

ADDITIONAL CORRESPONDENCE

SUSTAINABLE HARVEST SECTOR

PO Box 356, So. Berwick ME 03908 | 207-956-8497 | www.groundfish.org

January 17, 2020

John Quinn, Chair
New England Fishery Management Council
50 Water St. Mill 2
Newburyport, MA 01950

Dear John,

We write to provide the Council with some context concerning the recent USCG report “Summary of Stock Area Analysis and Investigation of Misreporting in the Northeast Multispecies Fishery.” That report flagged 350 trips over four years (primarily in fishing years 2011 and 2012) for which the analysis suggests operators misreported their catches.

The report described several metrics it examined for evidence of misreporting (pages 11-14) on trips that fished in more than one broad stock area. The primary metric was described as: “In general terms, the analysis flagged vessels that reported the majority of their catch in a stock area where they spent a small amount of time.” We contacted the lead author of the report who provided a more precise description of this metric:

- The flag was set for trips that had a ‘spread’ of 40% or more between time spent in a broad stock area, and pounds of a stock caught. For example, a vessel that spent 70% of its time in the Gulf of Maine but reported just 30% of its cod catch from that stock would be flagged ($70\% - 30\% = 40\%$). A vessel that spend 60% of its time in the Gulf of Maine and reported 40% of its cod as from that stock would not ($60\% - 40\% =$ just 20%).
- “Time” was measured as time spend moving at a speed of 3 knots, a typical towing speed (presumably for trawl trips only), derived from NMFS electronic vessel track records.

We were interested to know how often the USCG report’s 40% spread was ‘naturally’ breached, meaning how often it occurred in the absence of misreporting. We classified observed trips as absent of misreporting, where a third party verifies the amount and location of catch. We assumed the observer record was true and accurate, and examined our records for observed trips that exceeded the 40% threshold for codfish¹.

We do not have the timed vessel track data that the USCG used, so we used ‘number of observed hauls in a broad stock area’ as an imperfect proxy. For example, if an observer reported a trip made 7 of 10 hauls in the Gulf of Maine (70%) but reported just 30% of its cod from that area, that trip met the 40% threshold and was flagged.

GOM/GB West Cod Reporting

In fishing year 2011, our vessels made about² 125 observed trips that fished in both the Gulf of Maine and Georges Bank West stock areas. On 16 of those, observers reported the time/catch spread exceeded 40%. In fishing year 2012, of about 75 observed trips 10 exceeded the spread. Thus, in those two years, 10%-15% of our sector’s multi-area trips could have been falsely flagged for misreporting.

¹ The USCG also examined possible misreporting of yellowtail and winter flounders. Our sector’s catch of those stocks was too spotty to be of any value.

² A few trips in each fishing year had to be discarded for data quality issues.

Changes in fishing location may increase false flags. Beginning in fishing year 2015, our sector #3 voluntarily refrained from fishing in the inshore Gulf of Maine entirely, where cod is relatively abundant. Over 25% of that year's observed multi-area trips exceeded the 40% time/catch spread, meaning they could have been incorrectly flagged as misreporting.

GBE/GBW Cod Reporting

Our observer records for this analysis are much spottier, largely because so many trips have to be discarded because they use a combination of standard and haddock separator trawl gear (the latter designed to reduce catch of cod; it would be improper to compare those trips to single-gear trips). However, our limited dataset suggests false flags are much rarer here than they are in the GOM/GBW cod arena discussed above.

Changing Reporting Requirements

We recall mid-year changes to catch reporting requirements in the midst of the USCG-analyzed timeframe that created confusion for operators. As noted in the NEFSC's 2017 report Vessel Trip Reports Catch-area Reporting Errors: Potential Impacts on the Monitoring and Management of the Northeast United States Groundfish Resource (CRD 17-02) (pp 7-8):

Prior to 2012, the VTR instructions provided no guidance on how to report catch and effort on tows that crossed statistical area boundaries... In February 2012, the instructions were revised requiring vessel captains to apportion catch based on the time spent in each statistical area on tows that crossed boundaries. In December 2014 the instructions were again revised requiring that captains report the statistical area associated with the location of the start of the tow haul back – a protocol that is consistent with observer protocols. This change only impacted the reporting of tows crossing statistical area boundaries, and since the incidence rate of these tows is low (<10% of all hauls) and it is unknown if the fleet actually changed its reporting practices when the instructions were revised, it is not clear what impact, if any, this might have had on the observed trends.

Some apparent or actual misreporting during some of the report's timeframe may have been due to confusion about shifting reporting guidance.

Conclusion

We do not suggest misreporting does not occur (e.g. *US v. Carlos Rafael*), and in fact the USCG report's methodology provides an analytic framework to better help us ensure our sector vessels are reporting accurately. Though the report included disclaimers such as "this report does not draw any conclusions on whether any violations of law occurred...", it's clear that the USCG was, at a minimum, very confident that 350 of an unspecified number of multi-area trips had misreported.

We do believe that misreporting is not as widespread as some fear, and that investigative work such as this – even though it may sometimes infer an incorrect assumption - can both isolate potential violators, and identify operators who may simply be in need of reporting compliance assistance.

Sincerely,



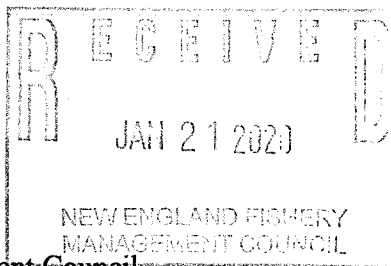
Hank Soule
Sector Manager

91 FAIRVIEW AVE
PORSTMOUTH NH 03801

April 10, 2019

New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Thomas A. Nies, *Executive Director*



**NORTHEAST HOOK
FISHERMAN'S ASSOCIATION**



Dear Executive Director Tom Nies & Council Chairman Dr. John Quinn

Subject: AMENDMENT 23/GROUNDFISH MONITORING

We represent a group of Commercial Fishermen with the Limited Access Handgear HA Permits, employing the use rod and reel, handlines or tub trawls to catch Cod, Haddock and Pollock along with small quantities of other regulated and non-regulated marine fish.

We are requesting that the NEFMC exempt Common Pool and Sector Vessels issued a limited access NE multispecies Handgear A or Small Vessel Category permit from Dockside Monitoring (DSM).

1. We requested the same exemption from the NMFS in our comments for Dockside Monitoring in Framework 45 and this request was granted. NMFS stated:

"Vessels issued a limited access NE multispecies Handgear A or Small Vessel Category permit, and vessels issued an open access NE multispecies Handgear B permit, land very small amounts of regulated species and ocean pout compared to vessels issued limited access NE multispecies DAS permits. Thus, dockside/roving monitoring costs would represent a greater proportion of their operational costs compared to NE multispecies vessels operating under a NE multispecies DAS. Based on public input, there is the potential that such costs would be more than the value of fish landed on a particular trip. Accordingly, FW 45 proposes to exempt Handgear A, Handgear B, and Small Vessel category permits from any dockside/roving monitoring requirements when operating in the common pool. Under such an exemption, it would not be possible for dockside/roving monitor service providers to provide statistically random coverage of all common pool trips, as required under Amendment 16. Therefore, the proposed regulations would also revise the Amendment 16 dockside/roving monitoring coverage provisions to accommodate this exemption, and specify that service providers must provide random coverage of all trips subject to the dockside/roving monitoring requirements." Docket ID: NOAA-NMFS-2010-0198 RIN 0648-BA27

2. Although Amendment 23 proposes that Dealers pay for DSM there is still the concern that the value of the catch and any subsequent profit made by the dealer (much smaller portion than the fisherman) will not be sufficient to cover the costs of the DSM for these permit categories. A Dealer may rightfully refuse to take the groundfish from a small vessel since they would lose money almost every time. **These federally licensed fisherman can only sell their catch to federal dealers. Implementing DSM on these small vessel fishermen would eliminate these fishermen from the fishery if no dealer will provide a DSM to them at a financial loss).**
3. We are requesting that both Common Pool and Sector vessels are exempt from DSM. This makes sense since the reasons for requesting this exception is the same regardless if a vessel is in the common pool or in a sector.

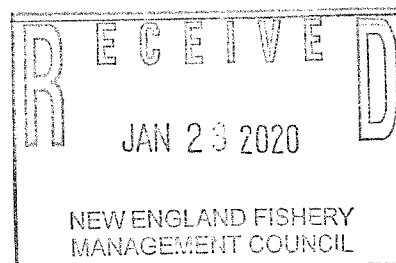
Very Respectfully,
Marc Stettner /s/

NEHFA MEMBERS: Marc Stettner, Timothy Rider, AJ Orlando, Hilary Dombrowski, Paul Hoffman, Christopher DiPilato, Ed Snell, Scott Rice, Roger Bryson, Brian McDevitt, Anthony Gross, Doug Amorello

January 23, 2020

Dr. John Quinn, Council Chairman
Mr. Tom Nies, Executive Director
New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950

Submitted via comments@nefmc.org



RE: Amendment 23 Draft Environmental Impact Statement

Dear Dr. Quinn and Mr. Nies:

Conservation Law Foundation (“CLF”) respectfully submits this letter to the New England Fishery Management Council (“Council”) regarding the Draft Environmental Impact Statement (“DEIS”) for Draft Amendment 23 to the Northeast Multispecies Fishery Management Plan (“Amendment 23” or “Amendment”). CLF has advocated for sustainable management of New England fisheries for decades, including the need to prevent overfishing, rebuild overfished stocks, and ensure accountability in the multispecies (“groundfish”) fishery. Monitoring that can produce accurate and precise catch data is essential to ensuring the Northeast Multispecies Fishery Management Plan complies with these mandates of the Magnuson-Stevens Act (“MSA”). Such monitoring has not existed in this fishery to date, and management, science, compliance, and enforcement have suffered as a result.

Amendment 23 was first introduced in September 2016, and it will soon be three years since the National Marine Fisheries Service (“NMFS”) published a Notice of Intent and initiated a scoping period.¹ Although CLF appreciates the efforts by Council and NMFS staff to reach this point, three years is a long time to develop such a fundamental premise of good fisheries management. Over this time, more and more analyses and testimonies have revealed the existing biases and flaws of the current groundfish monitoring program. Further, overfishing of both Atlantic cod stocks (Gulf of Maine and Georges Bank) has continued year-after-year,² and the situation has become even more dire than when the Amendment was initiated. For example, the most recent federal trawl survey confirms that biomass of Gulf of Maine cod has fallen to a new historic low.³ Inaccurate data must no longer plague stocks assessments or hamper management – it is well past time to correct this basic management flaw in the fishery. CLF urges the Council to vote the DEIS out for public comment at its January 2020 meeting.

¹ 82 Fed. Reg. 11,011 (Feb. 17, 2017).

² See Operational Assessment of 14 Northeast Groundfish Stocks, Updated Through 2018. Pre-publication copy dated October 3, 2019.

³ CLF email correspondence with the Northeast Fisheries Science Center.

A Reasonable Range of Alternatives

CLF remains particularly focused on the at-sea monitoring components of Amendment 23, referred to as “Sector Monitoring Standards” and “Sector Monitoring Tools.” These standards and associated tools are the principal means to satisfying the purpose and need of the Amendment, which is “to implement measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is precise and accurate representation of catch (landings and discards)”⁴ as well as the primary goal of the groundfish monitoring program: “to verify area fished, catch, and discards by species and gear type . . . in the most cost effective means practicable.”⁵

Amendment 23 proposes three sector monitoring standard options: (1) no action – CV precision standard, (2) fixed total at-sea target monitoring coverage level based on a percentage of trips, and (3) fixed total at-sea target monitoring coverage level based on a percentage of catch. Options 2 and 3 have sub-options for 25 percent, 50 percent, 75 percent, and 100 percent coverage. The sector monitoring tools include, in addition to human at-sea monitors: (1) electronic monitoring in place of human at-sea monitors, (2) audit model electronic monitoring, and (3) maximized retention electronic monitoring.

While it has been demonstrated that the “no action” alternative (CV precision standard) “is not an appropriate method to set at-sea monitoring coverage levels[.]”⁶ the options provided for sector monitoring standards and tools do represent a reasonable range of alternatives under the National Environmental Protection Act (“NEPA”) that warrant consideration by the public. The Council has studied and debated Amendment 23 for three years, conducted numerous analyses that have been reviewed by the Council’s Scientific and Statistical Committee, and delayed possible implementation by at least two years beyond the original timeline. The public now deserves the opportunity to provide feedback for Council consideration pursuant to NMFS’s own guidelines.⁷ Again, CLF urges the Council to vote out the DEIS for public comment at its January 2020 meeting and finalize any remaining details in the next few weeks prior to publication in the federal register.

⁴ Draft Amendment 23, DEIS Part 1 (draft for Committee review), at 11. Available at: https://s3.amazonaws.com/nefmc.org/3a_200114_Groundfish_A23_DEIS_Part-1_200121_101229.pdf.

⁵ *Id.* at 13.

⁶ Groundfish Plan Development Team Conclusions Based on Monitoring Analyses Conducted dated at April 15, 2019, at 3 and 4. Available at: https://s3.amazonaws.com/nefmc.org/1e_190415_Groundfish-PDT_Conclusions-for-SSC-Review.pdf. (“[T]he current precision standard is not an appropriate method to set at-sea monitoring coverage levels because the assumption that observed trips are representative of unobserved trips is false. . . . The analyses support more comprehensive monitoring in the fishery.”)

⁷ Operational Guidelines for the Magnuson-Stevens Fishery Conservation and Management Act Fishery Management Process, NMFS Procedure 01-101-03 (Oct. 25, 2017), at 1. (“The MSA mandates an open, public process for the development of fishery management measures and actions through the fisheries management council system.”)

Selection of a Preferred Alternative

CLF also encourages the Council to select preliminary preferred alternatives, at least for a sector monitoring standard. Selecting preferred alternatives does not constitute a final decision under NEPA but simply provides a signal to the public regarding which direction the Council is leaning and can help focus written and oral comments. Given the purpose, need, and goals of Amendment 23 and the groundfish monitoring program, CLF supports Option 2, Sub-Option 2D (fixed total at-sea monitoring coverage level based on a percentage of trips, 100 percent) and urges the Council to select this as its preferred alternative for a sector monitoring standard.

Minimizing bias is key to ensuring accurate and precise estimates of catch. As stated in the DEIS: “If there is evidence that behavior is different [on observed and unobserved trips], then a higher coverage level may be required to ensure the accuracy of discard estimates and to minimize the potential for bias in fisheries dependent information.”⁸ The Groundfish Plan Development Team’s analyses reveal that this difference exists on multiples levels: “All three analyses that compare observed and unobserved trip data conclude that observed trips are not representative of unobserved trips. The dimensions where observed trips differ from unobserved trips include: Gulf of Maine cod catch rates, groundfish landings to effort ratios, trip duration, pounds of kept groundfish, pounds of total kept catch, and trip revenue.”⁹ These analyses demonstrate that bias is a pernicious problem in the groundfish fishery, which makes it impossible to collect accurate and precise catch data.

The Council must focus on eliminating this bias to achieve Amendment 23’s purpose and need, the goals of the groundfish monitoring program, and the MSA’s most fundamental mandate to prevent overfishing. The DEIS is clear: “As coverage increases to 100%, the effective bias of unobserved trips reduces to zero . . . Therefore, observer bias is expected to be most problematic at low levels of observer coverage.”¹⁰ Additionally, 100 percent monitoring coverage is expected to have positive biological impacts on regulated groundfish and other species compared to no action, 25 percent, 50 percent, and 75 percent coverage (based on a percentage of trips).¹¹ Maximizing positive biological impacts should be a priority for the Council, particularly in the groundfish fishery where over half the stocks are overfished¹² – including both stocks of Atlantic cod.¹³

⁸ Draft Amendment 23, DEIS Part 1 (draft for Committee review), at 16.

⁹ Groundfish Plan Development Team Conclusions Based on Monitoring Analyses Conducted dated at April 15, 2019, at 3.

¹⁰ Draft Amendment 23, DEIS Part 3a (draft for Committee review), at 12. Available at: https://s3.amazonaws.com/nefmc.org/3c_200116_Groundfish_A23_DEIS_Part-3a_200121_101254.pdf.

¹¹ Draft Amendment 23, DEIS Part 3a (draft for Committee review), at 46.

¹² See Operational Assessment of 14 Northeast Groundfish Stocks, Updated Through 2018. Pre-publication copy dated October 3, 2019; see also NOAA Fisheries Status of the Stocks as of September 30, 2019. Available at: <https://www.fisheries.noaa.gov/national/population-assessments/fishery-stock-status-updates>.

¹³ *Id.*

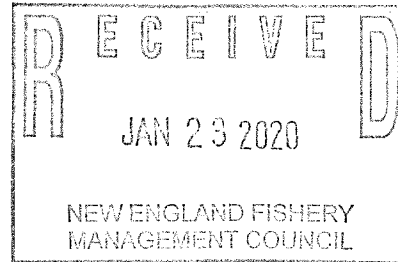


Lastly, the Council should reject efforts to delay Amendment 23 any further. While the economic concerns of increased monitoring are an important consideration, the Council must focus from what needs to be done to sustainably manage the groundfish fishery as required by the MSA. Thank you for considering these comments.

Sincerely,

Allison Lorenc
Policy Analyst
Conservation Law Foundation

Dr. John F. Quinn, Chairman
New England Fisheries Management Council
50 Water Street, Mill 2
Newburyport, MA 01950



Dear Chairman Dr. Quinn,

Please accept these comments on behalf of the Maine Coast Fishermen's Association regarding Amendment 23 to the Northeast Multispecies fishery management plan (FMP).

The Maine Coast Fishermen's Association (MCFA) is an industry-based nonprofit that identifies and fosters ways to restore the fisheries of the Gulf of Maine and sustain Maine's historic fishing communities for future generations. Established and run by Maine fishermen, the objectives of the Association are to provide a voice for our fishing communities, to rebuild the Gulf of Maine ecosystem, and to build viable fishing businesses on our coast. MCFA members represent a diverse range of fisheries and fishing businesses but have come together to build a vibrant future for Maine and its working waterfront communities. As such, we write today to encourage the New England Fishery Management Council (Council) to approve the Amendment 23 Draft Environmental Impact Statement (EIS) for public hearings.

Amendment 23 is a straightforward document that outlines a clear and concise problem statement paired with a handful of potential solutions to address the problem and some tools to implement those solutions. Significant analysis has been done to give Council members and the public the information to assess the rationale behind the need for potential regulatory changes and the costs that those new regulations will put onto the fishing industry. The draft EIS is a hefty document, it is new, and it certainly needs to be distilled so that the public can better understand what this analysis says, but that doesn't mean that we need to stall moving forward with public hearings. Council staff has been able to take far more complicated management plans and created straightforward and easily understandable outreach documents to ensure successful public hearings and engagement.

At this time, we do not suggest picking preferred alternatives to take to the public.

While we would like this document to go to the public with a wide range of options, the Amendment 23 public hearing process could be much more straightforward if it was made clear what alternatives were not approvable by NOAA. NOAA has made it clear that they believe there is a need for significant increases in monitoring coverage on this fishery. Does that mean that anything less than where we are today wouldn't hit their standard for improvement? If so, the 25% monitoring option (4.1.1.2.1 Sub-option 2A - 25 percent) should be removed from the document and not included as an option for the public.

Additionally, it would be of significant value to outline how implementation of these new standards would take place within or outside of the sector management system.

MCFA would also support the removal of dockside monitoring from this document. It has become abundantly clear that the issues related to dockside monitoring (black market fish) should be dealt with by enforcement and office of law enforcement and not become a burden on the industry. Dockside monitoring should be an elective tool that sectors can use to create comprehensive monitoring plans. But at this time we do not support deploying it over the entire industry.

Amendment 23 has changed very little since it was first drafted despite significant time and effort being put into analysis that continues to show a need for better accountability and more accurate and precise data in the Groundfish fishery. It is time to move this document forward, get the public to weigh in, build a compressive implementation plan, and finally finish a process that should have been part of the initial creation of sectors and an allocation system in New England.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Martens". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ben Martens
Executive Director