Science Center (NEFSC) determines observer coverage levels in the mackerel fishery based on the standardized bycatch reporting methodology (SBRM) and after consultations with the Council. Observer coverage in the mackerel fishery is currently fully funded by

NMFS. In Amendment 14, the Council recommended increases in the observer coverage in the mackerel fishery, specifically 100-percent observer coverage on all limited access mackerel vessels using midwater trawl (i.e., Tiers 1, 2 and 3) and Tier 1 mackerel vessels using small-mesh bottom trawl, 50-percent coverage on Tier 2 mackerel vessels using small-mesh bottom trawl, and 25-percent on Tier 3 mackerel vessels using small-mesh bottom trawl. Many stakeholders believe this measure is necessary to accurately determine the extent of bycatch and incidental catch in the mackerel fishery. The Council recommended this measure to gather more information on the mackerel fishery so that it may better evaluate and, if necessary, implement additional measures to address catch and discards of river herring and shad. The increased observer coverage level recommendations were coupled with a target maximum industry contribution of \$325 per day. There are two types of costs associated with observer coverage: Observer monitoring costs, such as observer salary and travel costs; and NMFS support and infrastructure costs, such as observer training, data processing, and infrastructure. The monitoring costs associated with an observer in the mackerel fishery are higher than \$325 per day. Upon legal analysis of this measure, the cost-sharing of monitoring costs between NMFS and the industry would violate the Anti-Deficiency Act. Therefore, based on this analysis, there is no current legal mechanism to allow cost-sharing of monitoring costs between NMFS and the industry.

Throughout the development of Amendment 14, NMFS advised the Council that Amendment 14 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Some commenters asserted that the \$325 per day industry contribution was not a limit, but a target, and that the Council intended the industry to pay whatever is necessary to ensure 100-percent observer coverage. NMFS disagrees, and does not believe the amendment specifies that the industry would pay all the monitoring costs associated with 100-percent observer coverage, nor does the amendment analyze the economic impacts of the industry paying all the monitoring costs. The FEIS for Amendment 14 analyzes the industry paying \$325 per day, and the DEIS analyzes the cost of vessels paying \$800 per day (estimated sum of observer monitoring costs), but it does not analyze a range of that would approximate total monitoring costs. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the mackerel fishery. Requiring NMFS to pay for 100-percent observer coverage would amount to an unfunded mandate. Because Amendment 14 does not identify a funding source to cover the costs of increased observer coverage, the measure is not sufficiently developed to approve at this time. Therefore, NMFS had to disapprove the 100-percent observer coverage requirement. With the disapproval of this measure, this action maintains the existing observer coverage levels and full Federal funding for observer coverage the mackerel fishery.

In 2013, a working group was formed to identify a workable, legal mechanism to allow for industry-funded observer coverage in the herring fishery, including staff from the New England and Mid-Atlantic Councils and NMFS. To further explore the legal issues surrounding industry-funded observer coverage, NMFS formed a working group of Greater Atlantic Regional Fisheries Office, NEFSC, General Counsel, and Headquarters staff. The NMFS working group is currently exploring possibilities.

In the November 7, 2013, partial approval letter to the Council, NMFS offered to be the technical lead on an omnibus amendment to establish an administrative mechanism to allow for industry-funded

observer coverage in New England and Mid-Atlantic FMPs. At its October 2013 meeting, the Council considered NMFS's offer and encouraged NMFS to begin development of the omnibus amendment. NMFS expects to present a preliminary range of alternatives for the omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

Additionally, other measures implemented in this action help improve monitoring in the mackerel fishery. These measures include the requirement for vessels to contact NMFS at least 48 hr in advance of a fishing trip to facilitate the placement of observers, observer sample station and reasonable assistance requirements to improve an observer's ability collect quality data in a safe and efficient manner, and the slippage prohibition and the sampling requirements for midwater trawl vessels fishing in groundfish closed areas to minimize the discarding of unsampled catch.

The same measure that would have required increased observer coverage, coupled with a \$325 contribution by the industry, would have also required that: (1) The Council would re-evaluate the increased observer coverage level 2 yr after implementation; and (2) observer service provider requirements for the Atlantic sea scallop fishery would apply to observer service providers for the mackerel fishery. NMFS believes these additional measures are inseparable from the 100-percent observer coverage requirement; therefore, NMFS also disapproved these measures. With the disapproval of these measures, this action maintains the existing SBRM-based observer coverage provisions for the mackerel fishery.

Appendix 2

Public Comments on Amendment 16

Groundfish Dockside Monitoring

Program

1. Comment: “The Northeast Coastal Communities Sector also noted that NMFS needs to ensure that the dockside monitoring costs for all sectors are fully covered for FY 2010 and that no individual sector be allowed to carry a balance of funds into 2011 if another sector has insufficient funds to cover their dockside monitoring.”
 - Response: “Amendment 16 anticipated a number of costs associated with sectors, including costs to join a sector and pay for a sector manager, and costs associated with monitoring and reporting provisions. Amendment 16 includes estimates of the costs associated with sector measures. The Council believed that these provisions are necessary to administer and effectively monitor sector operations, and that the benefits of transitioning from the current effort control system to a quota management system under sectors outweigh the costs associated with sector provisions. Under Amendment 16, the Council specified that the fishing industry would pay for the costs associated with sector provisions, and did not provide for alternative funding sources. While many of the administrative and monitoring costs associated with sector operations during FY 2010 will be paid by NMFS through Congressional appropriations dedicated to supporting Sector development, it is unclear whether such funding will remain available to support sector operations in future FYs. Additional funding has been made available from individual states, as well as from several environmental groups, to support individual sector development. If such funding from one or more of these sources is no longer available, the fishing industry will be responsible for paying these costs. Some management measures considered in Amendment 16 were not selected in part because of concerns over the costs and burdens of administering the program. The costs associated with 100- percent at-sea and dockside monitoring coverage were deemed to outweigh the benefits expected from such measures. Therefore, this action minimized costs to the extent practicable, consistent with National Standard 7. As discussed in the response to Comment 41, each individual vessel owner must choose which management regime would provide the most benefits based upon his/her intended operations. Further, if costs to join an already existing sector are considered too high, vessels may form their own sector with similarly situated vessels. The NMFS funding available to help offset costs associated with dockside monitoring during FY 2010 have been awarded by grant to a third party, GMRI, who is working directly with sector representatives to ensure the funds are distributed equitably to each sector relative to their particular monitor needs. Variables affecting dockside monitoring costs include the volume of catch, the number of trips, the need to provide service to remote ports, the need for roving monitors, or any combination of the above. However, these costs are difficult to estimate without full knowledge of how fishing operations will be executed during

FY 2010. The amount of the total grant to be distributed to sectors exceeds the current estimated total cost of dockside monitoring for all of the sectors. If necessary, funds can be shifted to optimize their effectiveness. However, should dockside monitoring costs exceed the amount of the grant, the sectors will be responsible for paying the additional costs, consistent with Amendment 16.”

2. **Comment:** “The Northeast Coastal Communities Sector stated that NMFS should establish a minimum threshold requirement for dockside monitoring to ensure that vessels that land low amounts of fish for each trip are not subject to unnecessarily high dockside monitoring costs, particularly for small ports in eastern Maine where the low availability of regulated species does not result high volumes of fish being landed for each trip.”

- **Response:** “As noted above in the response to Comment 46, the costs associated with dockside monitoring are affected by several variables, including the amount of fish landed, or the amount of time the dockside monitor is required to observe landings. If dockside monitoring costs are based primarily upon these factors, it is possible that the costs will be lower for smaller volumes of fish landed by vessels operating in eastern Maine than for other vessels landing higher volumes of fish. However, Amendment 16 did not propose a minimum threshold of landings that would exempt a trip from the requirements to use a dockside monitor. Instead, Amendment 16 specified that dockside monitoring coverage will be randomly assigned to 50 percent of sector trips. Because Amendment 16 did not include a specific exemption from the dockside monitoring provisions for small volumes of fish landed, NMFS has not revised the dockside monitoring provi by this final rule.”

3. **Comment:** “EDF, PEW, CLF, NAMA, and the CCCHFA indicated that additional observer coverage is necessary to effectively implement sector provisions and increase the accuracy of discard estimates in the fishery. PEW and CLF suggested that at- sea monitoring coverage should be increased to 100 percent, even if that means reducing dockside monitoring coverage. NAMA suggested that such increased coverage should be applied to at least FYs 2010 and 2011 to establish a baseline of sector operations. EDF recommended that if at-sea monitoring cannot be increased to 100 percent without delaying Amendment 16, NMFS should implement more restrictive enforcement measures that require individual vessels to pay for 100 percent observer coverage for the rest of the FY if reported discards are significantly higher or lower compared to observed trips, with positive incentives for sectors that “outperform the fleet average” for reporting quality. Two commercial fishermen, PEW, CLF, and CCCHFA also recommended that NMFS implement 100-percent dockside monitoring coverage. Oceana further claimed that Amendment 16 does not specify the precise level of observer coverage in the FMP, as alleged in a lawsuit brought against NMFS based on the approval of Amendment 13 to the FMP.”

- **Response:** “When the Council adopted Amendment 16, the Council neither selected the option to require 100- percent observer coverage, nor required sectors or the common pool to be subject to an at-sea monitoring program in FY 2010. However,

NMFS agrees with the basic concept advocated by the commenters that higher levels of observer coverage are more effective at collecting the data necessary to monitor groundfish landings and discards under Amendment 16 and reducing the potential of an observer effect that could potentially compromise data collected with less than 100-percent coverage. As stated earlier in the preamble of this final rule, NMFS has funding to provide approximately 38-percent at-sea monitoring coverage for sector vessels, and about 30-percent at-sea monitoring coverage for common pool vessels, in addition to fully funding 50-percent dockside monitoring coverage for FY 2010. Such coverage levels should provide sufficient information to more than meet the minimum requirements of the SBRM, while providing the additional coverage suggested by commenters to monitor sector operations under Amendment 16. Distribution of such funds was intended to accomplish the dual goals of monitoring both at-sea catch and dockside landings to ensure that discards are accurately estimated and landings data are validated. Shifting resources to emphasize one over the other would not be consistent with the objectives of Amendment 16. Additional coverage would provide more data on groundfish catch, but even if available funds were shifted to emphasize at-sea monitoring over dockside monitoring, there may not be sufficient funding to provide 100-percent observer coverage across the entire fishery. Further, there is no guarantee that such funding will be available for future years. Requiring 100-percent coverage would, therefore, cause the fishing industry to bear such costs, absent additional funding for NMFS to pay for such coverage. Individual sectors may establish at-sea monitoring programs through their yearly operations plans that provide for additional observer coverage beyond that provided by NMFS. However, no sector has proposed such additional coverage for FY 2010. Although EDF recommended implementing additional enforcement measures that would increase at-sea monitoring coverage based upon the accuracy of a sector's discard estimates compared to the fleet average, there were insufficient details provided to determine how to implement such a mechanism. Moreover, there is no enforcement authority that would allow the kind of real-time increase of observer coverage suggested by EDF. Further, it is unclear from the description whether it would even be possible for a sector to avoid triggering 100-percent at-sea monitoring coverage, as additional coverage would be required if the sector's reports were either statistically higher or lower than the fleet average. This approach could undermine incentives to accurately report discards and would, instead, create incentives to report discards that reflect the industry average. Because the Council did not include such a mechanism to increase at-sea monitoring coverage in Amendment 16, NMFS does not have the latitude to implement such a provision through this final rule. Finally, the Court's findings in the Amendment 13 lawsuit required that FMPs establish SBRM's, but did not mandate specified levels of observer coverage. Because Amendment 16 is in compliance with the omnibus amendment that implemented SBRMs for all FMPs

managed in the NE in January 2008, Amendment 16 is not at odds with the Court's findings in the lawsuit referred to by the commenters."

4. **Comment:** "Two commercial fishermen, PEW, CLF, and CCCHFA recommended that NMFS utilize electronic monitoring to reduce costs, including deploying electronic monitoring in other fisheries to record NE multispecies bycatch. The APO commented that the standards for approving electronic monitoring technology are not clear and that the public should be involved with any decision to approve such technology."
 - **Response:** "NMFS has not yet determined whether electronic monitoring technology is sufficiently developed to be applied in the NE multispecies fishery. Criteria to evaluate such technology are currently being refined by NMFS based upon existing research and pilot programs. Any electronic monitoring technology to be applied in the NE multispecies fishery will be subject to rulemaking consistent with the Administrative Procedure Act."
5. **Comment:** "Three commercial fishermen, the AFM, and the Sustainable Harvest Sector recommend that dockside monitors should not be required for trips in which either an atsea monitor or fishery observer is deployed. They suggested that such a practice is redundant and a waste of resources."
 - **Response:** "NMFS disagrees. The roles for dockside monitors and at-sea monitors are different; dockside monitors are intended to verify the landings of a vessel and certify that landings weights on the dealer report are accurate, while at-sea monitors are responsible for verifying area fished, catch, and discards by species and gear type. Furthermore, the responsibilities of a fishery observer differ from those of an at-sea monitor, in that observers are also required to collect biological samples and more comprehensive data on the interactions with protected species and marine mammals. Moreover, because both at-sea monitors and observers do not have the capacity to operate 24 hr per day, and are often required to sub-sample portions of the catch, data from at-sea monitors or observers do not represent a complete accounting of every pound of fish that is retained by a vessel, unlike dealer reports, and cannot be used to validate dealer reports. Finally, the Council did not differentiate in Amendment 16 between trips monitored by an at-sea monitor or observer for the purposes of defining dockside monitoring coverage levels. Therefore, because the purposes of dockside monitors and at-sea monitors and observers are different, the associated data for each entity are not directly comparable, and because the Council did not consider the exemption requested by the commenters, NMFS is not implementing such an exemption through this final rule."

Appendix 3

Public Comments on Framework 45's Proposed Rule

- Changes to the Sector Dockside Monitoring Program

1. **Comment:** “The NSC questioned the utility of dockside/roving monitoring requirements, suggesting that FW 45 should eliminate such requirements completely. The NSC believes the current requirements to be highly inefficient, representing an unsustainable and unjustified cost to the fishing industry. Further, they suggested that NMFS should allow sectors to use dockside monitoring data as a proxy for dealer data in the weekly sector catch reports submitted to NMFS to increase the utility of the dockside/roving monitoring program. Finally, NSC indicated that roving monitors should not have to observe offloads to a truck and also to a dealer, asserting that roving monitors should only be required to observe offloads from the vessel to a truck, to increase the efficiency and reduce costs associated with these provisions.”
 - **Response:** “The Council considered completely eliminating dockside/roving monitoring requirements during the development of FW 45. However, due to lingering concerns over the ability to enforce existing provisions to monitor sector ACE and minimize incentives to misreport catch, the Council retained dockside/roving monitoring requirements in FW 45. NMFS may only approve or disapprove measures proposed in FW 45, and may not change or substitute any measure in a substantive way. Therefore, NMFS cannot eliminate dockside/roving monitoring requirements through this final rule. During the development of Amendment 16, it was anticipated that sectors would rely upon dockside/ roving monitor data to document sector landings immediately following a vessel’s offload until the official dealer reports become available approximately a week later. This practice has been discussed with sector managers through several sector workshops held during 2009 and 2010. NMFS recognizes that dockside/roving monitoring data cannot currently be reported as part of the weekly sector catch reports submitted to NMFS based upon existing guidance and database structures. To date, many dockside/roving monitoring data are not systematically collected in a format that can be easily transferred to a catch monitoring database. Instead, they are often merely scanned images of a dockside/roving monitor report. NMFS has the regulatory authority to accept dockside/roving monitoring data in the future and may reconsider the acceptance of dockside/roving monitoring data if such data become available in an acceptable electronic format. Further, dealer landings, as documented through official dealer reports, have been the standard by which landings are monitored for many years, and were used as the basis for the calculation of potential sector contributions and, therefore, sector ACE. Accordingly, even if dockside/ roving monitor data could be considered as a proxy for dealer landings in weekly sector catch report, dealer landings data would continue to be the official record of species landed by each federally permitted vessel. The Council required sectors to develop

and implement an independent third-party weighmaster system satisfactory to NMFS for monitoring landings and utilization of ACE. The original intent of dockside/roving monitoring coverage was to verify landings of a vessel at the time it is weighed by a dealer to certify the landing weights are accurate as reported on the official dealer report for compliance purposes. Therefore, NMFS implemented regulations under Amendment 16 that require that a roving monitor must observe the offloads from a vessel to a truck and again from the truck to a dealer, unless the vessel offloads directly to a dealer. These regulations were based upon a pilot program and existing dockside/ roving monitoring programs developed in other regions and in Canada. During sector implementation workshops conducted in 2009 and 2010, and ongoing communications with sector managers, NMFS indicated that it would allow a roving monitor to only observe offloads from a vessel to a truck, provided a representative from the dealer ultimately receiving the fish was present at the time of the offload, and that all fish were weighed at the time of the offload. This ensures that the weight of fish offloaded corresponds to the weight of the fish recorded in the official dealer report, consistent with the intent of Amendment 16. Thus, existing regulations and protocols already allow for the behavior requested by the NSC in their comment.”

2. Comment: “The NEHFA, PERC, PEW, and one commercial fisherman supported exempting vessels issued a limited access NE multispecies Handgear A or a Small Vessel Exemption permit or an open access NE multispecies Handgear B permit that is fishing in the common pool from the existing dockside/roving monitoring requirements. They stated that dockside/roving monitoring costs may be more than the value of fish landed on a particular trip and would make the operation of such permits economically unviable. The NEHFA also noted that many handgear vessels are launched and retrieved at public boat ramps, thereby creating logistical difficulties for waiting for the dockside/roving monitor to arrive because a boat may be forced to move off of the dock to accommodate the launching of other boats. This group also contended that the current system of monitoring landings is sufficient for these vessels due to the small amount of fish landed on each trip. Finally, PERC suggested that handgear vessels fishing in sectors should also be exempted from the dockside/roving monitoring requirements.”
 - Response: “NMFS agrees that the costs associated with the existing dockside/ roving monitoring requirements could make fishing with a Handgear A, Handgear B, or Small Vessel Exemption permit uneconomical for the reasons noted above and specified in FW 45. Therefore, NMFS implements the proposed exemption from the common pool dockside/roving monitoring requirements for these permit categories through this final rule. Because the Council did not adopt a provision that would have exempted sector vessels fishing with a handgear permit from the dockside/roving

monitoring requirements as part of FW 45, NMFS cannot implement such a provision through this action.”

3. Comment: “Three commercial fishermen and two commercial fishing industry groups (AFM and NSC) opposed the proposal to require dockside/roving monitors to inspect the fish holds of vessels offloading groundfish. AIS, Inc., a dockside/roving monitoring service provider, also expressed concerns that the proposed requirement for dockside monitors to inspect fish holds presents safety issues. All commenters highlighted the risk of serious injury from having dockside/ roving monitors board vessels, climb down ladders into the fish holds, and inspect the holds or other compartments for fish that have not been offloaded. AIS noted that there are no standards in FW 45 that address potentially dangerous conditions in inspecting holds, or requirements for vessels to provide a standardized safe boarding system. AIS also stated that there is no guidance as to how to inspect fish holds, including whether dockside monitors must inspect piles of ice or look for fish in other compartments, giving the impression that dockside/ roving monitors may be acting as enforcement personnel instead of data collectors. Several commenters suggested that this potential risk will force vessel owners to buy more insurance to ensure that they are adequately covered for any potential liability lawsuits that might result from this provision. In doing so, they contested that this would contradict the FW 45 economic analysis that indicates that this measure should not impact either vessel owners or service providers. They noted that, even if the dockside/roving monitoring service providers had sufficient insurance coverage, vessel owners might still be sued and face financial liability from the injury claims of individual dockside/ roving monitors. Further, they claimed that the proposed rule does not provide any rationale that enhanced enforceability is needed, or that underreporting is occurring. They contested that the existing provisions that require dockside/roving monitors to ask vessel operators if all fish have been offloaded, and classify providing false statements to dockside/roving monitors as a violation, should be sufficient to enforce this provision. They recommended that NMFS Office of Law Enforcement should inspect fish holds, instead of dockside/roving monitors.”
- Response: “As noted throughout the development of Amendment 16 and FW 45 by both fishing industry representatives and NMFS, the transition to expanded sector management and ACLs increases incentives to misreport or under report catch and landings. Dockside/roving monitoring programs established in other regions of the United States and Canada that are managed by harvest quotas are considering, or have required, dockside/roving monitors to inspect fish holds to ensure that all fish are offloaded. The potential for dockside/roving monitors to inspect fish holds was explicitly discussed throughout the development of Amendment 16 as part of both the Council process and parallel meetings to discuss the development of sector measures sponsored by the Gulf of Maine Research Institute. Section 4.2.3.5.4 of the Amendment 16 FEIS documents this discussion and clearly indicates that to be approved as a dockside/roving monitor, a dockside/ roving monitor must meet several

criteria, including: ‘Physical capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as a dockside/roving monitor. The physician must understand the monitor’s job and working conditions, including the possibility that a monitor may be required to climb a ladder to inspect fish holds.’

Therefore, the general public, including both vessel owners and dockside/roving monitoring service providers, were well aware of the potential that dockside/ roving monitors might be required to inspect fish holds and the risks that such activity might incur. However, no comments opposing this practice were raised to NMFS during the public comment period on the Amendment 16 proposed rule. The final rule implementing Amendment 16 measures did not require dockside/roving monitors to inspect the fish holds based, in part, on a pilot dockside/roving monitoring program conducted in the summer of 2009. Similar to comments received on this action, some safety concerns were identified with inspecting fish holds during the pilot program, even though fish holds were actually inspected as part of that pilot program. As a result, in the Amendment 16 proposed (74 FR 69382; December 31, 2009) and final rules, NMFS intentionally included language in the dockside/roving monitoring program operational standards at § 648.87(b)(5)(ii)(B)(1) that allow individual dockside/roving monitors or service providers to inspect fish holds if they elect to do so. Section 311 of the Magnuson-Stevens Act provides the Secretary of Commerce with the general authority to enforce the provisions of the Magnuson-Stevens Act. NMFS acknowledges that existing dockside/roving monitoring provisions make it a violation for a vessel operator to provide false statements to a dockside/roving monitor about whether all catch is offloaded. However, that is just one of many ways to ensure compliance with existing regulations. NMFS does not agree that such measures are completely sufficient to ensure that all catch is offloaded. The only way to validate statements made by a vessel operator is to actually inspect fish holds. NMFS Office of Law Enforcement personnel already have the authority to board and inspect vessels. However, requiring dockside/roving monitors to also inspect fish holds, as anticipated during the development of Amendment 16, provides another means to ensure that vessel operators are complying with existing requirements, and that all fish that are landed are recorded in dealer databases or other data sources such as dockside/roving monitor reports. Dockside/roving monitors are not enforcement personnel, but their observations, including the reports summarizing the offloads of individual trips, are available to law enforcement personnel, as described in Section 4.2.3.5.4 of the Amendment 16 FEIS and the existing regulations at § 648.87(b)(4). The training provided to dockside/roving monitors by NMFS explicitly states that it is the dockside/ roving monitor’s responsibility to account for all catch, whether or not it is properly weighed or recorded by other parties. Monitors must record any species that is not weighed in their incident report to facilitate compliance with existing

requirements. Therefore, based on the need to ensure that NMFS is accurately monitoring the amount of fish landed, NMFS has retained the requirement that dockside/roving monitors must inspect fish holds as part of this final rule. NMFS recognizes that dockside/ roving monitors must proceed with caution when conducting inspections of fish holds. As part of the dockside/ roving monitoring training curriculum and certification process overseen by NMFS, individual dockside/roving monitors are trained and tested for competency in safety procedures, including slips, trips, and falls; electrical safety; climbing stairs and ladders; overhead dangers; unstable items; and fire. In addition, NMFS will likely require all previously certified dockside/roving monitors to attend a refresher safety training session on issues specific to boarding vessels and inspecting fish holds. Based on examples in other U.S. and Canadian fisheries, NMFS is currently developing standardized protocols that outline the major elements that dockside/roving monitors must comply with when inspecting fish holds. These elements include, but are not limited to, requesting permission from the vessel captain to board a vessel, following the instructions of the vessel's captain and crew to safely enter and exit the fish holds, and inspecting only areas of the vessel that would normally be used to store fish. Such standards will be integrated into the dockside/roving monitoring training curriculum developed and conducted by the Northeast Fishery Observer Program. The dockside/roving monitor service provider approval standards adopted in Amendment 16 explicitly included the requirement for service providers to have adequate insurance to cover injury, liability, or accidental death that might befall dockside/roving monitors. NMFS recognizes that despite such coverage, individual dockside/roving monitors still have the capacity to bring a lawsuit against vessel owners for any injuries incurred while inspecting fish holds. NMFS encourages sectors and dockside/ roving monitor service providers to seek agreement on how to best address the issues and problems raised by the comment. As to whether FW 45 sufficiently considers possible increases in cost for liability insurance for inspecting fish holds, NMFS does not have sufficient information to do so. While NMFS has information on the amount and type of insurance dockside/ roving monitoring service providers have purchased, it would be difficult for NMFS to speculate on the costs of additional insurance for individual vessels. However, NMFS is committed to reviewing the requirement to inspect fish holds and the costs associated with it over time as more information becomes available.”

4. Comment: “Two industry groups (AFM and NSC) supported the proposal to delay the industry’s responsibility for dockside and at-sea monitoring costs until FY 2013. They stated that this accurately reflects the fishing industry’s inability to pay for the high costs of such monitoring at this time. However, the NSC cautioned that the economic viability of the fishing industry is not likely to improve sufficiently to enable sectors to cover such monitoring costs in FY 2013. Accordingly, they recommended that the Council and NMFS

should consider further postponing industry responsibility for such costs until the fishing industry is profitable again. In contrast, PEW suggested that sectors should be in a better position to assume monitoring costs in FY 2013. PEW offered that the proposed delay would help ensure the success of the established sector program, arguing that the long-term benefits of fishing under sectors outweigh any potential impacts associated with reduced dockside monitoring in the short term. Oceana opposed delaying industry responsibility for dockside and at-sea monitoring costs, claiming that NMFS does not have the authority to modify sector monitoring provisions in a FW action because such a measure would be a fundamental change in the FMP and that implementing this delay through a FW action would circumvent the public process. Citing a recent court case (*Oceana, Inc. v. Evans*, 384 F. Supp. 2d 203, 255 (D.D.C. 2005)), they contended that such measures can only be modified through an amendment, with an associated NEPA document. They also suggested that the proposed delay would undermine the Magnuson Stevens Act requirements to monitor bycatch and implement measures to ensure accountability for ACLs, especially considering the concerns expressed by NMFS in a November 15, 2010, letter to the Council highlighting concerns about the potential limitation of NMFS funding in 2012 to support dockside and at-sea monitoring. FWW echoed this concern, noting that this might cause a “gap in the necessary enforcement required due to increased incentives for high-grading, misreporting, and underreporting.” They recommended that delaying or removing monitoring costs should be based on vessel size/capacity, or an individual business’s revenue.”

- Response: “NMFS recognizes that the costs of requiring the fishing industry to pay for sufficient at-sea monitoring coverage could reduce profitability. However, a FMP must continue to maintain measures that prevent overfishing and promote the long-term health and stability of the fishery, as required by section 303(a) of the Magnuson-Stevens Act. As noted above, NMFS is concerned that relying exclusively on available NMFS funding for at-sea monitoring coverage during FY 2012 may reduce the amount of at-sea monitoring coverage available during that FY due to the yet uncertain amount of available NMFS funding for FY 2012. NMFS agrees that delaying industry responsibility for paying for at sea monitoring coverage may reduce the amount of at-sea monitoring coverage during FY 2012 and undermine efforts to obtain accurate information regarding catch in the fishery. Therefore, NMFS has disapproved the proposed measure to delay industry responsibility for the costs at-sea monitoring coverage during FY 2012. NMFS expects at least some funding that will offset at least some of the at-sea monitoring coverage costs during FY 2012. Accordingly, the fishing industry would only be responsible for the costs of at-sea monitoring coverage that is not accounted for by available Federal funding. As noted in the FW 45 EA, delaying industry responsibility for funding dockside/roving monitoring coverage in FYs 2011 and 2012 will immediately reduce operational costs to industry, without reducing the availability of landings information. This is because the dockside/roving monitoring data are primarily used for enforcement purposes, not

catch monitoring. The trip-end hail report, in conjunction with the requirement for dockside/roving monitors to inspect fish holds implemented by this final rule, is intended to provide sufficient information to ensure compliance with existing regulations. Moreover, NMFS is expected to have sufficient funding in FY 2011 to continue the levels of observer and at-sea monitoring coverage for both sector and common pool trips implemented in FY 2010, and to augment that with sufficient dockside/ roving monitoring coverage for trips not monitored by observers or at-sea monitors. Even if insufficient funding available to NMFS results in a shortterm reduction in dockside/roving monitoring data, NMFS agrees that such reductions in data would likely be offset by long-term benefits of fishing under sectors. Therefore, NMFS is approving the delay in industry responsibility for dockside/roving monitoring costs through this final rule. Further changes could be considered by the Council through a future management action, but because NMFS does not have the authority to revise measures adopted by the Council in FW 45, NMFS cannot unilaterally postpone industry responsibility for such costs beyond FY 2012 through this action. NMFS disagrees that the proposed postponement of industry responsibility for dockside/roving and at-sea monitoring costs represents a fundamental revision of the FMP and would circumvent the public process. First, the fundamental dockside/roving and at-sea monitoring provisions implemented by Amendment 16 are retained. The only aspect of these provisions that changes through FW 45 is the entity paying for the costs of such monitoring. Although NMFS will pay for at least some of the costs of dockside/ roving and at-sea monitoring coverage for FYs 2011 and 2012, and will endeavor to achieve the coverage requirements specified in Amendment 16 for industry-funded dockside/roving and at-sea monitoring coverage, these changes do not constitute a fundamental change to the FMP requiring an amendment to the FMP. Second, the Council fully anticipated that measures adopted under Amendment 16 could be revised in the future through a FW action. This is documented in the Amendment 16 FEIS's executive summary when it states, "The periodic adjustment process is modified so that all measures adopted can be adjusted on a framework action" (see page 10 of that document) and in Section 4.2.8. This was codified in the regulations at § 648.90(a)(2)(iii) and (c)(1)(i). Both the Amendment 16 FEIS and the proposed regulations to implement Amendment 16 measures were made available for extensive public comment. Therefore, because the fundamental aspects of the Amendment 16 sector and common pool monitoring measures are not affected by the proposed delay in responsibility for monitoring costs, and that the public was afforded substantial opportunity to comment on the ability of the Council and NMFS to revise existing management measures through a FW action as part of the Amendment 16 proposed rule, NMFS has not remanded this provision back to the Council for implementation through an amendment to the FMP."

April 9, 2013

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

RE: Framework 48 to the Northeast Multispecies Fishery Management Plan
NOAA-NMFS-2013-0050

Dear Mr. Bullard:

On behalf of Conservation Law Foundation (CLF), I am writing to provide comments on the rule proposed by NOAA Fisheries for Framework 48 (FW 48) to the Northeast Multispecies Fishery Management Plan.¹ We recently submitted joint comments with the Pew Charitable Trusts to NOAA Fisheries on the related sector operations plans rule.² CLF focuses here on our particular concerns with Framework 48, most particularly the proposal to authorize a procedure that would allow sectors to access the year-round groundfish closed areas through their annual sector operations plan approval process.

We would note initially three contextual circumstances that surround the series of framework adjustments and sector ops plan approvals that are being promulgated in such a rushed manner this spring with significantly foreshortened public review and comment periods. First, there is a crisis with a number of groundfish stocks including both cod stocks, GOM haddock, and a number of flounder stocks. Many of the stock assessments exhibit significant retrospective patterns and the assessment scientists have already cautioned that their estimates may be optimistic in terms of predicted the actual condition of those stocks. With cod, age structure is significantly truncated and weights at age are low. Many of these stocks are in crisis as a direct result of the failure to curb overfishing and are now further burdened by worsening environmental factors.

There is no rational reason to place these stocks at any greater risk of further collapse. Although there are a number of significant quota cuts, there are also a number of quota increases in the fishery. Moreover, few, if any, multispecies permit holders are dependent on revenues from the

¹ Northeast (NE) Multispecies Fishery; Framework Adjustment 48; Federal Register / Vol. 78, No. 57 / Monday, March 25, 2013 / Proposed Rules / pages 18188-219.

² 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).

stocks with quota cuts, having diversified to a broad range of other species for some time. What is at risk by the measures proposed in Framework 48 as well as several of the other management actions being taken in this period is the long term future of a number of critical stocks and as well as the related fisheries that unavoidably catch these stocks as bycatch, thereby threatening long term risks of substantially greater social and economic harm.

The second overarching circumstance framing the Framework 48 action is the Omnibus EFH Habitat Amendment (Omnibus Amendment). The Omnibus Amendment has been slowly moving through the management process for close to a decade, despite the fact that protection of essential fish habitats from fishing activities was one of the primary legislative purposes of the Sustainable Fisheries Act of 2006. Significant technical analysis has been done in support of the current thinking underlying the Omnibus Amendment but none of that analysis has been presented to the public in a final form and the gaps in that analysis with respect to a consideration of the full range of benefits that EFH provides to species productivity are well known. Much of the work that is currently underway by the Closed Area Technical Team (CATT) is focused on improving that analytical framework and coming to a better understanding of the relationships between essential fish habitats and species productivity and management actions to mitigate or avoid deleterious effects. Each meeting of the CATT produces new information and insights into the multiple ways in which these closed areas are benefitting managed groundfish species, well beyond the mortality reduction benefits.

That analysis, however, is not complete. The documentation, alternatives analysis, and mitigation measures have not been fully reviewed; and the public has had no opportunity yet to understand and respond to the complex set of issues that will be addressed in the Omnibus Amendment. Any material or points of view about the relative contributions of various parts of the existing closed or open areas to improved productivity that are included in those documents are preliminary from a legal point of view. Nevertheless, even the language that is being used in Framework 48 to distinguish “mortality closures” from “habitat closures” reveals that the agency is already making decisions to promote opening existing closed areas on the basis of that preliminary analysis, prejudging the final decision document and environmental analysis. The agency’s action constitutes a classic segmentation of the environmental review process that is fundamentally against the principles and law of the National Environmental Policy Act (“NEPA”).

The negative impacts of the NEPA segmentation are exacerbated by the fact that all these decisions are being made in a foreshortened and confusing public comment period that stretches across four separate regulatory actions: the sector operating plan regulations, Framework 48, Framework 50, and then whatever form the later action takes on approving sector access in some or all of the closed areas later this year. This is the sort of chopped up, incoherent, and disjointed federal environmental review that routinely is found to violate NEPA. The agency here is already on record with the position that if this very same set of questions were to be raised together, there would be no question that an extended and integrated environmental review would be required.

The proposed solution of breaking the decision into smaller pieces is being proposed by the agency for the explicit purpose of avoiding that result. Such an approach is antagonistic to the principles of broad public participation and reasoned, integrated decision making that NEPA is intended to bring to all major federal decisions.

Finally, CLF strenuously objects to the framework process by which the existing closed areas are being made available for access for fishing. This is virtually the same approach that was rejected by the Federal District Court for the District of Columbia in Oceana, Inc. v. Evans, 384 F. Supp. 2d 203, 254, order clarified, 389 F. Supp. 2d 4 (D.D.C. 2005). In Oceana, the court set forth the following standard: “[a] framework adjustment that truly adjusts management measures according to specifications in the FMP might well be lawful, whereas so-called adjustments which in fact undermine or contravene key provisions of an FMP would not.” Oceana, Inc. v. Evans, 384 F. Supp. at 254.

In the instant case, Amendment 16 is the controlling last amendment and it specifically indicated that access to the year-round closed areas was not available to the sectors through their annual operating plans. CLF can find no support in the record of that action that would suggest that opening of any and all of the year-around closures was to be a proper subject of a framework action. Framework 48 directly undermines and contravenes that prohibition in Amendment 16 and is not a proper subject for a framework amendment. To make the situation even more untenable legally, Framework 48 itself does not even frame out or elucidate what the extent and type of access sectors will be allowed. Those sets of decisions are being delegated to yet another action, which seems to not even have the formal status of a framework: a later approval process with unspecified parameters or scope or even timing.

We will now turn to the provisions of Framework 48 itself and provide comments in the order the issues are identified in the document:

1. Status Determination Criteria for SNE/MA Yellowtail

It is difficult to understand a “best-available-science” assessment for SNE/MA yellowtail flounder that the stock could either be fully rebuilt and not overfished and not experiencing overfishing or that it is experiencing overfishing, is overfished, and the productivity of the fish population is so low that it might not ever rebuild even if fishing mortality were held to zero. While the evidentiary split of 60:40 suggests that the assessment scientists certainly considered it was a close call, it nonetheless seems a true Hobson’s choice. Perhaps SNE/MA yellowtail is just another indicator of a heavily disturbed system coupled with inadequate analytical tools for management.

2. SNE/MA Windowpane Flounder sub-ACLs

Given the recent significant exceedance of the total ACL limits for two years, we are pleased to see a new set of reactive and proactive accountability measures for this stock.

3. Scallop Fishery sub-ACLs for GB Yellowtail Flounder

These provisions make sense and we think the incentive structure provided by the FY2014 sub-ACL is appropriate.

4. Small-Mesh Fisheries sub-ACL for GB Yellowtail Flounder

At 100mt, the small-mesh catch of GB yellowtail flounder is significant and it is important that effective AMs are developed to control mortality in this fishery within prescribed limits. The proposed regulation requires subsequent action to be effecting and the public should know when adequate AMs will be developed in the small-mesh fisheries.

5. Recreational Fishery AM

CLF supports the requirement in the law that there should be proactive accountability measures available to the Administrator to ensure that the recreational sub-ACL is not violated.

6. Commercial Groundfish Fishery AMs

CLF supports the proposal in this framework to increase the effectiveness of the AMs by accelerating implementation in the fishing season after the overage is believed to have occurred. We also support the promulgation of rules setting area-based AMs for Atlantic Halibut, Atlantic wolffish, and SNE/MA winter flounder. We also support the revised AMs for SNE/MA windowpane flounder, including specifically the area-based AMs.

7. Commercial Fishery Minimum Sizes

The goal of these proposals is to reduce regulatory discards and increase revenue from the catch. These proposals are troubling however because they will have a tendency of encouraging fishermen to target small fish that have barely become sexually reproductive. Discards are wasteful and inefficient. However, because discards are counted against the catch but produce no financial return, the current size limits provide a natural disincentive to catching fish just entering the fishery. This action would remove that disincentive and likely still produce large discards of sub-legal fish. The 16" haddock size limit seems designed to promote the targeting of the latest large year class, a year class that might be vital to the future of the fishery if it were allowed another season or two. We have been told and we believe that a number of fishermen also are encouraged to fish illegally with net liners and other devices to prevent the escape of any legal-sized fish, even at the expense of high discards of undersized, sexually immature fish. With continued low levels of observer coverage coupled with the ACL cuts, it is reasonable to expect that such behavior might increase. Lowering sizes will produce more discards, not fewer. This might be less of a problem if full retention were required of all catch; at least then a more accurate picture of the bycatch problem might be documented. But the Council has not elected to do that.

8. Sector Monitoring Program

A. At-Sea Monitoring

Monitoring the New England groundfish fishery has become a troubling flash point and the quality and quantity of the data inputs to the stock assessment models threatens the very foundations of the public's confidence in fishery management. There is an industry perspective that can be seen in Framework 48 that it is the public's responsibility to pay for any monitoring as evidenced by the following sort of statement: "Framework 48 proposes to delay the industry's responsibility for at-sea monitoring costs to FY 2014.... Coverage levels would instead be set at the level that NMFS can fund."³ The failure of the Council and federal managers to manage these fisheries at sustainable levels has produced the apparent consequence that the scientists and manager are either stuck with inadequate data of the actual catches or fishing businesses that are financially burdened by the low quota levels are forced out of business by the burden of any marginal monitoring costs. We say "apparent" because it remains unclear to CLF what is the broad financial condition of the multispecies permit fleet. Many of the aggregate numbers neither support the notion that there is an economic crisis for vessel owners nor the notion that many multispecies permit holders are currently economically dependent on the stocks that will be experiencing quota cuts in FY2013. The industry has to bear its burden of monitoring if it wants to continue to pursue these fisheries. Raiding the scarce federal funding available for the process of approving electronic monitoring for this fishery in order to cover short-term monitoring costs is one of the worst proposals from a cost-benefit perspective that we can imagine in this area.

This monitoring directly bears on the managers' ability to understand what is actually going on with the various stocks of fish at sea. Monitors provide critical data that supports *increases* in quota as well as *decreases*. The assessment scientists seem to have formed a broad consensus that the persistent retrospective patterns they have seen in many of their groundfish models is a result of missing significant mortality in the fish at sea.

The Council's proposal in Framework 48, like the related provisions in the Sector Operations Plans Proposed Rule (NOAA—NMFS 2013-0007), does not meet applicable legal or regulatory thresholds. They preclude accurate monitoring of sector-level catch and thus undermine the meaningfulness of any of the sector-based accountability measures. These problems have been identified in extensive and thorough detail in the Sector Operations Plan Proposed Rule comments of Oceana. We have attached the Oceana comments to this letter and hereby adopt and incorporate them by reference as if fully set forth herein. The agency should reject the Framework 48 monitoring proposal.

³ Northeast (NE) Multispecies Fishery; Framework Adjustment 48, Supplemental Information at 26.

B. Dockside Monitoring

CLF supports the elimination of the dockside monitoring program as long as the dockside monitoring hail requirements and an effective dockside intercept system are in place, operational, and demonstrably effective.

C. General Monitoring Comments

With respect to the principle objectives of sector monitoring programs, it is becoming apparent that catch is being misidentified as to the stock area where it is being caught. This is a major problem for assessments and for inshore boats that are disproportionately dependent on particular stocks of fish. Accurate and timely identification of catch by stocks and by place is essential to the fishery and must become a much higher priority for the sector monitoring programs. Of course, without sufficient and appropriate sector/stock monitoring and stratification, all of these principles are meaningless.

We also remain very concerned that the monitoring protocols seem to result in too many monitoring trips on smaller boats that catch a diversity of species but are not responsible for a significant portion of the groundfish species of concern. On the other hand, many of the larger vessels that are targeting these species—and have a greater capacity to support the costs of monitoring—are not being targeted by the monitoring effort. CLF also strongly objects to the qualifying language—“to the extent practicable”—in the rulemaking associated with sector monitoring. Monitoring needs to be adequate to its purpose. Fisheries, or sectors within fisheries, that cannot meet appropriate performance standards should not open.

The rationale for reducing ASM on monkfish DAS trips seems to be sound in a world of constrained monitoring, and the protocols associated with the proposal seem appropriate. There is no reason, however, why electronic monitoring and full retention policies have not been developed and implemented in New England fisheries. These large mesh fisheries are perfect examples of where such programs would be very cost effective, produce valuable catch data, and promote regulatory compliance. Lowering the monitoring requirements works against this goal and is likely a false savings. The program will have to be carefully managed so that significant groundfish discards are not hidden by this loophole from normal coverage requirements.

9. GB Yellowtail Flounder Management Measures

The primary problem at this point in time with GB yellowtail management is the recent revelation that potentially wide-scale misreporting of the areas where GB yellowtail are being caught is taking place. This proposal, while understandable on its face, seems likely to create even more misreporting by unobserved boats. Until NMFS develops a better understanding of the extent of catch misreporting and implements measures to reduce the practice, this finer scale tuning of discard rates should not be approved.

10. List of Allowable Sector Exemption Requests

This section of the proposed rules eliminates the prohibition set out in Amendment 16 that sectors may not request access to year-around closed areas. The two rationales driving this change are eliminating the redundancy of catch limits and mortality-based closed areas and allowing the multispecies permit fleet access to areas where they could target redfish, pollock and GB haddock. The assumptions underlying these rationales are that the existing closed areas are closed purely to limit fishing mortality and that there are populations of haddock, redfish and pollock in these areas that are otherwise not accessible to the groundfish fleet. Both assumptions are invalid.

With respect to the fishery management functions being served by the existing closed areas, it is apparent from a review of the record that they were all closed for multiple reasons, not just to reduce mortality on groundfish populations. The Framework 48 comment letter submitted by the Pew Charitable Trusts and the appendix attached to that document lay out a detailed history of the closed areas. The Pew comment letter and its appendix are attached to these comments and we adopt and hereby incorporate them by reference as if fully set forth herein. CLF agrees with all the facts and the conclusions in those materials.

With respect to the rationale that access is needed before the Omnibus Amendment is completed in order to provide access to GB haddock, redfish and pollock, the analysis conducted by the CATT completely undercuts that justification. Redfish populations are not significantly identified with any of the existing closed areas and the ACL is fully accessible to the fleet without any opening of closed areas. The only analysis that suggests that additional pollock might be available if a closed area were to be open focuses on the proposed thin box on the eastern side of the Western Gulf of Maine Closed Area. Irrespective of this analysis, the entire pollock ACL appears to be readily accessible within currently open areas, thus obviating the need to reopen area for access to pollock. As for haddock, there already exist SAP programs that are designed to allow access to potential haddock in the Georges Bank closed areas but that issue seems almost academic given the fact that the fleet has caught such a low percentage of its ACL in FY2012. There is no evidence from the trawl surveys or observer data that those haddock are hiding out in CA I or CAII.

Indeed, looking objectively at the situation, the economic analysis of the proposed opening of the existing closed areas concluded that there was a chance of “neutral”—no benefits—to slightly positive benefits associated with allowing access into those areas with significant chances of major long term negative economic consequences. CLF believes that the characterization of the CATT literature search and economic analysis provided in the supplement information associated with Framework 48⁴ puts a positive spin, if not an outright exaggeration on the positive side of the presentations CLF observed on this topic at the CATT. In the actual words of

⁴ Northeast (NE) Multispecies Fishery; Framework Adjustment 48 at 40-41.

the economist who conducted the analysis: “there is potential for much greater costs if the exemptions place fishing pressure on critical life stages or greater gear interactions ensue, which would result in a negative net benefit of undetermined magnitude.”⁵

Others have commented on the increased impacts on protected marine mammals if these significant areas were to be re-opened to fishing as well as conflicts between recreational fishermen in the western GOM closure area. All those comments are meritorious and counsel against opening access to these areas.

A. Framework 48 Does Not Comply With the National Environmental Policy Act (NEPA)

As a federal agency proposal to modify the terms of an existing FMP, Framework 48 constitutes a major Federal action under NEPA that triggers the requirement to assess the environmental impact of such the proposed changes to the multispecies regulatory regime. 42 U.S.C.A. § 4332(2)(C). *See, e.g., Greenpeace v. Nat'l Marine Fisheries Serv.*, 55 F. Supp. 2d 1248, 1257 (W.D. Wash. 1999). NEPA imposes a requirement that federal agencies “will have available and will carefully consider detailed information concerning significant environmental impacts” before a project is approved. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)). *See also City of Alexandria, Va. v. Slater*, 198 F.3d 862, 866 (D.C. Cir. 1999).

An environmental impact statement (EIS) must include a detailed statement of the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. 42 U.S.C. § 4332(2)(C)(i)-(v). If it is unclear whether a full EIS is required, an agency must at a minimum prepare an environmental assessment (EA). 40 C.F.R. § 1501.4(b).

While an EA is not as comprehensive as an EIS, an EA must take a “hard look” at potential environmental consequences and consider reasonable alternatives. *See Cape Hatteras Access Pres. Alliance v. U.S. Dept. of Interior*, 731 F. Supp. 2d 15, 34-35 (D.D.C. 2010), and *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 71 (D.D.C. 2012). More specifically, an EA must discuss the need for the proposal, identify alternatives to the proposed action, and describe the environmental impacts of both the proposed action and the alternatives, including direct, indirect and cumulative impacts. *Nat'l Trust for Historic Pres. in the U.S. v. U.S. Dept. of Veterans Affairs*, CIV.A. 09-5460, 2010 WL 1416729 (E.D. La. Mar. 31, 2010). If, following this “hard look” at a proposed action and its potential effects, an agency determines that the action will not result in any significant environmental impacts, the agency may issue a “finding of no significant impact”

⁵ DePiper, October 25, 2012 at 5.

(FONSI) and is excused from preparing an EIS. *Id.* However, if the record does not support a FONSI, the agency must issue an EIS. *Id.*

In this case, the record reflects that the NOAA Fisheries has not previously analyzed the potential environmental consequences of the proposed use of a sector operations plan exemption to re-open areas that are currently closed to fishing for groundfish. Amendment 13 to the Northeast Multispecies Fishery Management Plan, published on April 27, 2004, described the procedure for establishing sectors, identified a list of management measures that may be adjusted through a framework action, and specifically provided that the Regional Administrator may not grant exemptions to year-round closure areas. §648.87(b)(1)(xvi). The prohibition on granting exemptions to NE multispecies year-round closure areas was reiterated in Amendment 16. §648.87(c)(2)(i). Because the re-opening of closed-areas was characterized as a prohibited act, such action was not analyzed in either an EIS or an EA nor, consequently, was a FONSI issued pertaining to such action. In light of this history, the fact that much of the area being proposed for access to sectors has been closed to groundfishing for over a decade and that this federal action authorizing a process to allow access to such areas will have a significant impact on the affected marine environment, NOAA may not re-open the closed-areas without conducting an EIS.

Moreover, the agency's actions are clearly an attempt to "segment" the larger Omnibus Amendment action that is intended to comprehensively address the status of all closed areas in New England. This separation from the Omnibus Amendment of this intended subcomponent of that action is designed to avoid NEPA review requirements. This practice of "segmenting" major Federal actions into smaller units for the purpose of avoiding preparation of an EIS and, thus, consideration of overall environmental impacts violates NEPA. *See Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 68 (D.C. Cir. 1987), *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987). Courts have identified standards that Federal actions must meet in order to avoid illegal segmentation. These include whether the proposed segment (1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives, and (4) does not irretrievably commit federal funds for closely related projects." *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298-99 (D.C. Cir. 1987) (citing *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d at 439). The proposed Framework 48 action to establish a process to exempt sectors from the prohibition on fishing in closed-areas would violate at least two of these requirements as it does not have substantial independent utility and it would foreclose opportunities to consider alternatives in the Omnibus Amendment and other future processes.

In 2011, NOAA issued an NOI for the Omnibus Amendment by which it merged into the Amendment a determination as to the functions and values of the groundfish closed areas and as to any future access to those areas. In so doing, NOAA conceded the lack of independent utility of any action to consider re-opening these areas. These are not discrete areas that can be understood or analyzed in isolation; they have interactive effects in the regional marine

ecosystem that have to be approached systemically and in an integrated fashion. The absence of independent utility of these various proposed closed area openings is further emphasized by the economic analysis referenced above that concludes that any benefits of re-opening these areas are highly speculative, if they exist at all.

Additionally, if the areas proposed for new sector access are approved, the opportunity to utilize the Omnibus Amendment to advance alternatives that maintain the existing high quality habitat within the closed areas would obviously be foreclosed as the gear impacts and catch of larger females and other productivity components in the closed areas would be rapidly lost. As noted above, the Omnibus Amendment is designed to fully consider the functions and values of existing and proposed habitat and groundfish closures and to assess the benefits of management measures for alternative areas. Any action that forecloses the very purpose of an ongoing, parallel management effort would be counterproductive and would violate NEPA.

Because NMFS has not prepared an EIS, and because interim consideration of opening areas that are presently closed would constitute improper segmentation under NEPA, NMFS should refrain from implementing any openings outside of the Omnibus Amendment currently underway.

B. The Framework 48 Process Must Comply With the Endangered Species Act

The Endangered Species Act makes it unlawful to take a threatened or endangered species. 16 U.S.C.A. § 1538(a)(1). The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. 16 U.S.C.A. § 1532(19). Any decision by NOAA to open areas that are presently closed would subject listed endangered species such as right whales and leatherback turtles to ship strikes, entanglement and other forms of takes. NOAA is obligated under the ESA to insure that any action authorized, funded or carried out by the agency is not likely to jeopardize the continued existence of any listed species. 16 U.S.C. § 1536(a)(2). As such, the agency must undertake a detailed consultative process for determining the biological impact of any proposed reopening. *Leatherback Sea Turtle v. Nat'l Marine Fisheries Serv.*, 99-00152 DAE, 1999 WL 33594329 (D. Haw. Oct. 18, 1999). That consultation process must culminate in the issuance of a biological opinion (BiOp) in which the agency states whether it believes that the activity is likely to jeopardize the continued existence of a particular species and, if so, the agency must suggest reasonable and prudent alternatives or devise plans to reduce the risk of a take. *Id.* (citing 16 U.S.C. § 1536(b)(3)(a)). Any action that may authorize groundfishing in the closed areas creates the risk of irreparable harm to endangered species. Consequently, prior to any such action there must first be a full consultative process and the development of a BiOp associated with access to the closed areas.

11. Requirement to Stow Trawl Gear While Transiting Closed Areas

CLF strenuously objects to this proposal that was adopted by the Groundfish Committee against the advice of the Council's VMS/Enforcement Committee, which recommended more modest changes targeted at safety and effectiveness. CLF believes that this fishery continues to have a significant and underreported problem with illegal fishing activity and misreporting of catches.

12. Correction to Eastern U.S./Canada Quota Monitoring

CLF does not think that the agency has the authority to make this change to the regulation without Council action. The fact that a different approach based on the agency's interpretation of Council intent might have been included in the Amendment 16 Preamble does not convert that interpretation into a Council action. Moreover, CLF is concerned that the recent reports and substantiation of misreporting of catch by multispecies permit boats on Georges Bank makes the VTRs inherently unreliable as an allocation mechanism. The current regulation should stay as is and NMFS should begin implementing it according to its terms until and unless the Council decides to change the allocation approach after debate and public comment.

Framework 48 is a step backward for the New England Fishery Management Council. The proposed program compromises data quality by failing to require adequate and appropriate monitoring; it attempts to authorize allowing widespread access to the closed areas despite the Council's awareness that the risks to future productivity are great and the short term benefits are marginal and short-lived at best; it continues a recent pattern of risk-positive management action in the face of great uncertainties about the status of a number of the stocks; and it violates both the spirit and the letter of the National Environmental Policy Act and the Endangered Species Act.

Thank you for this opportunity to offer these comments.

Submitted on behalf of the Conservation Law Foundation.

Sincerely,



Peter Shelley, Esq.
Senior Counsel



Paul J. Diodati
Director

Commonwealth of Massachusetts

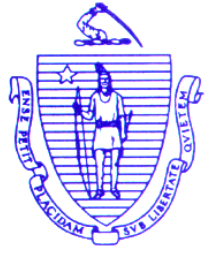
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April 8, 2013

Mr. John K. Bullard
Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
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Re: FW48 Proposed Rule (NOAA-NMFS-2013-0050)

Dear John:

We offer the following comments on your proposed rule Framework 48 and begin by requesting you to review the GOM cod presentation given by Northeast Fisheries Science Center (NEFSC) scientist, Michael Palmer, (*Gulf of Maine Cod: From Bankers' Hours to Bankruptcy and the Role of Fine-Scale Spatial Dynamics on Stellwagen Bank*).

FW 48 efforts to mitigate for FW 50 "potential negative economic impacts" should consider the frailty of GOM cod in particular. Dr. Palmer's presentation will assist that consideration; i.e., mitigation that ignores the fine-scale spatial distribution of cod will deteriorate stock status and the overall health of the GOM "stock." We highlight this presentation as part of our comments on your proposal to allow sectors to petition NMFS for access (albeit limited) to groundfish "mortality" closures and your dropping the cod minimum size by three inches.

Minimum fish sizes

The Council has decided to decrease minimum size limits for cod (22 → 19"), haddock (18 → 16"), gray sole (14 → 13"), yellowtail flounder (13 → 12"), plaice (14 → 12"), and redfish (9 → 7"). We opposed this action. Pollock (19"), halibut (41"), and winter flounder (12") are to remain the same. Vessels fishing in sectors will be required to land all allocated groundfish meeting the minimum size requirements. The "logic" for these changes is: *"These changes would be made to reduce regulatory discards and to allow many fish to reach spawning age before being caught, not to facilitate the targeting of smaller fish...The minimum size limits...are based on an analysis of the size of discarded fish in trawl gear in recent years and the length at 50% maturity (our emphasis). The*

minimum sizes...would be expected to reduce many discards due to minimum size restrictions under the gear requirements in place in 2009-2011...”

Because the status of many of our groundfish stocks is so poor (e.g., GOM and Georges Bank cod), it is counterintuitive to move away from minimum sizes where percent maturity is greater than 50%. For cod you propose to drop the minimum by 3 inches approaching 50% maturity. With our learning more about cod spawning behavior and the importance of repeat spawners for increased spawning success (not just for cod), targeting 50% maturity is not defensible. DMF research of which you are very aware is very relevant to our arguments.

The Council with NMFS in support has concluded it's acceptable to target cod and other groundfish even when the target size (as a minimum) is about 50% immature. We should be promoting fisheries sustainability through protection of age structure and accounting for spatial distribution with an emphasis on letting far more individuals become first-time, but better yet, second-time spawners.

As a member of the Sanctuary Advisory Council and aware of the contents of the Sanctuary's Management Plan (June 2010), we know the Sanctuary might revise its designation document on or before 2015 (See Executive Summary page iii) to give it authority to set regulations for fisheries within its boundaries. Weakening protection of cod and other Sanctuary resources heavily fished within the Sanctuary is ill-advised. Consider the following Plan conclusion: *“...fishing – especially commercial fishing impacts and pressures every resource state in the sanctuary. On an annual basis, virtually every square kilometer of the sanctuary is physically disturbed by fishing. Fishing has removed almost all of the big old growth individuals among biological important fish populations, and reshaped biological communities and habitats in the process...”* The Sanctuary, of course, would support any measure that reduces discards (such as increased mesh and strategically placed closures), but promoting the targeting of smaller fish with likely increased discarding of even smaller fish will cause justifiable concern.

Will the reduced minimum sizes “facilitate the targeting of smaller fish?” The Council and NMFS assumption that reduced minimum sizes will not change fishermen's behavior is a very risky assumption. After having participated at most of the Council's ABC Risk Policy Workshop designed to develop advice to the SSC about the acceptable probability of overfishing when setting ABCs, we conclude that the likely “severity of consequences” (one aspect of risk) from targeting smaller fish is too high and unacceptable.

By comparison you use the “full retention” approach as the way to conclude you will *“minimize the likelihood that vessels will target smaller fish.”* You compare this option to the minimum size reductions. A far better and legitimate comparison would have been against status quo: “no change in sizes.”

Moreover, by decreasing minimum sizes, NMFS will put sector fishermen at too high a risk. The Commonwealth, and perhaps other states, may not our minimum sizes for the aforementioned reasons, i.e., we are risk averse regarding the negative consequences of lowering the sizes. In our case, the Commonwealth's Marine Fisheries Advisory Commission recently opposed the size reductions, and its approval is needed before any reductions can be adopted.

Consequently, if NMFS lowers the sizes without garnering state support, you do so with the understanding that sector fishermen are held jointly liable for discarding legal-size groundfish. Your rule will force them to discard legal fish according to your definition, but illegal by ours. We appreciate the need to have everything in place for May 1; nevertheless, so far, there have been no important discussions with us about minimum size reductions – just a Federal Register announcement and two weeks to comment. States partner with the federal government on inter-jurisdictional fisheries issues, yet that partnership seems lacking when it comes to this pending groundfish action.

We support status quo. Note your rationale for status quo, i.e., make no changes: “*Since implementation in 1986, the Northeast Multispecies FMP has used minimum size limits in conjunction with gear requirements to reduce catches of sub-adult fish. When adopted the purpose of this measure was to **provide opportunities for fish to spawn before harvest, as well as to reduce the incentive to use illegal mesh to increase catches** (our emphasis).*”

The Council has abandoned this rationale in favor of reducing regulatory discards even though decreasing the minimum size likely will motivate fishermen to use illegal mesh. Witness recent examples given to the Council by Law Enforcement about use of net liners. Regrettably, we seem to be moving away from creating incentives for fishermen to use larger mesh and/or to avoid smaller fish.

We ask you to explain what is meant by a decrease in minimum sizes *allowing many fish to reach spawning age before being caught*. This appears to be a non sequitur. More smaller fish will be caught; therefore, how will many more fish reach spawning age before being caught. A better alternative is larger mesh or required use of square versus diamond mesh depending on the situation.

Also, consider the following FW 48 analysis of impacts of biological impacts: “*...the biological impacts of changing minimum size requirements are a function of whether the change leads to a different selectivity in the fishery. If the catch of small fish as a proportion of the total catch increases, then changes in yield per recruit, status determination criteria, and rebuilding progress could result...there would likely be reductions in yield per recruit, MSY, and slower rebuilding progress.*” GOM cod is provided as an example. “*A shift in selectivity of one year reduces the YPR 9.4% for GOM cod. The value of F40 declines 18.5%.*” The analysis highlights that biological impacts are difficult to predict because impacts will depend on fishermen's behavior.

Understand that we appreciate the subtle and unstated benefit of lowering minimum sizes, ostensibly to reduce regulatory discards; i.e., sectors' ACES effectively increase: less assumed discarding means more to land. We suspect that's why many fishermen, including Council members, especially those involved with sectors, favor the full retention approach that is still "on the table." Full-retention will be very difficult to support without far greater at-sea monitoring and law enforcement. Furthermore, states will have to rescind all minimum sizes, an unlikely scenario. Also, recreational fishermen will find that rescinding for the commercial fishery to be very at odds with their having to live with minimum sizes.

Currently, real or assumed discards caused by that sector reduce each sector's ACE(S). Consequently, a sector fisherman can find his catch portfolio reduced to account for discards even when he doesn't fish, i.e., other sector fishermen's discards count against each member's allocation (PSC, percent sector contribution). By assuming reduced discards with lowered minimum sizes, fewer fish are subtracted from sector ACEs; therefore, more can be landed. If you decide to reduce the minimum sizes, *how will NMFS adjust fishermen's portfolios? This must be clarified now rather than later.*

Finally, consider your own conclusion regarding reducing the minimum sizes: "...*there could potentially be unforeseen consequences from targeting smaller fish that could have long-term negative impacts on future landings and revenue...*" This is an important admission fraught with risk. We counter that the consequences can be and are "foreseen."

Mitigating negative impact of FW 50

Preparing as best we can for the severe socioeconomic impact of FW 50 is sensible; however, to properly address mitigation, the Council and NMFS must focus on individuals and not on classes of vessels or gear types. That has not happened. Therefore, NMFS' (Council) claim that fishing opportunities will increase and profitability in the groundfish fishery will improve thereby mitigating negative economic impacts anticipated for groundfish vessels and their communities, is specious.

Consider that you make a very important and risky assumption regarding allowance of exemption requests from sectors to year-round closures and changes to minimum size restrictions. You say: ***"Assuming all impacts to vessels are also applicable to ownership entities, all of the alternatives have the potential to impact a large number of small entities, and while some of the options may significantly alter profitability, none of them would have a disproportionate impact on small entities."*** This is a profound and vital assumption not supported by FW 48 analyses, unless major, untested assumptions are made.

Consider your statement pertaining to sector vessels and operating costs associated with at-sea and dockside monitoring in FY 2013, absent any funding assistance from NMFS: "...*the highest percent reductions in net revenue were expected to occur in the 30-50 ft vessel category.* ***Since profitability of individual vessels is unknown*** (our emphasis), *the effects of this option [sector monitoring] on participation levels could not be*

estimated, but it is likely that vessels operating close to the margin would be forced to exit the industry or lease their quota...” NMFS admits the likelihood that small vessels will suffer the greatest impact, contrary to the aforementioned conclusion about no disproportionate impact on small entities. NMFS should explain this seeming contradiction.

We intend to submit comments on FW 50. Those comments will focus on a better way to mitigate. For example, rather than “tweaking rules” in a risky way to give greater operational flexibility to sector fishermen, it will be far better to provide more catch, i.e., extraordinarily precautionary ACLs create extreme adverse socioeconomic impacts affecting sector and common pool fishermen – some far more than others. Caution is important, but layers of precaution cause inordinate sacrifices by vessel owners, fishermen and processors, shore-side infrastructure, etc.

Recreational Fishery AMs

NMFS proposes to proactively modify recreational fishery AMs prior to the start of each fishing year. NMFS intends to “*consult with the Council, or the Council’s designee, and would tell the Council, or its designee, what recreational measures are under consideration for the coming year.*”

We emphasize that NMFS should consult with states, not as Council members, but as separate partners having to consider state regulatory changes to support NMFS. The consultation should be more than telling states what NMFS intends to do. Groundfish recreational fisheries occur in state waters as well as in federal waters, perhaps more so in state waters; therefore, with states having saltwater recreational fishing licenses and working closely with NMFS on marine recreational fishery surveys (MRFSS & now MRIP), close coordination and reciprocal cooperation are key.

Sector Monitoring Programs

You note that Sectors were required by Amendment 16 to “*implement a dockside monitoring program to validate dealer-reported landings...Dockside monitoring was also set to be implemented for common pool vessels in FY 2012...*” Then you note: “*Through Framework 45, the Council suspended the dockside monitoring requirements until FY 2013 and required dockside monitoring only to the extent NMFS could fund it.*” With these dockside programs now being completely eliminated, we ask for a better description of what exactly convinced NMFS in 2011 that sector landings were “sufficiently monitored.” You indicate, “*dockside intercepts by enforcement personnel were sufficient to monitor those landing.*” Is this still true?

We understood then that reliance on law enforcement was a fallback position because limited funds had to be reprogrammed “to alleviate general sector operating costs.” The central question now becomes: How will sector landings be sufficiently monitored?

Regarding current dockside monitoring hail requirements, you ask whether those requirements should be maintained. We believe they should be kept because, as you state, “*hails have become a useful tool for both NMFS and sector managers to monitor*

sector vessels' activities, including use of certain sector exemptions, and to facilitate dockside intercepts by enforcement personnel...” Additionally, we ask if NMFS and Law Enforcement have adequate capability to check hails versus observed landings to monitor sector and common pool landings versus ACEs and quotas.

On a related monitoring issue, you propose to “*revise the regulatory text at §648.87(b)(1)(v)(B) to read that coverage levels must at least meet the CV standard at the overall stock level and be sufficient to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels.*” We ask for more clarification, i.e., what do you mean by “to the extent practicable.”

Furthermore, in the referenced section, you state: “*coverage must be fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the year.*” We support your approach, but are concerned that your “to the extent practicable” will result in coverage that isn’t satisfactory especially for statistical purposes and accurate accounts of catch and discard.

Confounding this important issue is the decision to “*delay industry responsibility for at-sea monitoring costs to FY 2014 to mitigate the expected negative economic impacts of lower trip limits in FY 2013. Coverage levels would instead be set at the level that NMFS can fund.*” We support your decision to delay and realize there is no other option to consider, and we understand why. However, by relying on the Council to “*further modify this requirement in the future as more information becomes available on the appropriate monitoring levels, costs of these programs, and implementation of electronic monitoring systems,*” NMFS really means it’s willing to accept a Council likely decision in 2013 to delay that responsibility to 2015 or beyond.

We also support your approach that sectors “*must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.*” However, the “if requested” part of your proposal should be understood as a consistent requirement, not just when requested that could very well be occasionally.

Sector Access to Closed Areas

You state, “*...sectors are subject to a hard TAC that limits overall fishing mortality resulting from sector operations, making certain other mortality or effort controls redundant...*” This is a mistake. For example, it doesn’t consider that mortality on aggregations of fish, such as cod, subject to fishing without trip or possession limits (i.e., sector vessels fishing as they will with original allocations enhanced through leasing) can create very high, localized fishing mortality dramatically reducing the size of aggregations and/or interfering with pre-spawning and spawning behavior. Reflect on Dr. Palmer’s analyses of the Stellwagen Bank area and very localized fishing caused by fine-scale distribution of cod.

You state that our concerns will be “evaluated by NMFS in the consideration of any specific sector requests for each fishing year.” We request those evaluations be made available to the Council and public for review before specific exemptions are granted. You indicate a “rigorous analysis” will be necessary, and we agree and ask if the Council’s PDT will be involved. It should be.

We appreciate NMFS is abiding by the Council decisions on access. For example, sectors will not be allowed access in Closed Areas I and II from February 16 through April 30 to protect spawning groundfish. However, we’re uncertain as to whether those are the correct dates, and we ask if the NEFSC will comment on these access dates to be modified by you if access timing is incorrect, e.g., should access be denied during some part of late fall and early winter when cod are also spawning. As you noted, the analyses must be rigorous.

Finally, we appreciate your treatment of the Council’s Closed Area Technical Team analysis of access to the closed areas. The CATT did a fine job and had some important conclusions such as: *“Due to data limitations and the fact that sector fishing effort is driven more by Catch Per Unit of Effort (CPUE) and market conditions than effort controls, the CATT was unable to quantitatively model potential changes in fishing effort.”*

For this and other reasons you’ve decided to *“consider sector requests for exemptions to closed areas in a separate rulemaking from the general approval of sector operation plans for 2013, if the proposed change in FW 48 is approved. The closed area exemption requests would be considered as amendments to the sector operations plans through a proposed and final rule that would be available for public comment with an accompanying National Environmental Policy Act (NEPA) analysis.”* This suggests any access could be no later than this fall. Sector fishermen likely will want access as soon as possible, and we all appreciate the sense of urgency. Nevertheless, this access is very controversial and requires the approach you have selected.

Status Determination Criteria GOM & GB Cod and SNE/Mid-Atl Yellowtail Flounder

We always appreciate the hard work of the NEFSC and the effort given to complete the many important stock assessments. However, there are times when we wonder about the outcomes. For example, we have two approved assessment models with one providing a biomass target of 54,743 mt (assumed natural mortality of 0.20). The other target is 80,200 mt (“ramped-up” natural mortality to 0.40 not expected to remain “in perpetuity”). Both models provided a fishing mortality threshold of 0.18. For each GOM cod scenario we are overfishing, and the stock is overfished. You now ask for comments on the two choices.

However, you offer no guidance as to what option is preferred and why, although with the SARC concluding that natural mortality is not expected to remain at 0.40, it seems you’re favoring the 54,743 mt. Considering the fishery failure officially effective on May 1 and a revised rebuilding schedule the Council will develop, it makes sense to choose the lower target.

The key will be to reduce fishing mortality to the 0.18 threshold or below. With that said, we wonder why the SARC did not conclude natural mortality is as high as 0.40, if not



SPRING GATHERING ON THE CAPE

Gray seals carpeted a beach Thursday at Monomoy National Wildlife Refuge, which has become the most popular area in the region for the mammals to haul themselves out of the ocean and take the sun. The most recent count showed more than 15,000 of the seals off New England.



higher. Consider the photograph in a recent front-page Boston Globe issue. An estimated 15,000 gray seals clustered at a haul-out on Monomoy Island suggests natural mortality has increased and will be much higher than expected for some time to come. This does not bode well for the groundfish fishery and for other stocks on which these seals and other predators (e.g., spiny dogfish) prey.

Finally, for yellowtail once again we wonder. The SARC concluded that the evidence was 60:40 (quite a call) in favor of a “recent recruitment”

scenario assuming that a “*possible change in productivity has reduced the size of incoming year-classes since 1990.*” Therefore, the stock is not overfished and overfishing is not occurring; thus, we are rebuilt, yet the new target is a very low 2,995 mt. The fishing mortality threshold is a modest 0.31, a bit higher than we would have expected.

We ask NMFS to reconcile the conclusion that for yellowtail there has been a “possible change in productivity,” but for cod that doesn’t seem to be case. Furthermore, calling yellowtail “rebuilt,” although technically correct, has a hollow ring to it. If productivity has changed so dramatically as to cause such a dramatic reclassification of yellowtail, why hasn’t GOM and GB cod been affected by changed productivity as well? We consider this to be an unanswered key question pertaining to the direction in which the Council and NMFS are headed, i.e., ecosystem-based fishery management.

Conclusion

We always appreciate the opportunity to comment on Council decisions and NMFS proposals, especially when those decisions and proposals are not supported by DMF. Of course, there are many we do support and helped develop as a Council member.

The task before us all is how to assist the groundfish fishing industry survive these very difficult times of low ACLs, poor prospects for groundfish rebuilding, and changes in ocean productivity contributing to low to poor year-classes. Our other task is to address industry consolidation and excessive shares – a task made even more difficult due to our fisheries failure.

Mitigation is extremely important, and we will support legitimate mitigation approaches. However, mitigation cannot be allowed that potentially will deteriorate groundfish

resource conditions even further. This is the attitude reflected in all of our
aforementioned comments and our previous ones on sector operations plans.

Sincerely yours,

A handwritten signature in cursive script that reads "David E. Pierce". The signature is written in dark ink on a white background.

David E. Pierce, Ph.D.
Deputy Director

cc
Paul Diodati
Mary Griffin
Melanie Griffin
John Bullard
Susan Murphy
Rip Cunningham
Tom Nies
William Karp



Post Office Box 112
Topsham, ME 04086
Phone: 207.619.1755
Fax 866.876.3564

John Bullard
Northeast Regional Administrator
National Oceanic and Atmospheric Administration
55 Great Republic Drive
Gloucester, MA 01930

April 9, 2013

Dear Regional Administrator Bullard:

As commercial groundfish fishermen using fixed gear to fish within the Gulf of Maine, we wanted to take this opportunity to directly respond to one aspect of the Framework 48 proposed rule, the Halibut accountability measures (AM), and express our concern regarding the northern location of the fixed gear closures associated with this AM. We understand and support the need for an accountability measure for the Atlantic Halibut fishery in cases where the total allowable catch is exceeded. However, with the current location of the northern area for the fixed gear exclusion area, there is a high likelihood that our summer fishery will be eliminated and that inshore fishermen from Maine will be disproportionately affected.

This past season we observed high numbers of Atlantic Halibut that were just below the minimum size. We are concerned that the total allowable catch has a high likelihood of being exceeded next fishing year, following the trends of the past two fishing seasons of exceeding the TAC by 29% and 57% respectively, and that the accountability measures will go into place for the majority of our 2014 fishing season or in a worst case scenario, 2013.

Additionally, we have significant economic concerns with the impact of eliminating fixed gear in these accountability areas. The justification for the accountability measure in Framework 48 states that approximately \$1 million in estimated revenues come from the fixed gear areas, and that the majority of the effort in that area is from vessels with homeports in Chatham, Massachusetts. Though the economic loss may be largest to these vessels, the Maine Coast Community Sector represents some of the boats with the largest landings at the Portland Fish Exchange, and those boats fish primarily around Platts Bank in the summer when our fishing season is in full swing. Losing access to these grounds would significantly impact fishing businesses within the sector without a corresponding benefit to the Atlantic Halibut resource.

Through observations, we have witnessed higher rates of Atlantic Halibut catch early in the fishing season in this area from targeting monkfish with tie-down gillnets. To better serve and restore the health of the halibut resource installing seasonal closures, or more specific gear restrictions may have a better outcome for the fishing resource while increasing the potential to still target healthy stocks in the area given the added economic pressures next fishing season

with the extremely low allocations. We fear that this accountability measure, as written for the fixed gear area, will have severe unintended consequences without having an adequate benefit for the Atlantic Halibut fishery. Additionally, but putting this AM in place for FY 2013, it does not give our sector the opportunity to develop any exemptions that may allow our fishermen to fish in this area using a specific gear-type. We are currently involved in two projects we feel may help us avoid halibut, one is to develop technology to track bycatch, share with other vessels, and ensure there is limited future catch and the second is a gear modification that allows for large panel mesh in the bottom of the gillnet which we believe would decrease halibut interactions. Without time to continue to test these programs and build a comprehensive exemption our gillnet fishermen will be removed from an important area without having the ability to develop a plan to deal with this AM.

Thank you for the opportunity to provide comments on the fixed gear accountability measure for Atlantic Halibut. We are very concerned with the current placement of the northern fixed gear area, and hope that future discussions can include local fishermen to determine an area, or time of the year to restrict effort, in a constructive manner that will benefit the resource and still provide fishing opportunities to allow MCCA members to continue to fish.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Martens", with a long horizontal flourish extending to the right.

Ben Martens
MCCA Sector Manager



April 9, 2013

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

Re: Comments on the Proposed Rule for Framework Adjustment 48 to the Northeast
Multispecies Fishery Management Plan [Docket No. 120814336-3249-01 RIN 06848-BC27]

Dear John,

The Northeast Seafood Coalition is a non-profit organization representing over 250 commercial fishing entities, which hold over 500 limited access groundfish permits, on political and policy matters affecting their interests in the federal groundfish fishery. Collectively, NSC members represent the full diversity of the groundfish fishery. NSC members fish on small, medium, and large vessels from ports across the northeast and they employ all groundfish gear types. NSC fishing members are enrolled in the Northeast Fishery Sectors (NEFS).

Today, the Northeast Seafood Coalition (NSC) submits the following in response to the request for comments to the regulatory measures for the groundfish fishery proposed under Framework Adjustment 48.

**1) Status Determination Criteria for GOM Cod, GB Cod, SNE/MA Yellowtail
Flounder and White Hake**

- ***Estimates of Fmsy***

NSC reiterates the specific concerns it expressed in its January 17, 2013, memo to the Council regarding the use and specific choice of Fmsy proxies for groundfish stocks below. As a more general observation, however, the current management process employed by the Council and agency does not provide managers with sufficient information, understanding or opportunity to consider alternative scenarios for directly estimating Fmsy or choosing among proxy alternatives. In many respects, these choices are a matter of policy based on management objectives and acceptable risk and can have profound implications for specific stock management. Such choices should be made by managers, not stock assessment scientists,

through a far more transparent and deliberative process that ultimately provides guidance to such scientists.

The current process for selecting Fmsy proxies is essentially the reverse. As noted below, current policy is based on advice generated more than a decade ago that was itself based on literature published a decade earlier than that. Absent any deliberate process by managers to reconsider this policy, it has simply been carried-forward in each stock assessment and consequent management action – including Framework 48. During this time there have been improvements to both the understanding of such population dynamics as stock-recruitment relationships that may provide for direct estimates of Fmsy, as well as improvements to the relevant analytical and modeling approaches for selecting the appropriate Fmsy proxy.

Thus, notwithstanding statements to the contrary in Framework 48, it is likely that the current use of the Fmsy proxy of F40%msp as the basis for managing nearly every groundfish stock does not meet the statutory standard for using the best scientific information available.

NSC's January 17, 2013 memo to the Council can be found at the conclusion of these comments. NSC urges the Agency under this present rule-making to seriously consider the two recommendations presented at the end of the memo. These recommendations request a more thorough review by the Science and Statistical Committee (SSC) and policy decision by the Council as follows:

“With these questions in mind, NSC respectfully recommends that the Council submit the following requests to the SSC to be addressed as soon as possible:

- 1) Where possible, provide direct estimates of Fmsy for all groundfish stocks.***
- 2) Where not possible to provide direct estimates of Fmsy, reevaluate the current Fx%msp proxy taking into consideration of what percentage of MSP is most likely to achieve the specific management goals for each applicable stock. This should include an evaluation of the consequences of this choice on the rebuilding target for each stock, and a comparison to available data.”***

2) SNE/MA Windowpane Flounder Sub-ACLs

NSC supports the proposed action to allocate a sub-ACL of SNE/MA windowpane flounder to the scallop fishery and rename the other sub-component the “other fisheries sub-ACL”.

3) Scallop Fishery Sub-ACL for GB Yellowtail Flounder Based on Estimated Catch

Consistent with NSC's input to the Council during their vote on November 14, 2012, NSC supports the proposed action for two reasons.

1. The TMGC accepted an extremely low TAC for 2013, one that the NSC has great concerns with. At this level and at any level below a 1,000 mt US share, the directed groundfishery is untenable. For this reason, NSC conceded that to destroy both the scallop and groundfish fishery, on paper, in advance of the start of the fishing years, should be avoided if possible. Discussions between groundfish and scallop fishery representatives resolved that the amount of catch estimated for bycatch would represent 40% of the US share of 215 mt in fishing year 2013.
2. NSC cannot overemphasize the need to have each substantial component of a fishery held fully accountable to their catch. Status quo policy does not do this adequately. NSC strongly supports allocating sub ACL's as a percentage of the total ACL in a manner that reflects the historical use and need for the stock by each stakeholder, with the directed fishery afforded the highest priority. Unfortunately, to date, existing policy places the directed fishery, which has suffered the greatest economic loss for the shrinking GB YT ACL, as the lowest priority--essentially receiving the leftovers after all "other" and "more important" fisheries have been receiving between 90 and 100 percent of their need. This policy was overlooked when the US / CA shared TAC was at or about 2,000 mt and the US was receiving at least 75 percent of the TAC. But at such low levels the stock must be allocated according to historical shares.

To be clear, NSC's support for the 40% is limited to 2013 for the reasons mentioned above. The spirit of this temporary 2013 sub-ACL formula was to allow the scallop fishery time to adjust to a sub ACL based on historical shares of 16%. NSC supports 16% in 2014 and beyond and will be strenuously opposed to any disingenuous effort that attempts to modify this critical decision. NSC support for this measure is entirely conditional upon the full three year policy being carried out as prescribed in this proposed rule. (40% 2013, 16% 2014, 16% 2015).

4) Small-Mesh Fisheries Sub-ACL for GB Yellowtail Flounder

NSC supports the proposed action to allocate a sub-ACL of 2 percent of the U.S. ABC for GB yellowtail to the small-mesh bottom trawl fisheries.

5) Recreational Fishery AM

NSC strongly supports a healthy and vibrant fishery comprised of both commercial and recreational stakeholders, however, NSC has grave concerns with the approach taken by the Council and Agency regarding recreational fishery accountability measures (AM). To us, there appears to be a stark inconsistency in the manner that MSRA is being implemented by the agency in terms of the approaches applied to deal with enormous cuts in fishery wide ACLs for GOM cod and haddock.

On the one hand, commercial fishermen are not allowed access to the “groundfish closed areas” for the purpose of “protecting groundfish and to promote rebuilding”, while on the other hand, a component of the fishery that argued for and succeeded in receiving 34% and 38% allocation of GOM cod and haddock respectively, is allowed to fish those allocations almost entirely within the “groundfish closed areas”.

The commercial fishery is fishing under an output controlled system with weekly or daily reporting from the sectors. VTR's are submitted within 24hrs of offloading and all VTRs submitted to NMFS every week. Sector vessels have at sea monitors or NEFOP observers on 22% to 38% of all trips. Comparatively, private and “for hire” commercial / recreational fishermen have little or no monitoring, are not under a directly controlled output but are instead managed through effort controls, and their reporting is sparse VTR data coupled with zero quota accounting in-season which leaves the fishery wide opened to a possible overage that would not be detected for months or even years after it occurred.

This double standard of applying AMs is inexcusable and it is questionable whether it is legal under MSRA. The implications to the fish stocks subject to strict rebuilding plans and the economic consequences to commercial fishermen dependent upon these stocks are significant. The recreational component of the fishery has been granted a substantial component of the ACL, a sub- ACL which is harvested largely in closed areas, with limited monitoring and reactive AMs.

But the double standard of management policy continues. Rather than proposing responsible measures for effectively monitoring and controlling fishing in the recreational sector in

response to ACL reductions as large as 77 percent, Framework 48 actually proposes to insert new authority for the RA to “loosen” recreational measures in-season if that sector is “projected” to be unable to achieve their sub ACL. NSC struggles to understand what data would be used that could reliably support such an in-season management response. Would the Agency consider allowing commercial vessels access to the GOM mortality closures if the commercial sub ACL was not being achieved? At least the Agency would know, at any point in time and with great precision, just how much has been harvested and how much is remaining, in stark contrast to what the Agency will have to make the decision to loosen recreational measures for harvests inside the groundfish closed areas.

This approach is tantamount to the Agency being compelled to open the WGOM and eliminate the April rolling closure this year to allow the commercial sector to harvest their GOM cod and GOM haddock that is being under-harvested FY 2012. Instead, the commercial fishery operating under strict hard TAC requirements, real time reporting and monitoring remains constrained by effort controls during a period of low catchability. Recently, the Agency has claimed the under harvest and low catchability has been evidence of low abundance and justification for unthinkable reductions in 2013 ACLs. Contrast that thinking with the proposed action for adjusting measures for the recreational sector and the double standard approach is quite clear to NSC.

6) Commercial Groundfish Fishery AMs

- ***Change to AM Timing for Non- Allocated Stocks***

In general, NSC does not support the proposed action because the data that will be used to make these decisions is known to be unreliable for use in the short term. The subjectivity of the evaluation of “should reliable information be available” is of particular concern since this determination could be made very late in the current fishing which would leave the fishery with little warning that an AM will be triggered at the start of the following year. This can have tremendous negative business effects on the fishery. Although NSC acknowledges the positive aspects of removing the AM if new information determines the AM should not have been implemented in the first place, it is little consolation as compared to the risk that having this policy in place will compel the agency to react when it believes it has “reliable” information when we all know that level of accuracy in the data does not exist in real time for non-allocated stocks. At this point, it is difficult to identify anything that is reliable in groundfish science or management.

Further, NSC notes that the timing of the AM's was not an issue addressed by the Court. Instead, as stated in the proposed rule preamble, NMFS recommends that AM's should be imposed 'as soon as possible' after the overage occurs. The Agency does not explain why and what the biological or management downside is of implementing such AMs in the third year. NSC seriously questions whether that downside would justify the severe impacts on business planning and operations if the agency mistakenly implemented an AM in the second year and had to reverse itself some months later. The potential chaos caused by this scenario argues strongly against putting the Agency in a position to make a subjective judgment as to when data is sufficiently reliable to implement these AMs in the second year. This is just looking for more problems. The groundfish fishery desperately needs reliability and stability—and one small way to achieve that is by continuing to implement these AMs in the third year.

In the event the Agency decides to ignore comments to the contrary and implements this change to the AM timing for non-allocated stocks, NSC supports the Agencies intent to use the start of the fishing year as the trigger point so that the entire fishing year is under one regime unless new information is revealed that could undo an AM if one has been triggered.

- ***Area-Based AMs for Atlantic Halibut, Atlantic Wolffish, and SNE/MA Winter Flounder***

In general, NSC does not support the proposed action because the data that will be used to make these decisions is known to be unreliable for use in the short term.

- ***Revised AM for SNE/MA Windowpane Flounder***

NSC supports SNE / MA Windowpane flounder sub-ACLs and the proposed AM applying to trawl vessels using codend greater than 5"

7) Commercial Fishery Minimum Fish Sizes

Species	Current Rules	Proposed changes for FW 48
Cod	22	19
Haddock	18	16
Pollock	19	No change
Gray sole	14	13
Yellowtail flounder	13	12
Dabs	14	12
Redfish	9	7
Winter Flounder (BBs)	12	No change

NSC strongly supports the proposed action as presented above. One way to help mitigate the huge reductions in ACL is to ensure as little wasted ACL to discards as possible. This measure was carefully analyzed by the PDT with the intent to convert the greatest portion of known discards into landings. Furthermore, these sizes were carefully considered in relation to the maturity and biology of fish stocks. The Council's final vote on the minimum fish sizes presented above is in some cases greater than the sizes originally presented by the PDT.

8) Sector Monitoring Programs

- ***Delay Industry At-Sea Monitoring Cost Responsibility***

NSC supports the Council's request to delay industry At-Sea Monitoring Costs Responsibility. Further, NSC notes that the current FY2013 Continuing Resolution enacted in March reallocates nearly \$120 million in revenues from the Saltonstall-Kennedy fund to cover the agency's costs for several critical functions including "Survey and Monitoring Projects".

- ***At-Sea Monitoring Cost-Sharing***

NSC understands the Agency's concerns and we support including the NE multi-species FMP in the joint effort with FMAT to develop a workable and consistent cost-sharing mechanism for the Northeast Region.

- ***Eliminate Dockside Monitoring***

NSC supports elimination of the dockside monitoring program at this time. NSC has maintained that this program was not well designed or contemplated in a manner that made the data timely or useful. It caused numerous logistics and costs issues without commensurate benefits. NSC has always maintained that Dockside Monitoring should either be 100% or 0% if the program's intent is to ensure equitable enforcement of dealer activities throughout the region. NSC agrees that the trip start and end hails offer vastly improved windows of opportunity for enforcement intercepts and that the requirement should be kept available for the Agency to implement on an "as needed" basis. However, NSC must point out that our experience with handling the traffic coming via VMS and through the various government and third party servers proved completely unreliable for fishermen to receive confirmation of hails returned to the vessels in a timely manner. This problem, unless resolved, will create enforce ability of hail requirements.

Consistent with NSC long record of promoting efforts to reduce redundancy and packaging data inputs to serve multiple purposes, NSC supports NMFS intent to clarify the regulatory text so that hails may be modified in the future to be streamlined with other reporting requirements that collect similar fishery data, such as Vessel Trip Reports (VTRs) and Vessel Monitoring System (VMS) catch reports.

- ***Sector Monitoring Goals and Performance Standard***

NSC supports the agencies proposed regulatory language to more explicitly state Sector Monitoring Goals and Performance Standards.

- ***Reduce At-Sea Monitoring for Monkfish Trips***

NSC supports this proposed action to implement a lower at-sea coverage rate for sector vessels fishing on a monkfish day at sea in the SNE Broad Stock Area with extra-large mesh gillnets.

9) GB Yellowtail Flounder Management Measures

NSC does not support the proposed action. Splitting this area into two strata will do little towards achieving the intended result. The only thing it will do is add complexity without benefit. NSC's comment during the Council deliberations was minimal to none because we struggled to understand how the benefits outweighed the costs or the likelihood of unintended results. NSC favored an approach to consider defining a more discreet area of historical GB YT catches for the purpose of allowing a greater area of GB to be accessed without assumed discard rates constraining access to the vast areas known to be sparse for YT presence. The propose action is far too broad in defining the two areas which we fear will result in no management benefits but will only add administrative burdens to the industry, Sectors and the Agency.

10) List of Allowable Sector Exemption Requests

NSC strongly supports the proposed action to broaden the list of allowable exemption requests. NSC agrees with the Agency's rationale for doing so, sectors are subject to a hard TAC that limits overall fishing mortality resulting from sector operations, making certain other mortality or effort controls redundant. Since hard TAC management was implemented by Amendment 16 in 2010, NSC has commented numerous times on the apparent disregard to remove regulatory artifacts associated with the old input control managed fishery.

11) Requirement To Stow Trawl Gear While Transiting

NSC strongly supports the proposed action to remove the gear towage requirement for trawl vessels while on a groundfish trip. NSC agrees VMS requirements are sufficient to monitor and enforce transiting requirements.

12) Correction to Eastern U.S./Canada Quota Monitoring

NSC supports the agency's proposed removal of the FW42 language inadvertently left in the regulations at § 648.85(b)(8)(v)(C). NSC participated directly in all Amendment 16 development meetings as well as the numerous data and technical workshops held to develop reporting tools and methodologies. If not explicitly, certainly implicitly, this Framework 42 artifact was being entirely replaced with sector level accountability to every distinctly managed stock or stock unit such as eastern and western cod and haddock in the US / CA areas. As the owner and developer of Fishtrax reporting tool, NSC was intimately involved in constantly modifying the software parameters for the automated onboard Fishtrax tool to ensure compliance with the regulatory methodology. NEVER was there an instance, either at a Council meeting or other meeting, where NSC was informed that eastern stocks were going to be required to be MISREPORTED under sector management. Had this ever been questioned or discussed by the Council during the development of Amendment 16, NSC and others would have commented extensively about the inconsistency this requirement poses for reporting and accountability of sector quota.

It is important to NSC that we continue to strive to create offshore opportunities to harvest GB haddock. Canadian haddock TAC utilization has been over 80% to as high as 98% while U.S. is barely harvesting 10%. It would be counterintuitive to artificially constrain U.S. fisherman by essentially requiring them to misreport catch which would result in premature shutdown of access to the very stock the U.S. is already disadvantaged relative to our Canadian counterparts.

Furthermore, since GB cod is one stock, and the eastern / western distinction is purely a management distinction for the benefit of the US / CA resource sharing agreement, there is no real biological issue regarding cod mortality but instead, there is a potential management issue IF misreporting of cod catch occurs on trips that are fishing eastern and western areas. NSC would argue that there would need to be overwhelming and convincing evidence that misreporting is occurring at a level that warrants further dismantling of any chance that the U.S.

can participate on par with the Canadians in the Transboundary Resource Sharing Understanding.

NSC completely agrees with the Agency's interpretation of Amendment 16 intent as this was certainly our understanding as a substantial stakeholder and participant in the Council process.

NSC appreciates the opportunity to provide comments on these important regulatory measures for the groundfish fishery. We will be submitting comments for the Proposed Rule for Framework Adjustment 50 in the coming days.

Sincerely,

A handwritten signature in blue ink that reads "Jackie Odell". The signature is fluid and cursive, with the first name "Jackie" and last name "Odell" clearly distinguishable.

Jackie Odell
Executive Director

NORTHEAST SEAFOOD COALITION

DATE: January 17, 2013

TO: New England Fishery Management Council

CC: Science and Statistical Committee

RE: Estimation of Fmsy for Groundfish Stocks

Implementation of the Magnuson-Stevens Act requirements to end or prevent overfishing according to the National Standard 1 guidelines requires the determination of Fmsy or, if a direct estimate cannot be determined, a proxy thereof.

Efforts to estimate Fmsy in groundfish assessments have typically applied methodologies that rely in part on an adequate understanding of the stock – recruitment relationship for each stock. In practice, stock-recruitment relationships are difficult to determine for many fish stocks. Accordingly, a range of approaches have been developed to estimate Fmsy, including biomass-based production models, theoretical stock-recruitment models, more generalized stock-recruitment models, and empirical stock-recruitment models.

Nevertheless, instead of presenting the results from different methods to the Council, the 2002 *Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish* chose to simply establish a proxy for Fmsy for groundfish stocks. This choice has had a substantially limiting influence on all future groundfish stock assessments and the advice provided to the Council.

<http://www.nefsc.noaa.gov/publications/crd/crd0204/crd0204.pdf>

The default proxy chosen by the 2002 Working Group for Fmsy was the Shepherd model (a combination of stock-and-recruitment theory and yield-per-recruitment theory). The Shepherd model is based on a specification of the 'maximum spawning potential' (MSP). Although a

range of MSP values are possible, the Working Group chose only 40% MSP.¹ So, in other words, although a large range of alternatives is possible, the Working Group presented the Council with only one method and only one of the many possible versions of the method.

It should be noted that MSP-based proxies for Fmsy assume the stock is in equilibrium. These stocks are not in equilibrium. Several more realistic alternatives exist for estimating Fmsy using non-equilibrium methods. Indeed, the scientist who performed the simulations in 1992-3 on which the 2002 Working Group based its advice for using F40%msp as a proxy has since raised his own questions about this methodology. Indeed, although those simulations were for west coast fish stocks, managers of those fisheries have since adopted F35%msp as their proxy for Fmsy.

The GARM III Working Group was unable to define stock-recruitment relationships for most groundfish stocks. Instead of using production models or other available methods that do not require any understanding of the stock-recruitment relationship to directly estimate Fmsy, the Working Group chose to apply the F40%msp proxy for Fmsy for all stocks (ignoring F30%, F20%, etc.), except redfish, for which F50%msp was applied. The GARM III report specifically cites the 2002 Working Group report as justification for their choice.

[http://www.nefsc.noaa.gov/saw/qarm/Garm%20III BRPs report 6june2008 finalCorrected.pdf](http://www.nefsc.noaa.gov/saw/qarm/Garm%20III%20BRPs%20report%206june2008%20finalCorrected.pdf)

Further, the choice to adopt the F40%msp proxy for Fmsy by the GARM III Working Group has subsequently been cited as the "best scientific information available" in Amendment 16 and subsequent framework actions adopted by the Council including proposed Framework 48. It is clear that the Council was not fully advised of the implications of this approach or the potentially more desirable and scientifically sound alternatives available when making these

decisions. As can be seen, the limited advice provided in the 2002 Working Group Report cited above has been perpetuated throughout the groundfish stock assessment and management process.

Two serious questions emerge for the Council's consideration—

1) Was the specific choice of F40%msp as the proxy for Fmsy appropriate for most groundfish stocks and does it represent the best scientific information available?

¹ The fishing mortality rate associated with 40% of the MSP of the stock. MSP is defined as the 'spawning stock biomass per recruit in the absence of any fishing' —i.e., when $F=0$. Thus, the F40%msp proxy means the fishing mortality rate that would reduce spawning stock biomass per recruit to 40% of the unfished level (maximum).

- The choice of 40% of MSP as opposed to some other percentage of MSP in setting a proxy for Fmsy (overfishing) is inherently arbitrary. It also often generates much greater rebuilding targets that may exceed Bmsy, which may be very difficult if not impossible to achieve within arbitrary MSA rebuilding timeframes. Managers need to understand the important implications this choice has for the specific management goals for each stock.

2) Is any MSP-based proxy for estimating Fmsy appropriate for groundfish stocks and does that represent the best scientific information available? (ie. should we use direct estimates of Fmsy instead)?

- Overfishing is legally defined according to Fmsy, and technical guidance from NOAA is that Fmsy proxies should only be used when Fmsy is not estimable.
- Since 2002 considerable additional data has been obtained that may support an understanding of the stock-recruitment relationship for some groundfish stocks (including Georges Bank yellowtail flounder) that is adequate to support the direct estimation of Fmsy for specific stocks (but a production model approach does not require assumptions about the stock-recruitment relationship).
- Even when stock-recruitment relationships cannot be determined as is often the case for groundfish stocks, valid production models based on age-aggregated biomass dynamics can be used to provide direct estimates of Fmsy for these stocks.
- MSP-based proxies for Fmsy are not appropriate for groundfish stocks that are not at equilibrium, and alternative non-equilibrium methods are more appropriate.

With these questions in mind, NSC respectfully recommends that the Council submit the following requests to the SSC to be addressed as soon as possible:

- 1) Where possible, provide direct estimates of F_{msy} for all groundfish stocks.**
- 2) Where not possible to provide direct estimates of F_{msy} , reevaluate the current $Fx\%msp$ proxy taking into consideration of what percentage of MSP is most likely to achieve the specific management goals for each applicable stock. This should include an evaluation of the consequences of this choice on the rebuilding target for each stock, and a comparison to available data.**

Appendix 5

MA DMF 12/2012

MA DMF Portside Bycatch Study Data Log

Land Date: _____				Scales Used: Large _____ TARE: _____				DMF TRIP ID: _____	
Vessel Name: _____				Small _____ TARE: _____				Sampler(s): _____	
Vessel Hail: _____ (mts, lbs, trucks)				Subsample Basket scheduled every _____ minutes				Offload Site: _____	
Sub-Sample #	Time (24 hr)	Basket Weight (kg)	Species 1 <small>(Target)</small>	Species 2	Species 3	Species 4	Species 5	Species 6	Notes <small>(Truck #/size, pump/offload notes, LF sample, problems...)</small>
Page SUM <small>(add columns for each page)</small>									After adding all columns verify that Basket Weight = SUM of all Species Weights
Trip SUM <small>(add Page SUMs after last basket of trip)</small>									Note: If using tube scales add to .1 kgs, if using digital scale add to .01 kgs.

If **SUM of RH/S** (Alewife, Blueback Herr, Am.Shad) = **1.5% OR MORE** of total **basket weight**, immediately text msg RH% to MA DMF

Appendix 5

MA DMF SMALL PELAGIC PORTSIDE BYCATCH SURVEY

Species _____ Tot Wt (kg) _____ Sub Wt (kg) _____			Species _____ Tot Wt (kg) _____ Sub Wt (kg) _____			Species _____ Tot Wt (kg) _____ Sub Wt (kg) _____			Species _____ Tot Wt (kg) _____ Sub Wt (kg) _____		
Lt (cm)	Frequency	Sub Wt (kg)	Lt (cm)	Frequency	Sub Wt (kg)	Lt (cm)	Frequency	Sub Wt (kg)	Lt (cm)	Frequency	Sub Wt (kg)
0			0			0			0		
1			1			1			1		
2			2			2			2		
3			3			3			3		
4			4			4			4		
5			5			5			5		
6			6			6			6		
7			7			7			7		
8			8			8			8		
9			9			9			9		
0			0			0			0		
1			1			1			1		
2			2			2			2		
3			3			3			3		
4			4			4			4		
5			5			5			5		
6			6			6			6		
7			7			7			7		
8			8			8			8		
9			9			9			9		
0		Notes	0		Notes	0		Notes	0		Notes
1			1			1			1		
2			2			2			2		
3			3			3			3		
4			4			4			4		
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6			6			6			6		
7			7			7			7		
8			8			8			8		
9			9			9			9		

MA DMF SMALL PELAGIC PORTSIDE BYCATCH SURVEY

Species			Species			Species			Species		
Tot Wt (kg)			Tot Wt (kg)			Tot Wt (kg)			Tot Wt (kg)		
Sub Wt (kg)			Sub Wt (kg)			Sub Wt (kg)			Sub Wt (kg)		
L (cm)	Frequency	Sub Wt (kg)	L (cm)	Frequency	Sub Wt (kg)	L (cm)	Frequency	Sub Wt (kg)	L (cm)	Frequency	Sub Wt (kg)
0			0			0			0		
1			1			1			1		
2			2			2			2		
3			3			3			3		
4			4			4			4		
5			5			5			5		
6			6			6			6		
7			7			7			7		
8			8			8			8		
9			9			9			9		
0			0			0			0		
1			1			1			1		
2			2			2			2		
3			3			3			3		
4			4			4			4		
5			5			5			5		
6			6			6			6		
7			7			7			7		
8			8			8			8		
9			9			9			9		
Notes			Notes			Notes			Notes		
0			0			0			0		
1			1			1			1		
2			2			2			2		
3			3			3			3		
4			4			4			4		
5			5			5			5		
6			6			6			6		
7			7			7			7		
8			8			8			8		
9			9			9			9		
Notes			Notes			Notes			Notes		

Appendix 6

DMR PORTSIDE BYCATCH STUDY

Samplers:

Basket # Total Kg	Basket # Total Kg	Basket # Total Kg
Basket # Total Kg	Basket # Total Kg	Basket # Total Kg
Basket # Total Kg	Basket # Total Kg	Basket # Total Kg
Basket # Total Kg	Basket # Total Kg	Basket # Total Kg
Basket # Total Kg	Basket # Total Kg	Basket # Total Kg
Basket # Total Kg	Basket # Total Kg	Basket # Total Kg
Basket # Total Kg	Basket # Total Kg	Basket # Total Kg

Link #
BCS #
Date
Target Species
Lot Weight

Catch Location
Gear Code
Depth Ftm
VTR #
Observer

Entered
Comments

Appendix 7
Sector Dockside Monitoring Program Standards
May 25, 2009

PURPOSE STATEMENT: *This document reflects a collaborative effort by sector organizers to capture a baseline protocol of a Dockside Monitoring Program for both 100% and less than 100% Dockside Monitoring Program. Acknowledging that individual sectors present unique technical challenges, participants in this process opted to articulate protocols they felt should be met by all sectors at a minimum. However, while it will be the responsibility of individual sectors to design a Dockside Monitoring Program that achieves these protocols, the approach taken by an individual sector will vary based on the unique circumstances of their sector.*

I. HAIL

1. Upon departure, sector vessels will HAIL OUT, meaning notify the Sector Manager (SM) and Dockside Monitoring Vendor that he is departing on a Groundfish (GF) Trip. The HAIL OUT will include basic identifying information. Basic identifying information includes vessel name (or other data that uniquely identifies the vessel) and sector name.
2. Transmission of the HAIL will be either via Vessel Monitoring System (VMS) or some other electronic method as determined by the Sector.
3. At an appropriate time before landing, (determined by sector and Dockside Monitoring Vendor) the sector vessel will HAIL IN, meaning notify the Dockside Monitoring Vendor of his specific offload location, estimated time of arrival, and estimated volume or weight of GF on board. Whether the captain needs to estimate volume of GF on board, broken down by species, will be determined by whether there is 100% or less than 100% Dockside Monitoring for the sector.
 - a. **If there is 100% Dockside Monitoring**, meaning a Dockside Monitor (DM) or Roving Monitor (RM) will be present for the offloading of every sector vessel groundfish trip, then the HAIL IN will include the following:
 - i. Vessel name, Captain's name, permit number, sector name, VTR# and Trip ID #.
 - ii. Specific offloading location, estimated time of arrival, and estimated volume or weight of all species combined on board.
 - iii. The DM vendor will send a confirmation to the vessel that the HAIL was received.
 - iv. If the DM has an emergency and cannot meet the vessel as required, the DM vendor will notify the vessel, the sector manager and the Office of Law Enforcement.
 - b. **If there is less than 100% Dockside Monitoring**, (meaning any specific GF trip may or may not have a DM or RM present to witness offloading), then the vessel will be notified by the DM Vendor (when they send their confirmation) that:
 - i. They will have a DM/RM present, OR
 - ii. They are issued a DM Waiver for the trip, (meaning no DM or RM will be present to witness the offload).

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- c. **If there is less than 100% Dockside Monitoring:** Regardless of whether the vessel gets a waiver or not, the HAIL IN will include everything required for 100% DM coverage, but will also include an estimated volume of each species on board.

II. Responsibilities of the Dockside Monitoring Vendor

1. The DM Vendor must be able to receive HAILS on a 24/7 basis and must be able to send a confirmation of the HAIL back to the vessel. The confirmation system may be automated, but must indicate completeness of the required information.
2. The DM Vendor may keep a running list of 'open trips' so they are prepared to cover landing events and for other purposes (safety).
3. Upon receiving a HAIL IN, the DM Vendor will respond by sending the vessel and the Sector Manager a confirmation that includes confirming that a DM will be at the unloading station at a time certain; (or be able to communicate with the vessel to coordinate a time for offloading to commence). This can be any time agreeable to the unloading facility, the vessel and the DM.
4. The DM/RM will be required to sign the dealer receipt to document that the offload was observed.
5. The DM Vendor will be required to keep a record of each offload for auditing purposes and for any other reasons that may be stipulated in the private contract between vendor and Sector. This may also be needed to satisfy NMFS compliance concerns.
6. If there is less than 100% DM required, then the DM Vendor will notify the Sector Manager and NMFS Law Enforcement with the complete HAIL IN information (including a breakdown of species to be landed and estimated weight of each species on board) and whether the vessel will have a DM present at offloading or not.
7. The DM/RM must provide accurate and complete data to the SM and/or any third party immediately upon completion of weighing to give the Sector Manager or third party with enough time for the SM to ultimately produce an accurate and complete weekly report to NMFS.
8. The DM Vendor will be responsible for establishing an acceptable randomized methodology for determining allocation of DMs/RMs and waivers if less than 100% coverage level is chosen.
9. The DM Vendor will be responsible for working with Sector Managers to establish an acceptable process for Safe Harbor situations when a sector vessel is unable to follow normal dockside monitoring protocol due to an emergency situation.

III. Actual Monitoring of Offload at Dealer

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1. The vessel may enter port and tie at safe berth but no offloading can commence until the DM/RM is present.
 - a. Under limited circumstances vessels may be allowed to land non-allocated stocks for example lobsters or scallops, but will be required to notify NMFS Enforcement with enough notice to enable enforcement to be deployed if desired.
 - b. **If 100% Dockside Monitoring is required:**
 - i. The DM will take copies of the VTR(s) with all information available (no blocked cells).
 - ii. The DM will verify the scales are certified and record the weight of offloaded fish by species or market class.
 - iii. The DM will check the vessel to ensure that all fish have been offloaded.
 - iv. The DM will sign the dealer receipt.
 - v. The DM will collect copies of the VTR(s), and the dealer receipt.
 - vi. The DM will electronically send his copies of the VTR(s), the dealer slip and his report to the sector manager ... if the sector has contracted with a third party to collect and process their data, then the DM will send all three documents to that third party.
 - vii. The DM will keep a copy of his report and it shall be stored by the DM vendor.
 - c. **If less than 100% DM is required and the vessel will get a waiver:**

The DM Vendor, when confirming that they have received the HAIL IN, will notify the vessel that they are receiving a waiver from DM for this trip. It will be the responsibility of each vessel operator to provide electronic copies of the VTR and dealer report to the Sector Manager or if applicable a contracted third party data company.
 - d. **If less than 100% DM is required and the vessel will have a DM or RM,** then the process for 100% DM will be followed.

IV. Offloading to a Truck / Roving Monitors

1. The vessel will HAIL IN as described for all Dockside Monitoring.
2. It will be the responsibility of each individual sector to specify what remote unloading facilities Sector members will be allowed to offload to trucks at in their operations plans.
3. All trucked fish must be weighed, either at the offload site by a licensed dealer (in which case it is treated as a dockside monitoring event) or at the dealer when the truck offloads.
4. **If 100% DM is required:**
 - a. The DM vendor will be responsible for ensuring a Roving Monitoring will be at the offload site when the vessel arrives to offload. All landing events at remote ports will be required to have a RM present to witness offload activities as well as a DM present at dealer to certify weigh-out.

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- b. Copies of the VTR(s) need to be available at the truck offload for the DM.

5. If less than 100% DM is required:

- a. The HAIL IN will include the captain's estimate of weight of each species on board.
- b. The vessel will be notified by the Dockside Monitoring Vendor (when they send their confirmation) that
 - i. they will have a RM present OR
 - ii. they are issued a DM Waiver for the trip
 - iii. the DM vendor will notify the Sector Manager and NMFS Law Enforcement with the complete HAIL IN information (including a breakdown of species to be landed and estimated weight of each species on board) and whether the vessel will have a DM present at offloading or not.
- c. Offloading of landings at remote ports and weigh out of landings at dealer facilities will be considered two separate events. DM will be responsible for establishing a selection process that randomly selects remote port offloads that will be monitored by a RM and weigh out of trucked landings at dealer facility by DM.

V. Actual Monitoring of Offload at a Remote Port

- 1. The vessel may enter port and tie at safe berth but no offloading can commence until the RM is present.
 - a. The RM will take copies of the VTR(s) with all information available (no blocked cells).
 - b. If there are scales, then the RM will verify the scales are certified and record the weight of offloaded fish by species.
 - c. If there are no scales at the offload site, then the RM will record the number of totes of each species with the Captain's estimate of weight of each tote.
 - d. The RM will check the vessel to ensure that all fish have been offloaded.
 - e. The RM will ensure that each tote is labeled with the appropriate information including but not limited to:
 - i. Vessel name, Captain's name, permit number, sector name, VTR# and Trip ID #, date of offload, RM name, tote number and species;
 - f. The RM will confirm that the driver's manifest includes an accurate list of all totes, the species they hold, the vessel and permit each tote came from, and the RM's name/contact info.
 - g. The RM will electronically send his copies of the VTR(s) and his Offload Report to the sector manager, and if the sector has contracted with a third party to collect and process their data, then the RM will send both documents to that third party.
 - h. The RM will keep a copy of his report and it shall be stored by the DM vendor.
- 2. Final RM protocols and requirements will be determined by the DM vendor and the individual Sector, detailed in the Sector's Operations Plan, and must be approved by NMFS.



New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

May 10, 2011

Ms. Patricia A. Kurkul
Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Pat:

The Final Rule implementing Framework Adjustment 45 included a requirement that dockside monitors inspect the fish hold for any trip assigned a dockside or roving monitor. At the April Council meeting, the following motion was passed without an opposing vote (12/0/2):

"request that the Council write a letter to NMFS expressing our concerns on the requirement to have dockside monitors go down in the fish hold."

The Council is concerned that this requirement poses an unacceptable safety risk for dockside monitors. There are no generally accepted standards that describe access from an offloading site to a fishing vessel. While at some locations there may be a boarding platform or gangway between the dock and the vessel, it is far more common for access to be by jumping or clambering from one to the other. Given the high tides in some areas of New England there may be a large vertical distance between the pier and the vessel, and as a result access may be via a poorly maintained, slippery, and, in winter, ice-encrusted ladder. There are numerous examples of experienced fishermen falling in the water between the vessel and the pier, often with tragic results. To expose dockside monitors to these risks without a clear benefit is unacceptable.

Once on-board a vessel the number of hazards does not decrease. Dockside monitors are being asked to inspect fish holds; access to a hold can be nearly as hazardous as that between the dock and the vessel. There are also safety concerns with entering fish holds do to the possibility of poor or non-existent ventilation. These personnel operate independently, with no safety observer or backup should they encounter a problem. There is a very real possibility that an accident could be undetected for a considerable length of time.

These safety issues are likely to increase the potential liability for both dealers or dock owners and the fishing vessels. As a result insurance companies may increase premiums. These increased costs will only dissipate the economic benefits of the catch share system.

Even if the safety issues can be resolved, there are other questions concerning the role of the monitors that have not been addressed. Are they to move ice or other gear to ensure all fish has been offloaded?

How do they respond if they do find catch that is not offloaded, since they do not have enforcement authority? Will this requirement delay the offload of multiple vessels at busy offload sites? What will be the response if a vessel captain does not give permission to board their vessel? Can a dealer refuse to allow a monitor to board from its dock because of safety issues?

In sum, the Council believes its concerns warrant revisiting this requirement. We urge you to reconsider this decision in light of the serious safety and practical issues that have been raised. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul", written in a cursive style.

Paul J. Howard
Executive Director