

CORRESPONDENCE



August 13, 2021

Eric Reid, Acting Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Dear Eric:

Pursuant to section 304(e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act, we are required to review all rebuilding plan at least every two years to determine whether adequate progress is being made to rebuild the subject stocks and immediately notify the Council if adequate progress is not being made. As a result of such a review, we have determined that Gulf of Maine (GOM) cod and Southern New England/Mid-Atlantic (SNE/MA) winter flounder are not making adequate rebuilding progress. Consistent with section 304(e)(3) of the Magnuson-Stevens Act, the Council is required to prepare and implement a revised rebuilding plan for each stock within two years of this notification.

Rebuilding progress reviews

We used the 2017 and 2019 stock assessment results to review the rebuilding plans for groundfish stocks under section 304(e)(7) of the Magnuson-Stevens Act. The criteria in the National Standard 1 (NS 1) guidelines state that the Secretary may find that a stock is not making adequate rebuilding progress if either:

1. The fishing mortality rate (F) required to rebuild the stock within the rebuilding timeframe ($F_{rebuild}$) or the ACL associated with $F_{rebuild}$ is exceeded, and accountability measures (AMs) are not correcting the operational issue that caused the overage, nor addressing any biological consequences to the stock or stock complex resulting from the overage when it is known; or
2. The rebuilding expectations of a stock or stock complex are significantly changed due to new and unexpected information about the status of the stock.

Neither GOM cod nor SNE/MA winter flounder met the first criteria for determining that the stocks were making inadequate rebuilding progress. For GOM cod, catch was below the annual catch limit (ACL) in 2018 and 2019, the most recent fishing years for which we have complete catch data. Although catch exceeded the ACL in 2016 and 2017, this was primarily due to catch from the recreational fishery and state waters commercial fisheries. We expect that proactive recreational measures addressed the recreational fishery overages, and they will keep the recreational fishery from exceeding its future GOM cod allocation. State waters catch has not contributed to any subsequent overages and we do not expect it to given the modifications to



state measures implemented to prevent excess catch. For SNE/MA winter flounder, the most recent assessments have concluded that overfishing is not occurring, but that the stock is overfished. Catch of SNE/MA winter flounder has consistently been below the ACL, and estimates of fishing mortality (F) have remained below F_{MSY} since 2008.

Gulf of Maine Cod

Based on the 2017 and 2019 assessments, GOM cod meets the second criterion of the NS 1 guidelines for not making adequate rebuilding progress. Rebuilding expectations have significantly changed as a result of new and unexpected information about the status of the stock. The rebuilding plan deadline is fishing year 2024. Despite fishing mortality reductions, the 2017 and 2019 operational assessments both determined that GOM cod remains overfished and overfishing is occurring. Overfishing was still occurring in 2018 in both stock assessment models, despite the catch remaining below the ACL. GOM cod recruitment has remained relatively low since 2010 despite reductions in catch and fishing mortality. There are unexpectedly limited signs of improvements in recruitment, and increases in recruitment and rebuilding have not occurred as expected. Therefore, under both assessment models, the stock is now projected to have only a 1-percent chance of rebuilding to the target biomass by 2024. Further, GOM cod shows a truncated size and age structure, which is consistent with a population experiencing high mortality. It is not clear whether the truncation is mainly due to recent high natural mortality, fishing mortality, and/or other environmental factors. Additionally, survey indices continue to be low, and the current spatial distribution of the stock is considerably less than its historical range within the Gulf of Maine. Models used in the GOM cod assessment continue to demonstrate a retrospective pattern. Both the 2017 and 2019 assessments cautioned that, should the retrospective patterns continue, the models may continue to overestimate spawning stock size and underestimate fishing mortality, which likely has contributed to continued overfishing.

We suggest that the Council should consider measures in its revised rebuilding plan beyond setting a new F target to enable the rebuilding of GOM cod. Specifically, the Council could consider additional spawning protections such as time/area closures, and selective gears or other measures that could foster increased spawning success to increase the probability of improvements in recruitment.

We understand that with the expected 2023 implementation of a new rebuilding plan, the timing presents some challenges with pending Council actions relative to its consideration of new cod stock structure and Amendment 23 to the FMP¹. However, the Council is required to implement a new rebuilding plan by 2023 and cannot wait to see how these two issues unfold over the next year to two years before it considers ways to adjust the rebuilding plan for GOM cod. The Council is likely to be making decisions on how to address cod stock structure around the same time the new rebuilding period would begin. Amendment 23, if approved, may provide information shortly into the rebuilding period that the Council should consider. We strongly urge the Council to be prepared to consider new information from its consideration of cod stock

¹ The Council took final action on Amendment 23 in September 2020. If approved, implementation is anticipated for May 2022.

structure, Amendment 23, and any other information after implementation of a new rebuilding plan.

Southern New England/Mid-Atlantic Winter Flounder

Using assumed catch in 2017 and $F=0$ through 2023, the 2017 assessment projected that SNE/MA winter flounder had less than a 1-percent chance of reaching the spawning stock biomass target by 2023. The 2020 assessment found a similarly low chance of reaching the target biomass (5 percent, using assumed catch in 2020 and $F=0$). There is an overall declining trend in spawning stock biomass over the time series, and current estimates are at a time series low. Spawning stock biomass and recruitment continue to decline despite low fishing mortality rates over the last decade. Because the assessments show that fishing mortality is low and overfishing is not occurring, SNE/MA winter flounder's projected inability to rebuild by the rebuilding deadline is likely not due to continued overfishing, but rather low productivity. Based on the new information regarding the unlikelihood of the stock reaching the spawning stock biomass target by the target date of 2023, this stock meets the second criterion of the NS 1 guidelines for not making adequate rebuilding progress.

Consideration of a new F target may be challenging given the stock's lack of rebuilding progress despite low fishing mortality. We therefore recommend the Council consider measures in its revised rebuilding plan beyond setting a new F target to enable rebuilding, such as spawning protections (i.e., selective gear requirements or time/area closures) to support additional growth for this stock. We also acknowledge that it will be difficult to design management measures to rebuild the stock when faced with climate change and other external factors that could be limiting the stock's ability to rebuild to historical reference points despite the management measures, as indicated in Bell, et al².

Next steps

Revised rebuilding plans for GOM cod and SNE/MA winter flounder must be implemented within two years, i.e. by August 2023. As such, the Council should include changes in an upcoming action that would allow us to implement changes to the rebuilding plan along with other management measures for the 2023 fishing year that begins on May 1, 2023. We support the recent Groundfish Committee recommendation for the Groundfish Plan Development Team (PDT) to consider factors impacting rebuilding of GOM cod and SNE/MA winter flounder to proactively address this requirement. The Council used the results of the 2020 assessment to set catch limits for SNE/MA winter flounder for the 2021-2023 fishing years in Framework 61, and we expect the Council will use the upcoming 2021 assessment information to set catch limits to prevent overfishing for GOM cod for the 2022-2024 fishing years in Framework Adjustment 63. These will serve as the best scientific information available until the Council develops revised rebuilding plans can be developed.

We will continue to provide advice and collaborate on the development and implementation of rebuilding programs through our participation on the Groundfish Plan Development Team, the Groundfish Committee, and the Council. If you have any questions about this guidance, or the

² Bell, Richard J, Anthony Wood, Jonathan Hare, David Richardson, John Manderson, and Timothy Miller. 2018. Can. J. Fish. Aquat. Scie. 75: 1405-1414.

development of rebuilding plans for these stocks, please contact Sarah Bland, Assistant Regional Administrator for Fisheries for the Greater Atlantic Regional Fisheries Office, at (978) 281-9257.

Sincerely,



Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service

cc: Janet L. Coit, Assistant Administrator for Fisheries, National Marine Fisheries Service
Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service
Tom Nies, Executive Director, New England Fisheries Management Council
Dr. Jon Hare, Director, Northeast Fisheries Science Center
Kelly Denit, Director, Office of Sustainable Fisheries



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

August 17, 2021

Eric Reid, Acting Chairman
New England Fishery Management Council
50 Water Street Mill 2
Newburyport, MA 01950

Dear Eric:

In January, we consulted with the Council to develop potential adjustments to recreational management measures for 2021. We have determined that changes to the current measures are not necessary, and we will retain the status quo Gulf of Maine (GOM) cod and haddock measures, as recommended by the Council. We will not be publishing a document in the Federal Register, as these regulations are already in place, but we will announce our determination on our website.

Based on available data, we have determined that the status quo measures recommended by the Council are likely to result in GOM cod and GOM haddock recreational fishing mortality within their 2021 sub-ACLs, while allowing for recreational fishing opportunities for both stocks. The fishing year 2021 recreational sub-ACL for GOM cod is 193 mt, the same as the 2020 sub-ACL. The fishing year 2021 recreational sub-ACL for GOM haddock is 5,295 mt, a reduction from the fishing year 2020 sub-ACL of 6,210 mt. Preliminary data suggests fishing year 2020 removals of GOM cod and haddock by the recreational fishery were below 2020 and 2021 sub-ACLs.

Given the overfished status of the GOM cod stock, uncertainty in estimating future catch, and COVID-19-related impacts on the for-hire business operations, status quo measures are precautionary and balance recreational fishing opportunity with the need to manage harvest and discard mortality for GOM cod. Status quo measures provide a level of certainty for private and for-hire recreational interests planning for the remainder of the 2021 fishing year.

Final 2021 Measures for GOM Cod and Haddock

Haddock			Cod			
Possession Limit	Minimum Size (inches)	Open Season	Possession Limit	Minimum Size	Open Season (Private)	Open Season (For-Hire)
15	17	May - February 28, April 1 - 30	1	21	September 15 - 30, April 1 - 14	September 8 - October 7, April 1 - 14



Thank you for the hard work of Council staff, the Groundfish Committee, and the Recreational Advisory Panel, particularly given recent challenges in recreational data collection. If staff have any questions on this decision, please contact Kyle Molton at (978) 281-9236.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Pentony", followed by a stylized flourish consisting of a loop and a long horizontal line extending to the right.

For Michael Pentony
Regional Administrator

From: Ming Warren - NOAA Federal [<mailto:ming.warren@noaa.gov>]
Sent: Wednesday, August 18, 2021 4:47 PM
To: Tom Nies <tnies@nefmc.org>
Cc: Brian Pawlak - NOAA Federal <brian.t.pawlak@noaa.gov>
Subject: Fwd: FY 2021 Spend Plan

Hello Mr. Nies,

Brian asked that I share with you the FY 2021 ASM Spend Plan.

The spend plan was transmitted to the Hill on 7/28 and we were notified by NOAA that it was approved by Senate Approps, and we can proceed with executing according to the plan.

Please let us know if you have any questions.

Thanks,
Ming



REPORT TO CONGRESS

NOAA AT-SEA MONITORING SPEND PLAN FOR FISCAL YEAR 2021

Developed pursuant to: Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021 (Public Law 116-260)

Paul Doremus, Acting Assistant Administrator
National Marine Fisheries Service
National Oceanic and Atmospheric Administration

Benjamin Friedman
Deputy Under Secretary for Operations
Performing the Duties of Under Secretary of Commerce for Oceans and Atmosphere
and NOAA Administrator

THE JOINT EXPLANATORY STATEMENT ACCOMPANYING THE CONSOLIDATED
APPROPRIATIONS ACT, 2021 (PUBLIC LAW 116-260) INCLUDED THE
FOLLOWING LANGUAGE

NOAA is directed to fully fund the At-Sea Monitoring costs in the New England groundfish fishery, including sea and shore side infrastructure costs, and shall ensure the costs and benefits of At-Sea Monitoring are commensurate with the gross revenues of vessels in the fishery. The agreement provides no less than the fiscal year 2020 enacted amount within Observers and Training for this purpose. Before obligating any of these funds, NOAA shall provide the Committees with a detailed spending plan.

THIS REPORT RESPONDS TO THE COMMITTEE'S REQUEST.

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I. EXECUTIVE SUMMARY

This report responds to the committee's request by providing a detailed spend plan for the \$10.3 million provided within the Observers and Training budget line in the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021 (Public Law 116-260). For fishing year 2021, based on a 40-percent coverage level, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) estimates that industry's 2021 costs for At-Sea Monitoring (ASM) will be approximately \$4.57 million. Through an agreement with the Atlantic States Marine Fisheries Commission, NMFS will reimburse 100 percent of those costs to industry using prior-year funds appropriated for ASM.

II. FISCAL YEAR 2021 ASM SPEND PLAN

This section outlines the proposed spend plan for the \$10.3 million provided in FY 2021. NMFS plans to use approximately \$3.425 million for shoreside costs associated with ASM sea days.

In addition, \$600,000 is planned for additional ASM training in FY 2021, which will cover the surge in training and recruitment necessary to offset a reduction in the number of trained monitors. This additional training will also prepare for an increase in the ASM rate from 40 percent to 100 percent in future years, which is in response to Amendment 23 of the New England Fishery Management Council Northeast Multispecies Fishery Management Plan.

NMFS plans to use approximately \$1.95 million to support efforts to develop Electronic Monitoring (EM) technologies for use in the groundfish fishery. This includes EM database development and management, continued development of machine learning capacity to support efficiencies in video review, and dockside monitoring in FY 2021.

NMFS also plans to use \$200,000 to purchase equipment and gear to support the increase in the at-sea monitors needed to increase from 40-percent to 100-percent coverage.

NMFS plans to use \$3.425 million for future industry support for groundfish monitoring costs for ASM, EM, and associated electronic reporting. This is in addition to the estimated \$6.4 million remaining from FY 2018-2020 ASM funds after 2021 industry sea days are reimbursed. Together, these current and prior year amounts will be sufficient to fully reimburse industry monitoring costs through at least FY 2022.

Finally, NMFS plans to use approximately \$700,000 for NOAA/NMFS Shared Mission Support Costs applied across the budget (e.g., information technology, acquisition and grant administration, general counsel support, and financial management).

Activity	Amount
ASM Shoreside Support	\$3,425,000
Additional ASM Training	\$600,000
EM Development (in lieu of human ASM)	\$1,950,000
Observer Equipment and Gear	\$200,000
Future Industry Support for Monitoring	\$3,425,000
NOAA/NMFS Shared Mission Support Costs	\$700,000
Total	\$10,300,000

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September 3, 2021



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

Mr. Marc Gorelnik
Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Dear Mr. Gorelnik:

Thank you for your recent letter regarding the Pacific Fishery Management Council's recommendation to delay the effective date of the West Coast groundfish electronic monitoring (EM) program regulations until 2023. I acknowledge the Council's stated concerns about the cost-effectiveness of the program and its interest in exploring the sole-source authority for a grant, contract, or other financial assistance under section 402(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1881a(d), for video review by the Pacific States Marine Fisheries Commission (PacStates). I also acknowledge the Council's interest in exploring funding mechanisms utilizing cost recovery under section 303A(e) of the MSA, 16 U.S.C. § 1853a(e), and addressing concerns regarding confidentiality and federal record retention. Additionally, I acknowledge the Council's specific interest in further investigating the trawl EM program in development under the purview of the North Pacific Fishery Management Council (NPFMC).

I understand the Council prefers that the EM program continue to operate under exempted fishing permits (EFPs) to allow for further evaluation of whether efficient catch handling and discard options would lower costs for vessels that are subject to EM requirements. Continued operation under EFPs would, in the Council's view, also encourage more participation in the bottom trawl fishery and provide time to establish a cost-effective funding mechanism for video review and storage that is consistent with other regional EM programs.

Having reviewed our workload and resources necessary to successfully implement the EM program, We are prepared to support extending the EM EFPs for another two years, provided that the Council addresses two issues.

First, we encourage the Council to clearly explain the purpose and goals of the proposal to continue EM program operation under EFPs. The National Marine Fisheries Service (NMFS) will need that information to evaluate whether EFPs for participating vessels can be issued under the EFP governing regulations at 50 C.F.R. 600.745. Second, regarding the costs of extending operation of the EM program under EFPs, although NMFS has previously funded the EM program's sampling costs, we currently have no identified funding for these costs beyond FY 2021. In order for NMFS to fully support the continued program operation under EFPs, this funding will need to be identified as soon as possible. This may require a mechanism for industry to reimburse PacStates directly for some if not all of the sampling costs.

If these issues can be addressed, and implementation of the regulatory program is delayed, NMFS can work with the Council to evaluate whether the EM model being considered by the NPFMC for the Bering Sea pollock fishery EM program could also be appropriate for operation

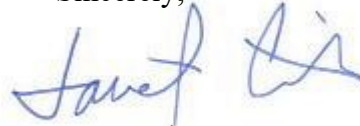


of the West Coast EM program when it transitions to a regulatory program. NMFS encourages the Council to coordinate with the NPFMC and scope its own process to look at developing a consistent approach to EM, including what that would be and how both would be implemented throughout the West Coast and Alaska. There may be other actions the Council may need to take for that approach to work on the West Coast and we would encourage the Council to start looking into all of these issues as soon as possible. We believe that to address these and other issues raised by the Council's preferred approach would require that regulatory implementation of the EM program be delayed until at least January of 2024.

In closing, we agree with the Council that the collaborative approach taken on the West Coast was responsible for the success of its EM program and that collaboration will continue to be key to successful implementation of the regulatory program. We are committed to a transparent, productive dialogue with the Council and to providing flexibility where we can while maintaining the integrity of the program.

If you or your staff have any questions, please contact Ryan Wulff, Assistant Regional Administrator for Sustainable Fisheries in the West Coast Region, at (916) 930-3733 or Ryan.Wulff@noaa.gov.

Sincerely,



Janet Coit
Assistant Administrator
for Fisheries



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September 17, 2021

Eric Reid, Acting Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, Massachusetts 01950

RE: CLF Cod Petition NOAA-NMFS-2021-0039

Dear Mr. Reid:

On behalf of the Stellwagen Bank Charter Boat Association, representing over one hundred charter/party boat captains and recreational anglers that fish the Gulf of Maine (GOM) and Georges Bank waters, we respectfully request that the Conservation Law Foundation's (CLF) proposal to prohibit the directed commercial and recreational fishing for Atlantic cod not be implemented based upon the evidence detailed below.

- National Standard 1 (NS1), when assessing maximum sustainable yield, considers natural mortality. We can attest to the fact that the nuisance schools of dogfish that eat everything in sight and a booming population of 50,000 plus gray seals that inhabit our waters are likely contributing to predation of cod in our waters. Between climatic shift of our stocks and mortality due to predation, the stock biomass may be impacted by factors that are not related to fishing.
 - Since the season closures and 1 fish bag limit was implemented we have observed more cod annually in the GOM waters. This is consistent with the fact that the recreational GOM sub ACL for cod has not been fully utilized since 2018. If we encounter cod during a seasonal closure or have achieved our bag limit of one cod per person for the short duration that the season is open, we release the fish and move to another area where the cod have not schooled in a group.
 - Ongoing annual trends of cod landings/released by recreational anglers and the for hire fleet have demonstrated that we avoid cod as bycatch when targeting haddock or other species. The Massachusetts haddock charts have also assisted in reducing cod bycatch by recreational anglers.
-



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- We have observed increased numbers of cod from 8" to 21 - 27 " and larger since the cod closures and subsequent restricted seasons and bag limits were implemented in 2017, which is indicative of the fact that the conservation measures are working and the simple fact that if we encounter a few cod, we are able to move to another area to target haddock or other species. Commercial gear types (draggers, gillnets, longlines), unlike rod and reel, can cause high cod mortality levels before the operator is able to move to another area.
- Increased numbers are observed near shore in state waters as well as at Stellwagen Bank and federal waters as well as the Chatham to Nantucket waters south of the latitude 42 line.
- Select photos are attached at Attachment A, demonstrating the size distribution of the cod we encounter and release.
- The recreational and for hire community presently provides valuable scientific details associated with the landing and release of cod in our waters that in many cases are in areas closed to commercial fishing. This data is reported to NMFS via eVTRs and MRIP interviews. To shut down the recreational fishery would result in the lack of such details to assist in the science necessary to manage the stock.
- Ultimately the CLF petition is premature, there are indications of rebound in recruitment in select areas and the recreational community has observed the same in areas closed to commercial fishing.

If you have any questions or comments please contact us at the emails below.

Very truly yours,

Capt Paul Diggins

Capt. Paul Diggins
SBCBA, Vice President
captain_paul@bostonfishing.com



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Capt Tom Depersia
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Cc: Tom Nies, NEFMC
Mike Pentony, GARFO
Rick Bellivance, Acting Chairman, Groundfish Committee
Frank Blount, Chairman, RAP
Dan McKiernan, MassDMF
Melaney Griffin, MassDMF
Ron Amidon, MassF&G



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ATTACHMENT A
2021 & 2020 PHOTOS OF GULF OF MAINE AND GEORGES BANK COD



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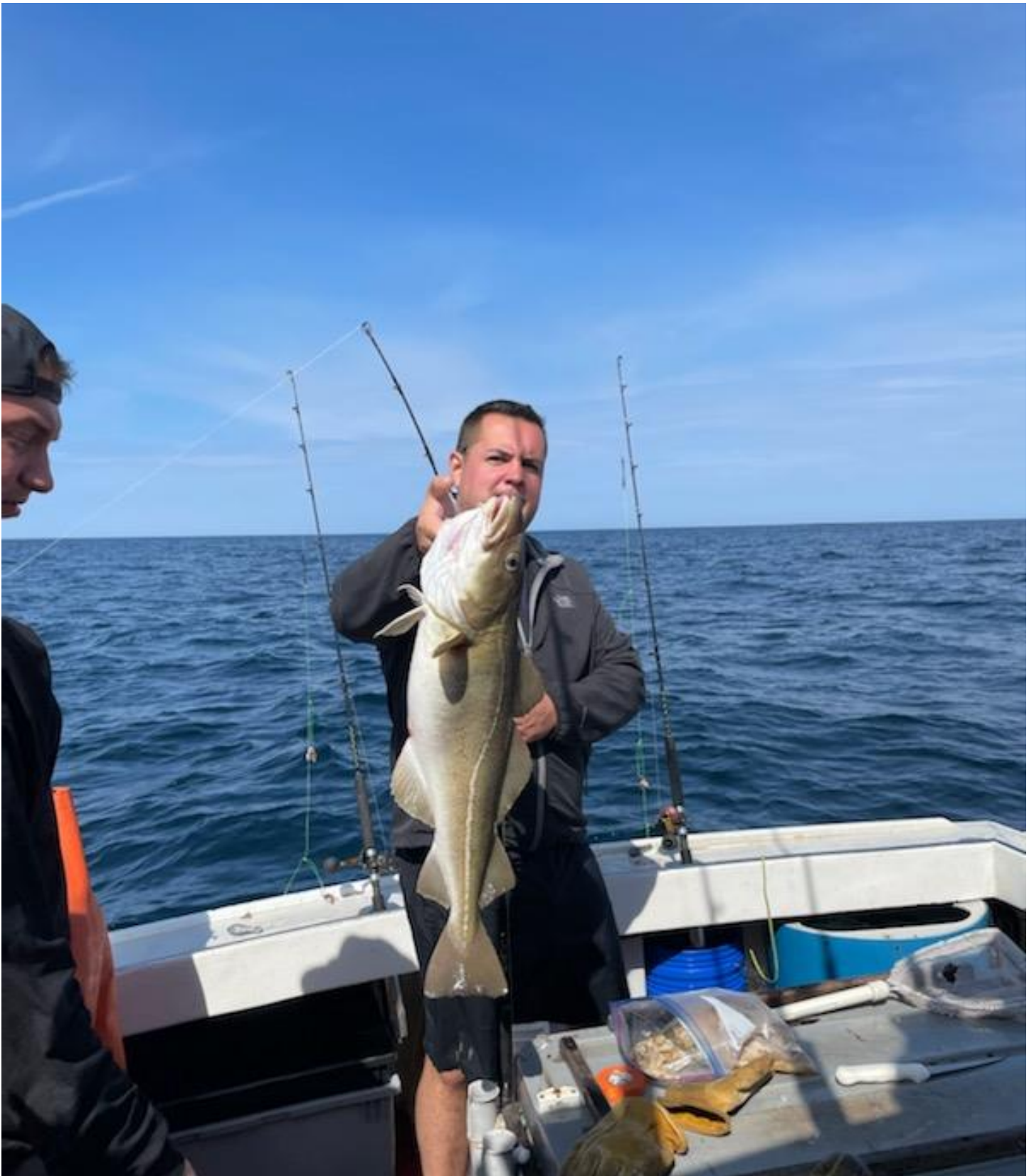


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