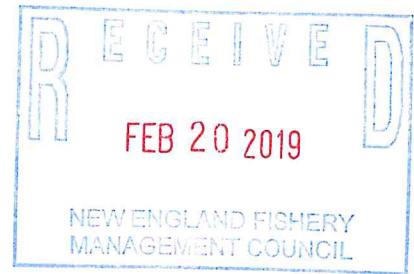


CORRESPONDENCE

New England Fisheries Management Council
February 12, 2019

Ted Ligenza
F/V Riena Marie
134 Pleasant Street
South Chatham, Massachusetts



To the Council:

I have been in the fishing industry for the last 44 years and have spent a substantial portion of that time jigging ground fish mostly cod and pollock. Staying in the business over the years has been difficult. Ground fishermen in the Northeast have had to deal with severely diminishing fish stocks, a serious problem in itself which has added insult of many various regulations over the years. Seasonal closures, area closures, size limits, soft tacks, hard tacks, boat tracking systems, call ins, days at sea, ITQ's, discard rates, on board cameras, and taking observers are some of the tools the government regulators have used to address the serious situation of stock depletion. At this point in time ground fishermen are given a choice of participating in the general category which is governed by hard tacks with days at sea or the sector category that works off ITQ's. Discard rates for both these groups is determined by observer coverage or on board cameras. Put it this way: ground fishermen are held accountable for the fish they catch. Fishermen who catch ground fish either have catch history or have to buy quota in order to go fishing.

Through all this articulation the fish stocks are still in a sad state. Letting people into the industry just because they have a captains license and want to run ground fish charters makes no sense but more significantly it makes a bad situation worse. If someone wants to run ground fish charters, they should be made to play by the rules the other fishermen catching ground fish have to adhere to. They need to have a qualifying ground fish permit with enough quota to cover the fish they catch. If they need more quota, then is on the license the charter boats need to buy quota as other fishermen in the industry do. The charter fleet also needs to have a method to account for how many fish they catch and discard. Because of the poor condition of the Northeast ground fish stocks, there is no room for double standards.

There has always been a few boats running ground fish charters through the years, it is a traditional part of the ground fish fleet. Past years in the water East of Chatham you might occasionally come across a charter boat you were familiar with, you knew the name of the boat and who the Captain was. Four years ago some new boats started showing up, now by this summer there is a fleet of new charter boats. It is like a gold rush. Where I fish these new charter boats have become a dominant feature on the water. Without a doubt they are catching a significant portion of the ground fish catches in the inshore grounds off Chatham. Considering the condition of our ground fish stocks having unknowns in the equation is a irresponsible and faulty way to run this fishery.

Ted Ligenza

**Conservation Law Foundation * Oceana * Whale and Dolphin Conservation
Center for Biological Diversity * Defenders of Wildlife * Humane Society of the United States**

February 21, 2019



John Quinn
Chair, New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950
iquinnfish@gmail.com

Tom Nies
Executive Director, New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950
tnies@nefmc.org

Re: 2019 Groundfish Priorities and Measures to Minimize Entanglements of North Atlantic Right Whales in Fixed Gear Fisheries

Dear Dr. Quinn and Mr. Nies:

We are writing on behalf of the Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, the Humane Society of the United States, Oceana, and Whale and Dolphin Conservation to urge the New England Fishery Management Council (Council) to develop measures that decrease interactions between endangered North Atlantic right whales and its Council-managed fixed-gear fisheries as expeditiously as possible. We look to your leadership to be part of the solution for this iconic species as the Council begins its work in 2019. Moreover, under the Magnuson-Stevens Act all fishery management plans must comply with applicable law including the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Failing to ensure the effective reduction of entanglements in these fisheries jeopardizes not only the survival and recovery of North Atlantic right whales but the continued authorization of these fisheries.

Direct threats to North Atlantic right whales are well understood and come in three categories that each need action- ship strikes, ocean noise and fisheries entanglements. Our groups are actively advocating to improve the management of each of these threats.

Entanglement Threats

Almost a year and a half ago, the dire status of North Atlantic right whales, due in part to entanglements in commercial fishing gear, precipitated the reinitiation of consultation on nine fixed gear fisheries (American lobster, red crab, and seven batched fisheries). To avoid a

jeopardy finding from the National Marine Fisheries Service (NMFS) in the new biological opinion(s) resulting from reinitiation, there must be immediate, comprehensive action by the New England Council, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, and/or NMFS to significantly reduce entanglement risks to right whales. Of these nine fisheries, the New England Council is responsible for developing conservation and management measures for its groundfish fisheries that use sink gillnets (participating in the Northeast sink gillnet fishery, a Category I fishery because of known interactions) and the red crab fishery (trap/pot fishery, a Category II fishery because this gear poses an entanglement risk). In December the Regional Administrator for NMFS, Michael Pentony, urged the Council to address this issue in 2019, stating: “a finding of jeopardy and the series of required measures that come with it is not where we want to end up so we’ve been encouraging those with a stake in these matters to consider being proactive.”¹ To date, there has been little or no discussion of potential solutions in the fixed gear fisheries managed by the Council.

Marine Mammal Protection Act Requirements

The MMPA has been in place since 1972 with the sole purpose of protecting or recovering marine mammals in the United States and beyond. This law has a strong legacy of success across the country; many species and stocks of marine mammals have shown substantial recovery since the law was first signed by President Nixon. The MMPA-mandated Atlantic Large Whale Take Reduction Plan (ALWTRP) is intended to reduce the level of serious injury and mortality of four large whale species, including the North Atlantic right whale, in commercial gillnet and trap/pot fisheries in the U.S. Atlantic in the Northeast, Mid-Atlantic and South Atlantic regions. The overarching goal of the Take Reduction Plan is to bring serious injuries and mortalities of these species to a level at or below a scientifically calculated level called the Potential Biological Removal (PBR) that will support the recovery of each stock or species, with the ultimate goal of pushing serious injuries and mortalities to insignificant levels (the zeromortality rate goal, or ZMRG). If PBR is exceeded, the Take Reduction Team is convened to recommend methods to modify fishing practices to bring serious injuries and mortalities to the whale stock to at or below PBR.

Under the MMPA, NMFS listed the Council-managed Northeast Multispecies, monkfish, dogfish and skate sink gillnet fisheries as Category I fisheries because of their frequent interactions with North Atlantic right whales.² These interactions have been documented since at least 1983³ and have occurred at least as recently as 2016.⁴ Survey data as well as opportunistic sightings

¹ See Audio of December 2018 NEFMC Meeting available at: https://s3.amazonaws.com/nefmc.org/27_Council_Priorities_1.mp3 (starting at 1:30:30).

² 2018 List of Fisheries.

³ Kraus, S.D. 1990. Rates and potential causes of mortality in North Atlantic right whales (*Eubalaena glacialis*). *Mar. Mammal Sci.* 6(4):278-91.

⁴ Landry, S. and M. Brown. 2017 Entangled North Atlantic Right Whales, October 2016 – October 2017. Presentation to the North Atlantic Right Whale Consortium. <https://www.narwc.org/uploads/1/1/6/6/116623219/landrybrown.pdf>.

and stranding data suggest that right whales use the waters south of Nantucket and Martha's Vineyard year-round.^{5,6,7} This area is also a high use area for gillnet fisheries,⁸ and the area has experienced shifted effort in the last year due to the elimination of several large year-round groundfish closures under the Omnibus Essential Fish Habitat Amendment 2.⁹ Right whale entanglements in gillnet fisheries are not infrequent. For example, 33 percent (8/24) of the right whale entanglement cases documented between 2010 and 2013 were in gear consistent with that used in the gillnet fishery.¹⁰

Currently the PBR for North Atlantic right whales is just 0.9 animals per year. Alarming, this level has been exceeded in all but two years since 2000. This indicates a chronic problem with existing fisheries regulations and the need to take a hard look at those fisheries that interact with North Atlantic right whales.

Endangered Species Act Requirements

Similar to the MMPA, since 1973, the Endangered Species Act has been extremely effective in identifying species at risk of extinction and then taking strong action to keep such species from going extinct with the ultimate goal of recovering these species. Under the ESA, before authorizing any fisheries management action (such as approving a Fishery Management Plan or amendment thereto under the Magnuson-Stevens Act or approving a Take Reduction Plan or amendment thereto under the MMPA) that may adversely affect an ESA-listed species, NMFS must undertake intra-agency formal consultation, culminating in a biological opinion stating whether or not the proposed action will jeopardize the continued survival and recovery of that species. A biological opinion includes, among other elements, an incidental take statement establishing the permitted levels of incidental take in those fisheries as well as reasonable and prudent measures to minimize and mitigate the impacts of the incidental take resulting from

⁵ Kraus, S.D., et al. 2016. Northeast Large Pelagic Survey Collaborative Aerial and Acoustic Surveys for Large Whales and Sea Turtles. US Department of the Interior, Bureau of Ocean Energy Management, Sterling, Virginia. OCS Study BOEM 2016-054. 117 pp. + appendices.

⁶ Asaro, M. Update on us Right Whale Mortalities in 2017. Presentation to the Atlantic Large Whale Take Reduction Team. November 30, 2017, available at https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/2017%20Nov/asaro_usstrandings_nov2017.pdf.

⁷ NEFSC Interactive North Atlantic Right Whale Sightings Map, available at <https://www.nefsc.noaa.gov/psb/surveys/>.

⁸ Bachman, M. 2016. Management measures for deep-sea coral zones and overlaps with fishing activity, available at <http://s3.amazonaws.com/nefmc.org/6.-160322-Coral-zone-measures-and-fishing-effort.pdf>.

⁹ See OHA2 Final Rule, 85 Fed. Reg. 15,240 (Apr. 9, 2018).

¹⁰ Knowlton, A.R. et al. North Atlantic Right whale entanglement case studies, available at http://www.bycatch.org/sites/default/files/2010-2013%20Right%20Whale%20Entanglement%20Case%20Studies%20-%2024%20cases_0.pdf.

the prosecution of those fisheries. These elements collectively set the limits for the fishery that support management and trigger future management action should these limits and measures be violated.

These measures are complementary but separate from the requirement of the MMPA to reduce serious injuries and mortalities to at or below PBR with the ultimate goal of reaching ZMRG. It is vital that the Council understand these dual requirements. Achieving PBR does not equate to compliance with the ESA and vice versa. Importantly, the take prohibited by the ESA is much broader than the serious injury and mortality at issue in the MMPA; the mandate that NMFS must avoid jeopardizing listed species in authorizing fishery management actions includes avoiding jeopardizing a species' recovery by reducing a species' ability to reproduce.

The incidental take statement in a biological opinion provides legal protections for participants in these fisheries. Without an incidental take statement authorizing incidental take of listed species resulting from their otherwise-lawful participation in such fisheries, participants may face civil or criminal penalties or be subject to a private action filed under the ESA citizen-suit provision seeking court intervention to halt participation in the fishery until such time as incidental take coverage is acquired. It is therefore critically important that each affected fishery be covered by a current and legally valid biological opinion with a legally valid incidental take statement.

As discussed above, in November 2017, NMFS reinitiated consultations under ESA section 7 for nine fisheries, including the Council-managed red crab and "batched fisheries" targeting several species of groundfish including Atlantic cod, haddock, pollock, flounders, monkfish, dogfish, and skates. To reach the requisite no-jeopardy findings and issue the requisite incidental take statements, NMFS must be able to consider and evaluate new, mandatory management actions that will significantly reduce entanglement risks to North Atlantic right whales. However, it is not currently apparent to the public that the Council has discussed such additional management measures, much less developed any such measures. Moving forward without significant new measures that can be evaluated during consultation to generate a legally sufficient no-jeopardy biological opinions with valid incidental take statements risks putting both the fisheries and the right whale in jeopardy.

Recommendations for Council Action in 2019

The recent focus of North Atlantic right whale conservation in the U.S. has been almost exclusively on the interactions with the American lobster fishery. This narrow focus is inappropriate and allows other fisheries with known and documented takes of right whales to escape scrutiny and necessary management response. We have previously commented on the need for 100 percent reporting, fine spatial reporting, lost gear reporting, and electronic vessel reporting and tracking to improve management and provide information to determine where

risks to and entanglements of protected species occur in all fixed gear fisheries.¹¹ To the extent they are not already required, we urge the Council to develop these requirements.

In addition, we urge the Council to take the following actions in 2019:

1. Demand that NMFS complete the biological opinion for the batched fisheries by a date certain (no longer than 6 months). This is a critical process that has been unnecessarily and inexplicably delayed. The Council bears responsibility for several of these fisheries and should do all that it can to expedite this process by providing NMFS not only with the best available scientific data on these fisheries but also with options for new management measures that will substantially reduce entanglement risks.
2. Analyze the most recent information on interactions of large whales, including right whales, in Council-managed fisheries to inform future management actions and the range of alternatives that will respond to this future need.
3. Initiate a management action that can respond to necessary changes to the Multispecies, Monkfish, Dogfish and Skate FMPs, as required by the ESA or the MMPA Take Reduction Plan. Considering the dire state of right whales, waiting to initiate action in a subsequent year is unacceptable and will likely allow months or years of interactions to continue.
4. Request that NMFS complete Section 7 consultations on all federal actions that may affect North Atlantic right whales, consistent with current legal requirements.
5. Continue Council oversight of non-fishing industries such as shipping, oil and gas exploration, aquaculture, and renewable energy development in the Northeast region, and provide opportunities to comment on the impacts where feasible.

Thank you for considering this important issue. We look forward to the Groundfish Committee and the Council's full consideration of these issues at its upcoming meetings.

¹¹ See April 21, 2018 Letter submitted on behalf of CLF, Defenders, and HSUS to NMFS' Michael Asaro re: Request for New Information Collection in Fixed Gear Fisheries (83 Fed. Reg. 29,101 (June 22, 2018)) ("All Category I and II trap/pot and gillnet fisheries with known interactions with right whales should have comprehensive reporting requirements, including the following fisheries: (1) Atlantic blue crab trap/pot; (2) Atlantic mixed species trap/pot which includes, but is not limited to: crab (red, Jonah, and rock), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp; (3) Northeast sink gillnet; (4) Northeast anchored float gillnet; (5) Northeast drift gillnet; (6) Mid-Atlantic gillnet; (7) Southeastern US Atlantic shark gillnet; and (8) Southeast Atlantic gillnet.").

Erica Fuller
Senior Attorney
Conservation Law Foundation

Sarah Uhlemann
International Program Director, Senior Attorney
Center for Biological Diversity

Regina Asmutis-Silvia
Executive Director
Whale and Dolphin Conservation, N.A.

Jane Davenport
Senior Attorney
Defenders of Wildlife

Sharon B. Young
Field Director, Marine Wildlife Protection
The Humane Society of the United States

Gib Brogan
Fisheries Campaign Manager
Oceana

Cc:

Michael Pentony, National Marine Fisheries Service Regional Administrator,
Colleen Coogan, Protected Resources Division, Greater Atlantic Regional Office
Michael Asaro, Protected Resources Division, Greater Atlantic Regional Office
Peter Burns, Sustainable Fisheries Division, Greater Atlantic Regional Office

February 13, 2019

A LETTER TO THE NEW ENGLAND FISHERIES MANAGEMENT COUNCIL



I am writing this letter regarding the problem of chartering for federal regulated groundfish. I've been participating in the jig handline fishery east of Chatham, MA on Western George's Bank for the past 25 years.

Chartering on Western George's Bank for Cod and Pollack is highly unregulated, and many more vessels are participating in this charter fishery year after year. There are two difference between charter and commercial fishing which take place on an average day.

Commercial Fishing has an outline of strict protocol by NMFS.

- 1). Have quota or IFQ before sailing.
- 2). Lease fish if needed
- 3). Call for pre-trip notification 48 hours before sailing.
- 4). Declare into fishery area and length of trip.
- 5). Take observed or turn on electronic monitoring cameras to record weight, length and count of discards.
- 6). Make the trip and hope to catch the fish
- 7). End trip hail before leaving fishing grounds and send NMFS location, catch, and weights through Skymate before crossing demarcation line.
- 8), Offload trip to licensed dealer who reports fish weights and species to NMFS weekly.

jc 2/21/19

9). Captain or vessel owner send VTR to NMFS with weights, species and location within 48 hours of landing trip.

10). Pay sector landing fee so fish quotas are not exceeded but are accounted for.

Under this management system there is 100% accountability on commercial vessel, their catch and crew when fishing Western George's Bank Cod, Pollack and other species. If a commercial vessel cheats or doesn't fish by these rules, we are fined or jailed.

As for the Charter vessels for multi species, specifically Cod and Pollack the following appear to be the undocumented regulations for their sailing.

- 1). Captain books charter for 6 people.
- 2). Make trip not informing NMFS what area where they will be fishing and has no VMS or observer aboard.
- 3). Vessel returns to port with coolers full of bagged up fillets.
- 4). Clients leave vessel with fillets. Vessel owner or captain is responsible for VTR guestimate for what was caught on the trip.

Under this management system there is 0% accountability in the charter head boat fishery for ground fish.

This is a massive grey area in the fishery. This is a gateway of cheating and unlawful practice.

Recommendations for changes regarding Charter ground fish;

ITQ's

VMS

Dock side monitoring

ZERO Cod possession from Western George's Bank.

In conclusion, mandated protocol for commercial fishing is strictly enforced while charter fishing has nothing but a list of loopholes that need to be addressed. This list of differences between the two fisheries is vast and needs to be fixed.

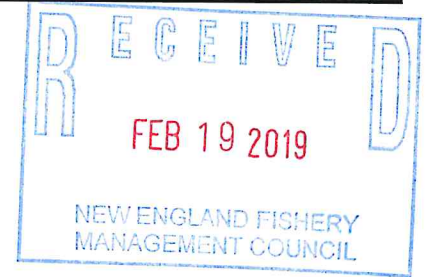
Respectfully,

Nick O'Toole

Member of Fixed Gear Sector

Sherie Goutier

From: Bruce Sweet <bsweet60@comcast.net>
Sent: Tuesday, February 19, 2019 8:41 AM
To: comments
Subject: comments on groundfish management actions



Dr. John Quinn and Mr. Director Tom Nies,

I am a charter boat operator out of Gloucester MA. As you know the zero cod possession and reduced haddock bag limits for GOM have been devastating to our charter fishing operations. Cod is essential for my customers from PA and NY to come to Gloucester. I know for fact numbers of them are traveling to RI for winter fishing instead or not at all. I am encouraged to see many of the action options do include the start of cod coming back to our catches. I still think the angling effort is over stated based on my on the water observations. As written, I find option 6 the most favorable but I would strongly request that any cod possession be moved to May through July not the late summer or fall months. Most of my customers want to come for groundfish in May and June when they are plentiful in shallow water and no dog fish are present. Further we have Striped bass and Tuna to fish for in the late summer and fall.

Thank you for your consideration.

Capt Bruce Sweet

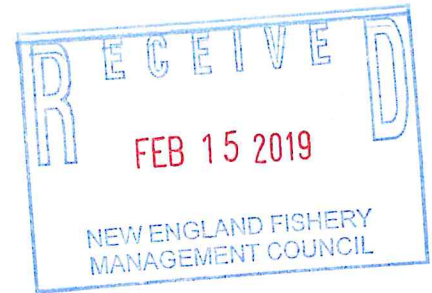
Sweet Dream Sport Fishing

Gloucester MA

jc 2/20/19



William R. Tower, III (Tim), President
P.O. Box 837
93 Frazier Pasture Road
Ogunquit, Maine 03907-0837
207-646-2214
F/V Bunny Clark
F/V Petrel
Fishing Tackle



February 15, 2019

Tom Neis
Executive Director
New England Fishery Management Council
50 Water St.
Newburyport, MA 01950

RE: RAP meeting on February 22, 2019 & adjusting recreational fishing regulations for fiscal fishing year 2019.

Dear Mr. Neis:

I will not be able to attend the upcoming RAP meeting on February 22, 2019. In lieu of this, I would like to present my comments to you based on attending the PDT meeting via Webinar on February 13, 2019.

I have reviewed the models/options that were presented by Scott Steinback during the PDT meeting, understand that they will be presented to the RAP and feel that another option should be reviewed. After talking to Scott I found that this option had already been run as a model but had not been presented. The specifics of the model are thus: minimum size limit on haddock of 17", a 15 haddock bag limit, a haddock season extending from April 15 until March 1 (removal of the fall haddock closure), a cod season with a one cod bag limit during September & October with a cod minimum size of 21" inches. I would ask that this be a proposal for another option available for the RAP to consider.

I have a strong feeling, based on my experiences in the fishery and from the many meetings I have attended over the years, that the uncertainty of getting these models to produce what we want them to produce is very high. We are using a cod sub-ACL of 220 metric tons (mt) for the recreational sector. The model that is probably the most desirable for the recreational fleet is number 6 which gives us a cod mortality rate of 145 mt. Knowing that in four of the six option review years, these models showed a higher mortality rate for cod than expected, I am afraid that 145 mt will bring us too close to our limit for any of us to feel comfortable moving forward.

We Specialize in Groundfishing Trips • 40 All Tackle/Line Class IGFA World Records and 20 Maine State Angling Records Since 1983



e-mail: ttower@bunnyclark.com or info@bunnyclark.com • 24-Hour Fax: 207-646-1219

JC 2/20/19



William R. Tower, III (Tim), President
P.O. Box 837
93 Frazier Pasture Road
Ogunquit, Maine 03907-0837
207-646-2214
F/V Bunny Clark
F/V Petrel
Fishing Tackle

-2-

If you also take into account that participation in the fishery by recreational anglers was well down in the GOM in 2018, as compared to other years, that new regulations could spurn increased involvement in the fishery in 2019 and that the new means of data collection for MRIP (coming available) might show that we are actually taking more cod than was previously thought, there is good reason for a more conservative approach when applying new regulations to the recreational fishery.

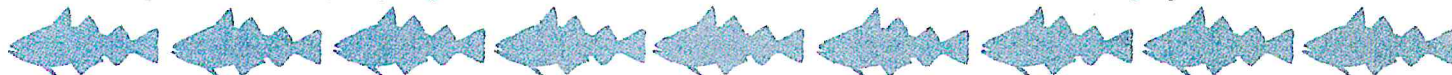
My seventh option proposal, mentioned above, has already been vetted by the Steinback/Lee team. And, if I understood correctly, gives us a mortality rate of 121 mt in respect to cod. This, I feel, is close to what we want to achieve for 2019. Our ultimate goal here should be regulation stability in the recreational fishery. In a perfect world we would have the same regulations for five years at a time with a review before the end. I know this can't be achieved at the present time. But to move toward this goal we need to have regulations that are more responsible now. And as much as I would love to see a cod season as described above, I wouldn't be opposed to having a more limited cod season if we could be assured of having an open haddock season as described above. For 2019, I think that this "option 7" will get us where we want to go and be conservative enough to apply.

Thank you very much for considering this proposal.

Sincerely,

William R. Tower, III (Tim)

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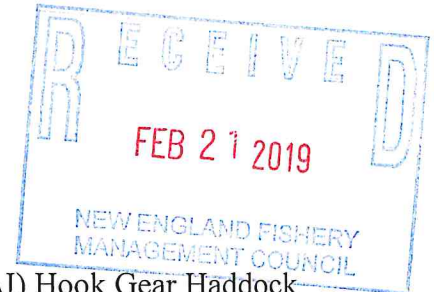
e-mail: ttower@bunnyclark.com or info@bunnyclark.com • 24-Hour Fax: 207-646-1219



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

FEB 15 2019

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



Dear Tom:

I intend to remove regulations associated with the Closed Area I (CAI) Hook Gear Haddock Special Access Program (SAP), because they are no longer necessary.

On November 19, 2004, we published an interim final rule implementing measures approved under Framework Adjustment 40-A to the Northeast Multispecies Fishery Management Plan (FMP). Among other measures, Framework 40-A created the CAI Hook Gear Haddock SAP to provide additional opportunities to target healthy stocks. The CAI Hook Gear Haddock SAP allows vessels to access the groundfish year-round CAI if they follow certain gear and other restrictions.

The Council's Omnibus Essential Fish Habitat Amendment (OHA2), implemented on April 9, 2018, eliminated the year-round closure of CAI. When OHA2 eliminated CAI, the CAI Hook Gear Haddock SAP was no longer necessary, because, aside from the Georges Bank (GB) Dedicated Habitat Research Area and the Seasonal CAI North closure (February 1 – April 15), the geographic area once covered by CAI is now an open area accessible to the groundfish fleet.

Removing unnecessary notification and reporting requirements and restrictions related to the CAI Hook Gear Haddock SAP will help avoid confusion and inconsistencies with other regulations. For example, 50 CFR 648.85(b)(7)(vi)(C) sets a 1,000-lb trip limit of GB cod for common pool vessels participating in the CAI Hook Gear Haddock SAP. This trip limit is higher than the Incidental Catch Total Allowable Catch (TAC) at §648.85(b)(ii) for common pool vessels fishing in the CAI Hook Gear Haddock SAP this fishing year.

We are authorized under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act to make administrative changes to regulations that are necessary to carry out any fishery management plan or amendment. Prior to the start of fishing year 2019, we intend to conduct rulemaking to remove the CAI Hook Gear Haddock SAP regulations at §648.85(b)(7) to be consistent with the changes made by the OHA2.

There is one regulation associated with the CAI Hook Gear Haddock SAP that our intended rulemaking will not change. Found at §648.85(b)(5)(ii), the regulation establishes an Incidental Catch Total Allowable Catch (TAC) for GB cod, which is split between the CAI Hook Gear Haddock SAP, Regular B Days-at-Sea Program, and the Eastern U.S./Canada Haddock SAP. Because changing the regulation implementing the Incidental Catch TAC would involve



allocation decisions, it would be inappropriate for us to do so under our section 305(d) authority. I recommend the Council address these allocation decisions in the next available multispecies action.

If you have any questions about the CAI Hook Gear Haddock SAP, please contact Liz Sullivan, Acting Groundfish Team Supervisor, at (978) 282-8493.

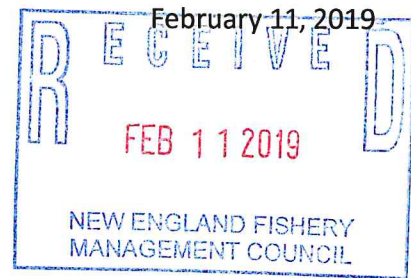
Sincerely,



Michael Pentony
Regional Administrator

cc: Dr. John Quinn, Chairman, New England Fishery Management Council

John F. Quinn, Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950



Re: Update on FY 2018 Coverage Levels

Dear John,

On behalf of Northeast Fishery Sector I, II, III, IV, VI, VII, VIII, IX and XII please accept the following update on realized coverage rate for FY 2018. We remain fully committed to ensuring we meet the FY 2018 target coverage rate, and this commitment did not waiver even during the recent government shutdown. Acknowledging that the recent shutdown impacted the Council's ability to receive an update on this issue we felt it prudent to share this information. The table below is an updated version of the data provided to the Council, by GARFO during its September 2018 Council meeting. This table reflects all data available, for NESSN Member Sectors as of February 11, 2019.

FY 2018 Sector Observed Coverage Levels as of February 11, 2019:

Sector Name	Groundfish Trips	ASM Observed	NEFOP Observed	Total Observed Trips	ASM Coverage Rate	NEFOP Coverage Rate	Combined Coverage Rate
NEFS 12	344	25	19	44	7.27%	5.52%	12.79%
NEFS 8	142	9	9	18	6.34%	6.34%	12.68%
NEFS 7	1	0	0	0	0.00%	0.00%	0.00%
NEFS 6	106	8	7	15	7.55%	6.60%	14.15%
NEFS 3	141	7	5	12	4.96%	3.55%	8.51%
NEFS 2	1087	105	58	163	9.66%	5.34%	15.00%

As we previously noted in our November 13, 2018 letter, the NEF Sectors are and have always been fully committed to ensuring that we satisfy all operational and regulatory requirements of sector management. This commitment includes our responsibility to ensure that we do everything in our ability to meet the annual target coverage rate. As you can see almost all NEF Sectors have seen significant improvement in coverage since the fall of 2018. The two sectors that have not seen a significant increase in combined coverage have had less than five trips taken since September 20, 2018, which has impacted their ability to increase overall coverage.

To conclude, the NEF Sectors understand the 15% target coverage rate requirement for FY 2018. Each of the Sectors will continue to work with the Agency, the Observer Program, ASM Providers, NESSN and NEF Sector Members to ensure each Sector is meeting this requirement.

Northeast Sector Service Network
1 Blackburn Center, 2nd Floor
Gloucester, MA 01930

jc 2/12/19

Thank you,



Elizabeth Etrie
Program Director
Northeast Sector Service Network

CC: Greater Atlantic Regional Fisheries Office
Northeast Seafood Coalition
I, Northeast Fishery Sector Inc.
II, Northeast Fishery Sector Inc.
III, Northeast Fishery Sector Inc.
IV, Northeast Fishery Sector Inc. (lease only)
VI, Northeast Fishery Sector Inc.
VII, Northeast Fishery Sector Inc.
VIII, Northeast Fishery Sector Inc.
IX, Northeast Fishery Sector Inc. (lease only)
XII, Northeast Fishery Sector Inc.

Attachment:

Fishing Year 2018 Sector Observer Coverage Levels as of September 20, 2018

SECTOR NAME	GROUND FISH TRIPS	ASM OBSERVED	NEFOP OBSERVED	TOTAL OBSERVED TRIPS	ASM COVERAGE RATE	NEFOP COVERAGE RATE	COMBINED COVERAGE RATE
FGS	615	2	9	11	0.3%	1.5%	1.8%
SHS 1	61	4	3	7	6.6%	4.9%	11.5%
SHS 3	212	12	11	23	5.7%	5.2%	10.8%
MCCS	200	9	6	15	4.5%	3.0%	7.5%
NEFS 8	97	5	3	8	5.2%	3.1%	8.2%
NEFS 11	294	9	10	19	3.1%	3.4%	6.5%
NEFS 12	267	13	13	26	4.9%	4.9%	9.7%
NEFS 2	597	51	28	79	8.5%	4.7%	13.2%
NEFS 3	138	7	4	11	5.1%	2.9%	8.0%
NEFS 10	42	1	2	3	2.4%	4.8%	7.1%
NEFS 13	76	5	4	9	6.6%	5.3%	11.8%
NEFS 5	311	8	11	19	2.6%	3.5%	6.1%
NEFS 6	34	2	1	3	5.9%	2.9%	8.8%
NCCS	55	1	2	3	1.8%	3.6%	5.5%

Northeast Sector Service Network
1 Blackburn Center, 2nd Floor
Gloucester, MA 01930



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John F. Quinn, J.D., Ph.D., Chairman | Thomas A. Nies, *Executive Director*

February 8, 2019

Mr. Michael Pentony
Greater Atlantic Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

In accordance with provisions of the Magnuson-Stevens Act, I reviewed the draft regulatory text for Framework Adjustment 58 to the Northeast Multispecies (Groundfish) Fishery Management Plan in order to deem whether it is consistent with the framework text and the Council's intent. I based the review on the draft regulatory text provided to the Council on February 4, 2019, further modified through discussions between our staffs. I concluded the agreed upon revised draft regulatory text implementing Framework Adjustment 58 measures is consistent with Council intent. I am not commenting on the regulation corrections that were provided in the same correspondence.

Please feel free to call me with any concerns.

Sincerely,

Dr. John F. Quinn.
Chairman

**Draft Regulatory Text
NE Multispecies Framework 58**

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, revise paragraphs (a)(7) and (k)(17) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a) * * *

(7) Possess, import, export, transfer, land, or have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters either by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations, or are species included in the NE Multispecies Fishery Management Plan that were harvested by a vessel issued a valid High Seas Fishing Compliance permit that fished exclusively in the NAFO Regulatory Area.

* * * * *

(k) * * *

(17) *Presumptions*. For purposes of this part, the following presumptions apply:

Regulated species possessed for sale that do not meet the minimum sizes specified in §648.83 are deemed to have been taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel issued a valid High Seas Fishing Compliance permit that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

* * * * *

3. In § 648.17, revise paragraph (a) to read as follows:

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

* * * * *

(a) *Fisheries included under exemption*—(1) *NE multispecies*. A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section, is exempt from NE multispecies permit, mesh size, effort-control, minimum fish size, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82, 648.83, and 648.86, respectively, while transiting the EEZ with NE multispecies on board the vessel, or landing NE multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area.

4. Section 648.90 is amended by:

- a. Revising paragraph (a)(5)(iv)(B), and
- b. adding paragraph (a)(5)(iv)(D).

The revision and addition read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications,
and flexible area action system.**

* * * * *

(a) * * *

(5) * * *

(iv) * * *

(B) 2017 and 2018 fishing year threshold for implementing the Atlantic sea scallop fishery AMs for Northern windowpane flounder. For the 2017 and 2018 fishing years only, if scallop fishery catch exceeds the northern windowpane flounder sub-ACL specified in paragraph (a)(4) of this section, and total catch exceeds the overall ACL for that stock, then the applicable scallop fishery AM will take effect, as specified in § 648.64 of the Atlantic sea scallop regulations. For the 2019 fishing year and onward, the threshold for implementing scallop fishery AMs for northern windowpane flounder will return to that listed in paragraph (a)(5)(iv)(A) of this section.

(C) * * *

(D) *2017 through 2020 fishing year threshold for implementing the Atlantic sea scallop fishery AM for GB yellowtail flounder.* For the 2017, 2018, 2019, and 2020 fishing years, if scallop fishery catch exceeds the GB yellowtail flounder sub-ACL specified in paragraph (a)(4) of this section, and total catch exceeds the overall ACL for that stock, then the applicable scallop fishery AM will take effect, as specified in § 648.64 of the Atlantic sea scallop regulations. Beginning in fishing year 2021, the threshold for implementing scallop fishery AMs for GB yellowtail flounder listed in paragraph (a)(5)(iv)(A) of this section will be in effect.

* * * * *

5. In § 648.82, revise paragraph (k)(3)(iii) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(k) * * *

(3) * * *

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the April 30 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement

proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.



New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., Chairman | Thomas A. Nies, *Executive Director*

February 8, 2019

Mr. Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

Consistent with the consultation requirements of 50 CFR 648.87, the Groundfish Committee and Council reviewed a proposal for a new groundfish sector, *Mooncusser Sector*. The review materials included: the proposal packet (cover letter, preliminary operations plan, and Environmental Assessment table), dated January 8, 2019; a letter from Regional Administrator, Michael Pentony to Executive Director, Tom Nies dated December 17, 2018 requesting review of the new sector proposal; and meeting summaries from the Groundfish Plan Development Team and Groundfish Committee meetings, on January 9, 2019 and January 15, 2019, respectively.

The Groundfish Committee and Council focused their review on consistency with the requirements and goals of the sector program in Amendment 16, noting no glaring concerns with the *Mooncusser Sector* proposal. The proposal also appears to be consistent with other proposals for previously approved sectors. The sector would be comprised of inactive permits and be leased only for fishing year (FY) 2019. The proposal also specifies the ability for permits to become active in future years.

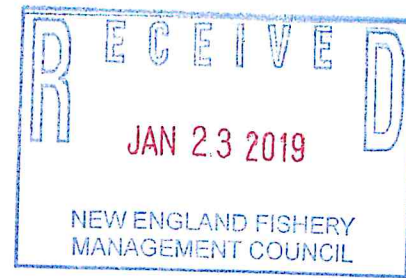
On January 30 during its first meeting of 2019, the Council passed a motion (15/0/2):
That the Council support the "Mooncusser Sector" for approval in fishing year 2019 and beyond.

The Council understands that the National Marine Fisheries Service may determine an additional review of this sector is warranted for future fishing years.

Please contact me if you have questions.

Sincerely,

Thomas A. Nies
Executive Director



January 24, 2019

To: New England Fishery Management Council members:

Please find attached the joint letter dated December 20, 2018 sent from Conservation Law Foundation and Environmental Defense Fund to NOAA and New England Council leadership, along with supporting materials. In this letter, we urged NOAA and the Council to remedy 2018 observer levels that have fallen below the already insufficient targets, and to proceed with timely development, analysis and implementation of Amendment 23. We submit this letter now to ensure that it is placed into the administrative record for Amendment 23.

We sympathize with federal government staff and contractors who are furloughed or working without pay due to the continuing federal government shutdown, and express our support to them and their families. Moreover, we understand that the backlog of work due to the shutdown will significantly add to the Council and NOAA workloads, and could result in additional delays in the Council and NOAA staff's efforts on many pressing matters, including Amendment 23.


Nevertheless, we urge that the Council and NOAA do all they can once funding is restored to ensure that progress on Amendment 23 remains on track for alternatives development, analysis, selection of preferred alternatives, and final action. This progress and these actions are critically important so that the monitoring reform that the groundfish fishery gravely requires can be put in place by the beginning of the 2020 fishing season.

To that end, we recommend, consistent with the requests in our letter, that the Council and NOAA provide resources to ensure the process remains on track, and to stick to a timeline that enables implementation of the new monitoring program by FY2020. Achieving this may require additional resources, as well as consideration of how to prioritize and complete the work that needs to be done so that the Council is able to select a range of alternatives at the April meeting.

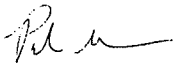
Given reports¹ that fishery monitoring continues despite the shutdown (thanks to the "essential" nature of the observer program), we expect to see that observer coverage has been occurring recently at higher levels than occurred earlier in the year, in order to make up for the monitoring shortfalls revealed in letters from GARFO to the fifteen New England sectors in September 2018. As our enclosed letter details, and as some Council members requested at the January 15, 2019 Groundfish Committee meeting, we request a status report on sector observer coverage levels as soon as is practicable, considering the government shutdown.

¹ See John Sackton, SeafoodNews, "Partial Government Shutdown will have Limited Impact on Fisheries in the Near Term," December 26, 2018.

Sincerely,

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

Johanna Thomas
Director, New England Region
EDF Oceans Program

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

Priya Sundareshan
Attorney, EDF Oceans



December 20, 2018

Rear Admiral Timothy C. Gallaudet
Assistant Secretary of Commerce for Oceans and Atmosphere
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 5128
Washington, DC 20230

Chris Oliver
Assistant Administrator for NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Mike Pentony
Regional Administrator
National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930-2276

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

Dear Sirs:

We write to express our deep concern about the fundamental lack of accountability in the New England groundfish fishery and the deepening crisis it has engendered in the region. The absence of effective monitoring is having profound negative effects on the groundfish resource, on the quality of the stock assessment science and therefore the efficacy of management, and on the economic prospects of fishing communities. This is the oldest organized fishery in the United States and it has become deeply crippled under the watch of the New England Fishery Management Council, GARFO, and NOAA Fisheries. As the key leaders with ultimate management authority and statutory responsibility over this important resource and fishery, you have a duty to take immediate and effective steps to fix this problem.

At the national scale, NOAA Fisheries properly reports that it has "effectively ended overfishing and is rebuilding domestic fish stocks[.]"¹ Not in New England, however, where chronic mismanagement in the groundfish fishery continues unabated. Atlantic cod, various flounders, and other groundfish are still subject to overfishing and remain in a persistent overfished status – which

¹ https://naturalresources.house.gov/uploadedfiles/testimony_oliver.pdf.

has endured for almost 30 years in some cases – despite the legal requirement to prevent overfishing and rebuild fisheries in as short a time as possible. NOAA Fisheries and the Council have consistently failed to prevent overfishing on some of these stocks since “overfishing” metrics were first approved in 1989. If there isn’t a radical change in management direction, the prospect of these stocks ever rebuilding remains tenuous at best.

A committee of the best experts in the fisheries science community concluded that stocks will generally rebuild if effective management measures are in place maintaining catches at scientifically appropriate levels.² Their conclusion, of course, rested on the assumption that assessment scientists had access to accurate catch data to set the proper quotas in the first place. A separate analysis by the Natural Resources Defense Council produced three overall reasons why rebuilding plans fail to reduce fishing mortality: (1) ineffective input controls and lack of accountability measures, (2) mortality due to bycatch in other fisheries, and (3) inaccurate estimates of stock size leading to improperly high catch limits.³ All these drivers of management failures are present in the New England groundfish fishery and have a singular common denominator: the lack of effective at-sea monitoring in the fishery. This failure endures despite the millions in taxpayer funds that are dedicated to propping up the current monitoring system.

Lack of monitoring and overfishing are inextricably linked

Meaningful solutions must track the sources of any management problem. In order to achieve a healthy fishery, managers and scientists need accurate and reliable data to understand the level of catch in any given fishing year, inform stock assessments, set appropriate catch limits, and enforce the limits that are set. For years, however, the organizations you lead – organizations that have a mandatory duty to develop and enforce science-based catch limits – have enabled a management system and strategy that is crippled by inaccurate and unreliable catch data. And historic problems are growing more acute in New England. On the one hand, there are now widespread public accounts of unreported and misreported discards of Atlantic cod at sea verified by NOAA Fisheries and state fishery officials, who acknowledge receiving reports of “discards up to 2000-3000 pounds per trip” and “reports about observers not recording these discards.”⁴ And on the other, the world is now aware of the profound lack of oversight that enabled criminal enterprises like those of Carlos Rafael to thrive in this region for years.

² “[A]nalysis of rebuilding plans indicated that when fishing mortality was effectively reduced, only a few stocks did not show an increase in biomass.” NRC Committee on Evaluating the Effectiveness of Stock Rebuilding Plans of the 2008 Fishery Conservation and Management Reauthorization Act at 120 (NAS 2014).

³ NRDC Report *Bringing Back the Fish: An Evaluation of U.S. Fisheries Rebuilding Under the Magnuson-Stevens Fisheries Conservation and Management Act*, <https://www.nrdc.org/sites/default/files/rebuilding-fisheries-report.pdf>.

⁴ See https://s3.amazonaws.com/nefmc.org/180417_1_Intros-and-Reports.mp3, Recording of the April 2018 New England Council meeting, where discussion of widespread reports of high levels of illegal discarding begins at 22:00; the transcript of this discussion is attached. “This Spring, the number of individuals coming to us with reports about cod discarding is unusually high.... Reports we are receiving this spring are that there are discards up to 2000-3000 pounds per trip happening in this area. We are hearing reports from not just groundfish vessels but other non-groundfish vessels that they are catching dead cod in many of their tows. We are also hearing reports about observers not recording these discards.”

New England groundfish fishermen face intense economic pressure to discard low-quota stocks like cod without reporting them so that they can continue fishing for target stocks. When the Pacific groundfish trawl fishery – a similar multispecies fishery with historically high bycatch and seven severely constraining overfished species – made its transition to a catch share program in 2011, a 100 percent at-sea and dockside monitoring requirement ensured accountability and drove intense, rapid innovation in fishing methods and gear configurations to avoid bycatch.^{5,6} Today, most of the previously-overfished West Coast rockfish stocks, which once restricted the catch of other species, have largely recovered, many dramatically ahead of scientific predictions.⁷ The successful recovery of this multispecies fishery and the presence of 100 percent monitoring are not simply coincidences.

Under the watch of the Council, GARFO, and NOAA Fisheries, New England has taken the opposite course and predictably suffered the opposite results. “Target” monitoring coverage levels in New England (which include both ASM and NEFOP science observers) have been steadily declining since 2010 from already minimal levels, reaching their lowest levels – 14 percent – in fishing year 2016. Currently, in fishing year 2018, the monitoring coverage “target” remains low at just 15 percent but the actual coverage is even lower. Recent revelations from GARFO, the Council, and OLE indicate that discarding of legal-sized fish is not even being reported by observers on the trips they do take.⁸ Under these circumstances, there is no reliable information about what is happening with catches and discards at sea. We have yet to find a single person who has any confidence that the current monitoring program produces information that bears any resemblance to the real world of the fishery.

Some fishermen claim that the current ACLs for Gulf of Maine cod do not reflect the actual cod population, arguing that they are seeing more cod now than ever before and that “they can’t get away from cod.” And yet, the reported catches all manage to stay magically within the extremely low ACLs year after year. Even fishermen have become increasingly vocal about what is really happening at sea: massive illegal and unreported discarding of cod and other low quota stocks. At the April 2018 council meeting, during the discussion of increased illegal discarding, GARFO staff said, “Industry are expressing increased frustrations with how wasteful discarding is and the potential impact or future impact on the stock. Related to this, people are concerned that widespread discards puts bad data into the system and puts bad data into the science, and connected to that, industry are expressing frustrations that continued bad data into the system continues to give quotas that aren’t reflective of what they are seeing on the water and it’s not reflective to the fish available to the fishery right now.”⁹ There is no incentive for any of the fishermen to play by the rules in this fishery if they want to stay competitive.

Predictably, the status of key vulnerable stocks has grown worse and their assessment models have degraded as monitoring coverage levels have declined. The Gulf of Maine cod stock, which has been overfished since at least 1990 when Amendment 4 first quantified overfished

⁵<http://blogs.edf.org/edfish/2016/08/05/gear-workshop-highlights-innovators-in-west-coast-fishery/>.

⁶ See NOAA Fisheries, The West Coast Catch Shares Program: 2015 Update for the West Coast Catch Shares Program (November 2015), available at https://www.westcoast.fisheries.noaa.gov/publications/fishery_management/trawl_program/analytical_docs/final_2012-2013_summary_report.pdf.

⁷ <http://westcoasttrawlers.net/2017/12/12/west-coasts-pacific-ocean-perch-stocks-declared-rebuilt-will-lead-to-higher-groundfish-catches/>.

⁸ See Recording of the April 2018 New England Council meeting; transcript attached.

⁹ *Id.*

levels, is still overfished and subject to overfishing.¹⁰ In recent years, the stock has plummeted to historic lows and is persistently hovering at 5 percent of what scientists consider to be a healthy population level.¹¹ The stock has had a severely truncated size and age structure for some time without any management response and is not on track to meet its 2024 rebuilding timeline.¹² Georges Bank cod is in a similarly poor state, but scientists are unable to make quantitative estimates about the population because the model from the 2015 operational assessments could not be updated and could no longer be used for management advice,¹³ likely the result of poor data inputs to the models. The analytical assessment for witch flounder was rejected due to pervasive retrospective patterns, among other issues, and uncertain estimates of total catch was explicitly identified as a significant deficiency.

In addition to the straight-forward problems of program implementation, part of the problem with the New England groundfish monitoring program is the reliance on the coefficient of variability (CV) standard. CV aims for precision, not accuracy. As discards as a percentage of catch increase, combined with the presence of observer bias, the likelihood increases that the data produced by relying on the CV standard are precisely wrong. *See* Attachment 1 at 14-15. At a Groundfish Plan Development Team (PDT) meeting in June 2018, NOAA Fisheries itself conceded that “[the existence of bias] may call into question [the CV method’s] validity for determining monitoring coverage.”¹⁴ At the same meeting, NOAA Fisheries also provided an analysis that showed, in part, further evidence that “what observers are seeing for catch composition is different than on unobserved trips, so that there is bias in the discard estimates.”¹⁵ If observers are not even reporting the discards that are occurring on the trips they take, this bias is dramatically compounded.

When managers lack reliable information on the amount of catch, both directed and unintentional – as has been the case in the New England groundfish fishery – increased scientific and management uncertainty result, as does the potential for overfishing. There can be no serious question that the Council and NOAA Fisheries are failing to deal adequately with the significant uncertainties that have applied for years in the groundfish fishery and are now increasing. The National Standard 1 Guidelines explicitly call for adequate buffers between the overfishing level (OFL), acceptable biological catch (ABC), and annual catch limit (ACL) in order to ensure that uncertainty in either science or management does not result in overfishing.¹⁶ When the actual in-season monitoring coverage falls below the already inadequate coverage requirements, the guidelines call for the annual catch limit to be even further reduced to prevent overfishing.¹⁷ NOAA Fisheries, however, has not required any buffer changes as monitoring levels have declined and has increased the ACLs on some stocks even while overfishing persists.

¹⁰ https://www.nefsc.noaa.gov/publications/crd/crd1717/gulf_of_maine_cod.pdf.

¹¹ *Id.*

¹² *Id.*

¹³ https://www.nefsc.noaa.gov/publications/crd/crd1717/georges_bank_cod.pdf.

¹⁴ https://s3.amazonaws.com/nefmc.org/6a_180601_Groundfish-Committee_meeting_summary_Final.pdf.

¹⁵ *Id.*

¹⁶ *See* 50 C.F.R. §§ 600.310 (f)(2)(ii) (“The ABC control rule must articulate how ABC will be set compared to the OFL based on the scientific knowledge about the stock or stock complex and taking into account scientific uncertainty.”); 600.310(f)(4)(i) (“ACL cannot exceed the ABC...ACLs in coordination with [accountability measures] must prevent overfishing (see MSA section 303(a)(15)). If an Annual Catch Target (ACT), or functional equivalent, is not used, management uncertainty should be accounted for in the ACL.”)

¹⁷ *See, e.g.*, 50 C.F.R. § 600.310(g)(2) (“For fisheries without inseason management control to prevent the ACL from being exceeded, AMs should utilize ACTs that are set below ACLs so that catches do not exceed the ACL.”).

While the SSC has attempted to account for scientific uncertainty in setting OFLs and ABCs, the management uncertainty buffers applied between the ABC and sub-ACLs are low to the point of being meaningless in these overfished and unhealthy fisheries. In New England, these buffers are based on four criteria: (1) enforceability and precision of management measures, (2) adequacy of catch monitoring, (3) latent effort, and (4) catch of groundfish in non-groundfish fisheries.¹⁸ There has been no adjustment upward to capture the observer bias that is now documented in the fishery.¹⁹ Nor is there any direct consideration of stock health for either uncertainty buffer in New England, whereas in the 100 percent monitored Pacific groundfish fishery, buffer levels do take stock health into account.

Implosion of the sector at-sea monitoring program

Given the region's dismal track record in preventing overfishing, it was shocking to learn several months ago that sectors operating in the groundfish fishery are significantly failing to meet even their current, albeit inadequate, at-sea monitoring requirements. GARFO's own analysis reveals realized coverage for a majority of sectors that represent most of the groundfish fleet is as low as 1.8 percent.²⁰ The current reality has become undeniable: the monitoring system in New England is so broken that vendors cannot provide monitoring services under the present circumstances, and NOAA Fisheries and the Council are now enabling sectors to avoid their regulatory monitoring obligations. This utter lack of accountability has produced a "management" approach that is based, at best, on professional guesswork, not data or science.

We would have expected the acknowledgment of management failure and contract violation that these sector monitoring letters represent to be accompanied by an immediate and consequential corrective response from NOAA Fisheries, GARFO, and the Council, requiring immediate steps to bring sectors into full compliance. However, the GARFO letters and agency statements at the December 2018 Council meeting seem to suggest that your view is that this is simply a routine matter of training more observers and working with the sectors to make sure that fishermen are following their own sector monitoring rules, effectively kicking the problem down the road without consequences yet again. NOAA Fisheries appears reluctant to hold noncompliant sectors accountable with penalties or other sanctions as long as the sectors claim to operate in "good faith" with GARFO to fix the situation. However, behind this façade of "business as usual" is the reality that the monitoring system in New England is utterly broken. There is an urgent need to develop a new monitoring system that provides the full accountability that the fishery requires for recovery and sustainable management.

Unacceptable progress on Amendment 23

The law requires – and the region's groundfish resources and those who depend on them deserve – replacing the current monitoring approach with one that produces accurate as well as precise estimates. Amendment 23 to the Northeast Multispecies Fishery Management Plan is the vehicle the Council and NOAA Fisheries have determined will be used to accomplish that

¹⁸ https://s3.amazonaws.com/nefmc.org/180220_Groundfish_FW57_Appendix_II_Calculation-of-ACLs_FINAL.pdf.

¹⁹ *Id.*

²⁰ See Letters to 15 sectors dated September 25, 2018, from Michael Pentony, Regional Administrator for NOAA Fisheries Greater Atlantic Regional Fisheries Office, included as Attachment 3 (GARFO Letters).

objective.²¹ And yet, as you all recognize, the Council is making little progress on the amendment. The pace and approach to developing Amendment 23, unfortunately, resembles the Council's earlier efforts to address the economic and social impacts of fleet consolidation and quota allocations in Amendment 18: slow progress with frequent deferrals of action steps and a consistent pattern of revisiting decisions. Amendment 18, as we repeatedly expressed to you at the time, ultimately produced a set of management strategies that fundamentally failed to address the consolidation problem that it was intended to fix.

If immediate steps are not taken, the same pattern will play out and Amendment 23 will meet the same fate as Amendment 18. Notwithstanding the imperative to increase accountability in the fishery, to better understand why so many groundfish stocks have performed so poorly for so many years despite fishermen "staying within quotas," and to improve data inputs to the stock assessment models that are performing so poorly as management tools, Amendment 23 will become yet another example of the Council and NOAA Fisheries delaying the process out of fear that the necessary corrective management actions will be controversial, complicated, or expensive.

Amendment 23 was introduced in **September 2016**. Now, **more than two years later**, the Council has yet to put alternatives on the table for consideration. The delays have been the result of a garden variety of bureaucratic issues that are well within your power as leaders to cut through. The most recent delay, which will postpone review of the Amendment 23 alternatives from the Council's January 2019 meeting to the April meeting, was caused by the "challenge" of scheduling a special meeting between the PDT, the Groundfish Advisory Panel, and the Groundfish Committee. Even the need for this special meeting, in part, illustrates the bureaucratic fog surrounding this amendment: Council staff openly questioned the purpose of the amendment at a Groundfish Committee meeting – two years into the process.

Unfortunately, this example is just one in a long string of delays that Amendment 23 has faced since the beginning, and for which there appears to be no end in sight. In a recent meeting with EDF, Council staff hinted that getting the Draft EIS ready in time for a September 2019 Council meeting would be extremely difficult, even assuming the alternatives make it to a Council vote by April. While ongoing efforts to synthesize and peer-review important analyses that will underpin the alternatives are important and take time, the meta-message from the Council's Executive Committee and NOAA Fisheries is that it is acceptable to continue to delay the process, allowing fishing without accountability for yet another season, if not more. Based on everything we as members of the public can see, your leadership on these key issues is lacking.

We can only hope at this point in time that it is not too late for the Council and NOAA Fisheries to ensure that prompt and effective actions are taken to meet the purpose and need of Amendment 23 as immediately as the dire circumstances of groundfish populations require, and that sector accountability is elevated as a critical agency priority before some of these stocks, especially Gulf of Maine cod, drop to such low levels that they can never recover.

As the Council and NOAA Fisheries will already miss the intended 2019 fishing year implementation date for Amendment 23, the agency should demand specific and enforceable

²¹ The Groundfish PDT has concluded that the CV standard will not likely achieve the purpose and need of Amendment 23: "Framework 48 stated that the minimum coverage level based on CV is only appropriate for sector monitoring purposes if there is no evidence that behavior on observed and unobserved trips is different. If there is evidence that behavior is different, then a higher coverage level may be required to ensure the accuracy of discard estimates." Draft Alternatives document of March 20, 2018.

deadlines for each stage of the Amendment 23 process, ensuring that it will be concluded in time to have a new monitoring system on the water for the 2020 fishing year.

In tackling this persistent problem with at-sea monitoring, NOAA Fisheries should not hide behind the current expensive, cumbersome, and inefficient system of human observers – even if the agency were able to fix the current problems causing the systemic breakdown of the ASM program. EDF and CLF, not to mention many other organizations, agencies, and individuals across the fishery, have worked diligently and successfully for years to pursue methods to improve reliability and coverage levels using electronic monitoring and reporting. This is not new territory. The Pacific multispecies groundfish fishery now has 100% at-sea monitoring and 100% dockside monitoring in place and it appears to be working well, and is in the process of a transition to EM coverage.

Simply implementing these new monitoring tools and techniques in combination with human collection and evaluation of data as needed will ensure that the reliable and accurate data needed to manage the groundfish fishery is available at a reasonable cost.²² What is of overriding importance now is achieving full accountability in the groundfish fishery so that it too may someday join the ranks of the nation's sustainably managed fisheries.

NOAA Fisheries must exercise its leadership and oversight duties to regain control of the New England groundfish fishery.

Preventing overfishing remains the most central, important, and unqualified mandate of the fishery law you are charged with implementing. If the statutory goals of producing optimum yields of New England's groundfish fisheries are ever to be achieved, the agency must ensure that:

- New England's groundfish stocks are not overfished;
- overfishing is prevented;
- there is demonstrable compliance with annual catch limits with no illegal discards and full accounting of regulatory discards;
- appropriate management and science buffers are set;
- necessary steps are taken to rebuild overfished stocks;
- the fishery is managed based on the best scientific information available; and
- sectors follow their own rules and contractual obligations.

It is black letter law that regulators must ensure that fishery management plans have at least a 50 percent chance of achieving a rebuilding plan's goals²³ using appropriate scientific and management buffers. The agency has further adapted and expanded that standard.²⁴ Nonetheless, that has not happened in the New England groundfish fishery. NOAA Fisheries has sanctioned and enabled the overfished condition of cod and yellowtail flounder since the early 1990s and seems unwilling to take the necessary corrective actions. Assessment after assessment, there has been an

²² Furthermore, given the new additional resources provided to NOAA Fisheries for supporting the costs of ASM, cost is not the issue. NOAA Fisheries has informed industry members that some \$4.6 million will be available for covering ASM industry costs in FY2019 alone. See <https://www.fisheries.noaa.gov/feature-story/noaa-fisheries-announces-reimbursement-sector-sea-monitoring-costs>. That is an exorbitant budget for the published number of observer days, and we encourage the agency to use some of the remaining funds to increase monitoring levels immediately, including accelerating the development of more durable and reliable means of collecting fishing data.

²³ See *NRDC v. Daley*, 209 F.3d 717, 753-754 (D.C. Cir. 2000),

²⁴ See 50 C.F.R. § 600.310(f)(4).

unbroken demonstration that the ACLs that you are setting and the buffers you are using are not preventing overfishing.

The combination of unrealistically low buffers between OFLs and ACLs, demonstrated biases in existing catch data, low monitoring rates, lack of discard monitoring, and, most recently, indications that even those low monitoring rates will not be achieved this year, remove any serious question about two things: 1) overfishing is still occurring on key groundfish stocks, and 2) meaningful measures to ensure accountability with ACLs at-sea are not in place or on the horizon. The result is a fishery that blatantly violates the MSA.

To meet statutory obligations and to offer any hope of rebuilding and ending overfishing of depleted groundfish stocks in New England, the Council and NOAA Fisheries must, at a minimum, access and employ accurate and precise data obtained through a reliable at-sea monitoring program. Statistically reliable data are also necessary to ensure full accountability and fundamental fairness so that all fishermen play by the same rules and catch limits are observed. NOAA Fisheries' chronic failure to demand the same standards in New England that have been demonstrated to achieve management success in other regions undercuts the integrity of the sector system here in New England and jeopardizes the economic and social prospects of the fishery, further eroding the public's trust in fisheries management.

We believe it is past time for everyone engaged with this fishery to face the facts: NOAA Fisheries and the Council have lost control of this fishery and are essentially managing the fishery in the dark. The management measures in place in this fishery are forcing even the most honorable fishing operations to violate the law if they are to survive in the fishery's current environment. There is no way to scientifically determine whether the fishery is in compliance with ACLs and no rational basis for arguing that it is.

In order to cure existing legal violations, NOAA Fisheries and the Council must establish and stick to an aggressive timeline for Amendment 23, using firm deadlines so that full accountability is in force in the fishery no later than the start of the 2020 fishing year. In the meantime, NOAA Fisheries must use the substantial taxpayer resources that have been dedicated to monitoring of this fishery and that are currently sitting idle to immediately increase coverage levels to comply at a minimum with the existing monitoring requirements by the start of the next fishing year on May 1, 2019. The current failure of observers to record discards must be corrected immediately. The Secretary must use his emergency authority, if necessary, in order to remedy the overfishing that is under way at this time.

We request a meeting with you in Washington to discuss this critical situation. We would hope this meeting could take place before the New England Fishery Management Council convenes on January 29, 2019. Please advise us at your earliest opportunity whether and when such a meeting could be scheduled.

Very truly yours,



Peter Shelley
Senior Counsel
Conservation Law Foundation



Matt Tinning
Associate Vice President, Oceans
Environmental Defense Fund

Attachments:

Transcript of discarding discussion at April 2018 New England Council meeting

EDF FR55 letter

GARFO September 25 letters

EDF AM23 letter

FY19 spend plan

CC:

Cisco Werner, Ph.D., NOAA Fisheries Director of Scientific Programs and Chief Science Advisor

Sam Rauch, Deputy Assistant Administrator for Regulatory Programs

Jon Hare, Ph.D., NOAA Fisheries Science and Research Director, Northeast Fisheries Science Center

Jason McNamee, Ph.D., Chair, New England Fishery Management Council Science and Statistical Committee

NEFMC
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January 4, 2019

Kevin M. Scola
P.O. Box 1392
Marshfield, MA 02050

RE. Comment on recreational limits

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Dear Mr. Chairman

I would like at this time to make a proposal that the catch limits for 2019 recreational measures concerning Gulf of Maine Cod & Haddock and Georges Banks Cod & Haddock be exactly the same for both geographical areas and user groups including but not limited to Charter boats & Head boats.

I strongly believe that this is the correct course of action given the strong scientific evidence that both of these stocks intermix at a much higher level than originally thought.

This is the only real responsible & correct course of action to take given the astronomical high level of fishing effort on the Georges Bank's stock in the recreational sector and the historical low-level of effort on the Gulf of Maine stock.

To allow one user group access to a stock that has basically collapsed & intermixes with another stock that has basically collapsed as well is irresponsible at best and leads to speculation of special interests being taken care of and corruption .

It only makes sense to have uniform regulations for both user groups if both of these stocks are indeed at very low historical levels as suggested and the mortality rate is astronomically high to the point where it basically accounts for 250 metric tons .

Whatever the catch rate is for the user group that fishes on Georges Bank stock is then it should be the same for Gulf of Maine stock user groups and vice versa..

It's about time we take hard measures in order to help the stock to rebuild in a timelier manner.

Yours truly

Capt. Kevin M. Scola

Bluewater Charters
Survival fishing company

