

CORRESPONDENCE



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*

June 25, 2021

Mr. John Carmichael
Executive Director
South Atlantic Fishery Management Council
4055 Faber Place Drive, Suite 201
North Charleston, SC 29405

Dear John:

This letter is in regard to the new reporting requirements implemented in January 2021 through the Southeast For-Hire Electronic Reporting Program that apply to all for-hire permit holders issued by the NOAA Fisheries Southeast Regional Office. While we are strong advocates for timely reporting and fishery dependent data programs, we have concerns about the additional data fields that are now required for dolphin/wahoo permit holders.

As you are aware, for-hire vessels with dolphin/wahoo permits are found throughout the New England and Mid-Atlantic regions. As a result of the SERO reporting program, these vessels now must enter 12 additional data elements after each trip to meet the new requirements, regardless of whether they target and/or catch dolphin/wahoo. It is unclear how these data from permit holders in the GARFO and SERO region will be used, particularly on trips that do not land dolphin/wahoo. We would like to request an explanation of how each of these new data elements, most of which are socio-economic in nature, are to be utilized in management moving forward.

It is not our intent to limit another Council's ability to collect the data they feel is necessary to manage their fisheries; however, our concern is that without continued work to improve reporting tools and address inconsistencies in reporting requirements, reporting accuracy and compliance may suffer. As you may already be aware, the New England and Mid-Atlantic Fishery Management Councils have adopted electronic reporting in all fisheries under their jurisdiction. Most recently, starting in 2019, both Councils worked closely with the Greater Atlantic Regional Fisheries Office (GARFO) to develop a joint omnibus framework that will implement consistent electronic vessel trip reporting requirements for all commercial vessels in the Greater Atlantic Region in November 2021. Development of this action took careful consideration of the overlap of permit holders for species managed by the NEFMC and MAFMC as a way to ensure that eVTR requirements were consistent across the region and that measures were satisfactory in meeting the data needs for management, science, and enforcement for both Councils. We point to this example of coordination between Councils with the hope of starting a discussion around collaboratively developing ways to ease the reporting burden for fishermen across the Greater Atlantic and Southeast Regions.

Sincerely,

Thomas A. Nies
Executive Director



New England Fishery Management Council

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

July 6, 2021

Ms. Kelly Denit
Director, Office of Sustainable Fisheries
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1315 East-West Highway, Room 14743
Silver Spring, MD 20910

Dear Ms. Denit:

Thank you for providing the New England Fishery Management Council the opportunity to review the draft procedural directive “Information Law Application for Data and Supporting Guidance in Electronic Monitoring Program for Federally Managed U.S. Fisheries” (04-115-04). This directive answers many questions that are asked when we discuss electronic monitoring (EM) programs for our fisheries. Please consider the following comments as this directive is finalized.

We suggest that the objective of the directive may need to be revised, or later sections of the directive should be revised to be consistent with it as written. The current text reads “This procedural directive provides guidance in the application of Information Law to raw EM data that are made and retained by NOAA fisheries, or a third-party in EM programs.” While much of the directive addresses this objective, sections III.2.A. and III.2.B do not. These sections refer to video review standards and cost effectiveness and are not explicitly linked to information law. Further comments on these sections are provided below.

We think footnote number 4 to Table 1 is confusing. According to the table, the Federal Records Act (FRA) does not apply to raw EM data maintained by a NOAA Fisheries Contractor or a Federal Financial Assistance Recipient. Footnote 4, however, says that NOAA Fisheries could include a provision in a contract or award that overrules this general statement. It would be helpful to clarify why such a choice would be made, as it would increase the cost of the program (some of which may be the responsibility of the industry).

Section III.2.A describes the use of a web portal for conducting secondary video review of a third-party. This section notes that the agency must retain any such record used for agency business, and would thus need to obtain a copy and preserve it as a federal record. While this is

an information law issue, the discussion of the appropriate level of view review is not and could be deleted.

During our review of Section III.1.B, some Council members expressed concern that a third-party EM provider might be considered the submitter of confidential data to the agency and could authorize release of that information in accordance with section 402(b)(1)(F) of the MSA. It was clarified during the meeting that in all cases the vessel owner/operator is considered the submitter and maintains control over the data. It may be helpful to make this clear in the procedural directive.

Most of Section III.2.B does not seem consistent with the objective of the directive. Ostensibly this section addresses requirements for third-party performance monitoring, but this is only discussed in the third paragraph ("Monitoring third party performance"). The first paragraph notes that that reporting alternative costs must be evaluated for the purposes of regulatory impact analysis. This does not seem to have any relationship to information law. The second paragraph is even more problematic. This paragraph notes that narrowly-focused industry-funded program may forgo opportunities for streamlining and integrating other monitoring requirements. The implication is that and industry-funded EM program could augment or replace other monitoring and reporting requirements. What is not addressed is how costs will be apportioned should the EM program be assigned data collection that is currently the responsibility of the agency (for example, the observer programs for marine mammals or biological sampling). On the surface, it would seem this could shift the costs of those programs onto the industry. The possibility that such mission creep will increase industry costs is of great concern. These first two paragraphs appear misplaced and, in our opinion, should be removed from this directive.

On the whole, this procedural directive will clarify how EM data will be managed. We believe our suggestions will better focus this directive. Please contact me if you have questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas A. Nies". The script is cursive and fluid.

Thomas A. Nies
Executive Director

cc: Regional Fishery Management Council Executive Directors
Michael Pentony
Dr. Jon Hare



New England Fishery Management Council

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

July 9, 2021

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

Dear Mike:

I am writing to comment on the Proposed Rule for Framework Adjustment 61 to the Northeast Multispecies (Groundfish) fishery management plan, published in the Federal Register on June 24, 2021 (86 FR 33191).

I am raising one minor issue in the draft regulation text – a reference to “Northeast Multispecies” rather than the correct term “regulated multispecies and ocean pout”. Northeast Multispecies, as defined in the regulations, also includes silver, red, and offshore hake.

Our concern is that use of the incorrect term could lead to confusion with respect to this section of the proposed rule:

“(C) No vessel may participate in the Redfish Exemption Program in any areas that are otherwise closed to fishing for Northeast multispecies or fishing with trawl gear, including but not limited to year-round closed areas, seasonal closed areas, or habitat closures.”

Since fishing for silver, red, and offshore hake is limited to specific areas in the Gulf of Maine, this paragraph could be interpreted to also limit the redfish exemption to a smaller area than what is proposed in Framework 61. We believe that problem is avoided if the term “regulated multispecies and ocean pout” is used instead of “Northeast Multispecies.”

Please contact me if you have questions.

Sincerely,

Thomas A. Nies
Executive Director

From: Michael Pentony - NOAA Federal <michael.pentony@noaa.gov>

Sent: Tuesday, July 20, 2021 3:50 PM

To: Hank Soule <shsector@gmail.com>

Cc: Sarah Bland <Sarah.Bland@noaa.gov>; Peter Christopher <Peter.Christopher@noaa.gov>; Kyle Molton <kyle.molton@noaa.gov>; Claire Fitz-Gerald <claire.fitz-gerald@noaa.gov>; comments <comments@nefmc.org>; Amy Morris <FGSector@gmail.com>; Dan Salerno <nefsector5@gmail.com>; David Leveille <nefs02@gmail.com>; Deven Franco <nefsvii@gmail.com>; John Haran <sector13@comcast.net>; Libby Etrie <libby.etrie@gmail.com>; Linda McCann <nbsector07@comcast.net>; Mary Hudson <mary@mainecoastfishermen.org>; Paula Lynch <paulasectorx@yahoo.com>; Stephanie Sykes <stephanie@capecodfishermen.org>

Subject: Re: Please see attached letter requesting action today on fixing sector EVTR noncompliance restrictions

Hello Hank and sector managers,

Thank you for bringing this issue to my attention. The staff at the Greater Atlantic Regional Fisheries Office (GARFO) were first made aware of this issue on Thursday, July 15. Since that time, GARFO and Northeast Fisheries Science Center (NEFSC) staff have been working diligently to fix the problem. As of this morning, the majority of the missing electronic vessel trip report data have successfully transmitted from the NEFSC to GARFO's data systems and are available in the Sector Information Management Module. However, there are still a small number of trips in the NEFSC database that have not been transferred to GARFO's data systems. We will continue to work on identifying the reason for this data issue. In the meantime, we will lift the 5-percent noncompliance Annual Catch Entitlement transfer threshold so as not to penalize sectors for the agency's data issues. This change will take effect today and will remain in effect until we fully resolve this issue, though we expect this to be a short-term solution as we're working to fully resolve this data disconnect as soon as possible. Please let me know if you have questions.

Mike

On Tue, Jul 20, 2021 at 9:57 AM Hank Soule/SHS <shsector@gmail.com> wrote:

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Michael Pentony

Regional Administrator

[Greater Atlantic Regional Fisheries Office](#)

55 Great Republic Drive

Gloucester, MA 01930

Phone: 978-281-9283



50 Years of Science, Service, and Stewardship

July 20 2021

Mike Pentony, Regional Administrator
GARFO
55 Great Republic Ave.
Gloucester, MA 01930

Dear Mike,

This letter requests immediate relief (relief granted today) from sector ACE trading prohibitions resulting from unexplained software problems somewhere within the NOAA, NEFSC and/or GARFO systems.

A few dozen vessels in the groundfishery use the EVTR software reporting program FLDRS. EVTRs are transmitted to the NOAA/NEFSC for processing, then passed through to the GARFO. For some reason, the NEFSC has not been transmitting those EVTRS to GARFO for the past few weeks – or, the GARFO system is not accepting them.

As a result, over 100 trip EVTRs across multiple sectors (concentrated in one) have not been received by GARFO. Each trip is thus considered ‘noncompliant’ by GARFO, as if the operator had submitted no EVTR at all.

Some of these ‘noncompliant’ trips have now reached the 35-day window where if the noncompliant cumulative total exceeds 5% of a sector’s total trips, the sector is prohibited from trading.

As of yesterday, two sectors whose vessels recently harvested nearly one third of New England’s groundfish catch are prohibited from acquiring allocation from other sectors because of NOAA software bugs. Another will be prohibited by the end of the week. Not only are the ‘noncompliant’ sectors impacted, but so are compliant sectors who might wish to lease allocation to them.

The ‘noncompliant’ sectors manage 25% of the fleet’s ACE. Well over 200 MRIs are or are about to be unable to lease their allocations to other sectors through no fault of their own, or their sector. Holding this ACE hostage to NOAA software bugs is not acceptable.

The ‘noncompliant’ sectors are also currently unable to accurately report their sectors’ ACE use because certain data elements are not being received or provided by GARFO.

We ask you to immediately raise the sector VTR noncompliance threshold to a level which stops sectors from being punished by whatever software problem NOAA is experiencing. We ask for a response to this request today. There seems to be no sense of urgency from the GARFO regarding this issue, which has been ongoing for a few weeks.

We wrote you recently about raising the VTR noncompliance threshold over concerns about general havoc once EVTR becomes mandatory. This is an example of why we requested that. Submission and software glitches occur now, and we expect them to increase in November. We hope this situation will lead you to act favorably on that request.

Sincerely,

Dan Salerno
NEFS V and XI

Amy Morris
Fixed Gear Sector

Paula Lynch
NEFS XII

David Leveille
NEFS II and VI

Stephanie Sykes
Mooncusser Sector

Mary Hudson
Maine Coast Community Sector

Linda McCann
NEFS VIII

Hank Soule
SHS I and III

cc: Pete Christopher, GARFO
Sarah Bland, GARFO
Claire Fitz-Gerald, GARFO
Kyle Molton, GARFO
New England Fishery Management Council



Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101 Portland, OR 97220-1384
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pcouncil.org
Marc Gorelnik, Chair | Charles A. Tracy, Executive Director

July 21, 2021

Ms. Janet Coit, Assistant Administrator for Fisheries
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

SUBJECT: Council Recommendation to Delay Final Rule Effectiveness for Electronic Monitoring Program Regulations for the West Coast Until 2023

Dear Ms. Coit:

First, I would like to offer congratulations on your appointment as Assistant Administrator for Fisheries on behalf of the Pacific Fishery Management Council (Council). We look forward to working with you on fishery issues, and hope we have an opportunity to meet each other in the near future.

The Council appreciates all the work National Marine Fisheries Service (NMFS) has done to develop the information and engage the industry to support implementation of the electronic monitoring (EM) program regulations for the West Coast Trawl Catch Share Fishery, which are currently set to be effective January 1, 2022. The Council has a strong desire to continue working collaboratively with NMFS and affected stakeholders to develop and implement a program that effectively meets our goals and objectives with particular emphasis on the cost-effectiveness of the program for the groundfish industry and the wise use of public funds. In 2011, the Council began investigating the use of EM in the Trawl Catch Share Fishery to assist the industry in reducing observation costs, particularly for the bottom trawl industry, and create flexibility in choosing between human observers and EM to conduct catch accounting, which is especially important in small and remote ports where human observer availability can be limiting. The Council and the industry still think that the future success of the groundfish fishery hinges on a successful, cost-effective, and flexible monitoring program; however, we remain concerned about how the program will be funded by the industry and NMFS in the future.

Given the importance of this program, the need to have strong industry buy-in, and our collective desire to build on the successes we have achieved thus far using Exempted Fishing Permits (EFPs), the Council strongly recommends that NMFS delay implementation of the EM Program regulations. The Council also thinks that it is imperative NMFS change the [2019 EM final rule](#) prior to its implementation to, among other things, remove the requirement for third-party video review contained in the rule.

The Council request would provide additional time for the industry to continue to work with NMFS and Pacific States Marine Fisheries Commission (PSMFC) to examine ways to develop a mechanism for the industry to fund video review and storage by PSMFC and reduce concerns regarding confidentiality and Federal record retention.

The Council would also like information as to how NMFS may use the authority of the 2007 Reauthorized Magnuson-Stevens Fishery Conservation and Management Act to implement a sole-source contract with PSMFC:

“Section 402 (d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if— (1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or (2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.”

The Council believes that application of this authority may not be consistent within the agency across regions and so requests clarification and guidance on how it may be applied to help meet the objectives of the West Coast Trawl Catch Share EM program. For example, it is the Council’s understanding that recent discussions at the North Pacific Fishery Management Council (NPFMC) indicate that NMFS may be able to use PSMFC as a sole-source contractor to conduct video review and storage on behalf of the Bering Sea pollock industry, and to use cost recovery money to cover those costs. The Pacific Council would like to be able to consider this option, and in fact requested this in [April 2017](#); however, at that time [NMFS responded](#) “We have determined that NMFS cannot designate PSMFC, or any other service provider, as the sole provider for video review, because NMFS cannot favor one company over another, including PSMFC.” The Council would like to understand if there has been a policy shift, and if a mechanism similar to that proposed by the NPFMC could be used in the West Coast EM Program.

The Council recognizes that application of 402(d) authority would require NMFS to cover the cost of a sole-source contract with PSMFC to conduct video review, and that [NMFS policy](#) is industry should be responsible for the cost of video review. Therefore, during several Council meetings, and in particular, June 2021, the Council expressed support for use of cost recovery dollars under the Trawl Catch Share Program (up to the 3 percent cap) to offset NMFS’ costs associated with a grant to PSMFC for video review and storage both when the program is under permanent regulations and in the interim under EFPs. The Council believes there is room under the 3 percent cap to cover those costs for the mothership whiting sector, and cover or nearly cover those costs for the shoreside trawl sector, based on the cost estimates provided by NMFS at the June 2021 Council meeting. Those estimates assumed 100 percent review rates, which are expected to decline through time and further reduce costs.

The Council also understands that NMFS is planning on creating an audit program to review the accuracy of third-party video review providers in the West Coast Trawl Catch Share EM program, a costly expense that includes new staff that would not be needed with a sole-source contract with PSMFC (PSMFC would be exempt from the audit as a trusted partner, as they currently are under

the EFP program). The cost of the audit program would be recoverable, and is [estimated](#) to be similar to the cost of a sole-source contract with PSMFC. Therefore, it seems likely that the overall cost of a third-party review model with a NMFS audit could approximately double the cost of a PSMFC contract model. Industry would bear the full cost of the third-party review, and the audit costs would be borne largely if not entirely by industry through cost recovery. Therefore, the Council believes cost efficiency could be gained by both industry and NMFS by using the PSMFC sole-source contract approach. In addition, efficiency and program consistency may also be gained for vessels that use EM in both the Bering Sea pollock and West Coast whiting trawl fisheries (about 19 vessels fish in both fisheries).

The Council requests NMFS investigate potential use of the cost recovery funding mechanism to charge the mothership and shorebased sectors for reimbursement to NMFS for the PSMFC's actual cost for video review and data storage. The Council recognizes that reimbursement of funds from the industry directly to NMFS may not be possible at this time and if there is a shortfall in the cost recovery funds a mechanism may be needed to reimburse PSMFC unless NMFS would consider using the "savings" from the audit program to cover those costs.

In 2019 NMFS delayed the implementation date of the final rule based on a conclusion that an additional year of EM implemented through an enhanced EFP through 2021 would provide valuable information that will lead to a more successful, stable, and economically viable EM regulation. The Council believes an additional delay and extension of the EM EFPs through at least 2022 is needed to continue investigating efficient catch handling and discard options that could provide lower costs and encourage more acceptance of EM use in the trawl catch share fishery and to establish a cost-effective funding mechanism for video review and storage that is consistent with other EM programs across regions. The Council and NMFS may also want to consider aligning the timing of the regulatory processes in the West Coast trawl and Bering Sea pollock fisheries to help ensure consistency and fairness.

In summary, the Council requests that NMFS delay implementation of the EM regulations and extend the EM EFPs until such time that the Council can develop a recommendation to amend the final rule in a manner that takes full advantage of all the tools at our disposal to achieve a cost-effective and fair EM program. The Council may take action at the September 2021 Council meeting to recommend a delay in implementation to examine amending the EM regulations that will allow use of a sole-source contract with PSMFC for video review and data storage, and to address the concerns associated with data confidentiality. Therefore, the Council requests that NMFS provide a response in time for full consideration of potential paths forward and Council action at the September 2021 Council meeting.

The Council strongly desires to continue working collaboratively with NMFS and affected stakeholders to develop and implement an EM program that effectively meets our goals and objectives relative to catch accounting and cost-effectiveness for the groundfish industry. Should you or your staff have any questions, please feel free to contact me or Executive Director, Chuck Tracy.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Gorelnik". The signature is fluid and cursive, with the first name "Marc" and last name "Gorelnik" clearly distinguishable.

Marc Gorelnik
Council Chair

BLW:kma

Cc: Pacific Council Members
Mr. Sam Rauch
Mr. Brett Alger
Ms. Melissa Hooper
Ms. Keely Kent
Ms. Abigail Harley
Mr. Justin Kavanaugh
Groundfish Electronic Monitoring Policy Advisory Committee
Groundfish Electronic Monitoring Technical Advisory Committee
RFMC Executive Directors



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

July 28, 2021

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

RE: Comments on Amendment 23 to the Northeast Multispecies Fishery Management Plan

Dear Tom:

We completed our review of the draft Amendment 23 final environmental impact statement that the Council submitted on April 30, 2021. Enclosed are substantive comments addressing consistency with applicable law, as well as suggestions that may clarify the text and improve the document. Council and GARFO staff have already discussed the attached comments and have coordinated on how to incorporate the necessary changes. As requested, my staff provided a track changes version of the word file to your staff. For many of the comments enclosed, we provided suggested text in the track changes version of the document. If you have additional questions on the comments provided, or on the review of Amendment 23, please contact Mark Grant at (978) 281-9145. We appreciate your quick turnaround of this document, to ensure that we can file the final environmental impact statement with the Environmental Protection Agency and complete the amendment review and rulemaking process for implementation on May 1, 2022.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pentony".

Michael Pentony
Regional Administrator

Enclosure



Amendment 23 Final Environmental Impact Statement Comments

Section	Page	Comment	Type
Global		The document lacks the required Regulatory Flexibility Act analysis and the Regulatory Impact Review required by Executive Order 12866. However, we note that Council staff are waiting for NMFS staff to complete the analyses for inclusion in the document for formal submission.	Substantive
Global		We suggest you consider a 4-year time horizon for the economic analyses in the final environmental impact statement to align with the preferred alternative for a coverage target.	Suggestion
Global		Please insert additional text to address the updated Biological Opinion released on May 27, 2021. Text was sent to your staff on May 27, 2021.	Substantive
Global		We suggest replacing references to the Fisheries Sampling Branch (FSB) with the Fisheries Monitoring Operations Branch (FMO). Due to our recent reorganization, referring to FSB could confuse members of the public looking for information.	Suggestion
Executive Summary	8-9	We suggest clarifying what enforceability and compliance refers to in this section.	Suggestion
Table 1	10	We suggest clarifying what enforceability and compliance refers to in this table.	Suggestion
4.1.1	70	We suggest adding dockside monitoring (DSM) to the statement “Adequate coverage (combined NEFOP, ASM and EM) is required to generate accurate discard estimates with a known level of precision,” because estimates of catch for MREM vessels will be determined by the DSM shoreside.	Suggestion
4.1.1.1	71	We suggest expanding the description of the no action to include a description of the existing requirement for sector operations plans to include a monitoring program that is reviewed by NMFS as part of the operations plan approval process.	Suggestion
4.1.1.2.5	72	We suggest clarifying that the preferred alternative for setting a coverage target does not remove the requirement for sector operations plans to include a monitoring program that is reviewed by NMFS as part of the operations plan approval process to avoid confusion about how the fixed coverage target affects existing sector requirements.	Suggestion
4.1.3.2	79	We suggest clarifying the first sentence of the rationale to include all monitoring providers, rather than specifying at-sea monitoring providers, because Amendment 23 also approves EM.	Suggestion

Amendment 23 Final Environmental Impact Statement Comments

6.5		Please revise the affected environment section on protected resources to address the new biological opinion, consistent with the description in Framework Adjustment 61.	Substantive
6.6.10.1	234	We recommend adding EM to Table 63. EM is a suitable alternative to the ASM program, but it is not a direct replacement and does not collect the same level or type of data as ASM. Adding EM to this table would more clearly distinguish the differences among the monitoring programs. My staff has provided your staff with a table comparing the data collected by our monitoring programs that can be used to inform revisions.	Suggestion
6.6.10.2	238	We suggest revising the first full sentence to read, "The recommended coverage level is expected to sufficiently monitor and facilitate the enforcement of catch levels for Northeast multispecies sectors each year." This clarifies that monitoring itself is not an enforcement system.	Suggestion
6.6.10.3	240	We currently expect to be able to fund 100-percent coverage for at least 2 years and we suggest you consider including that in your discussion of available funding.	Suggestion
7.2	283	In the first full paragraph, we suggest revising point 1) to clarify that the reason high levels of monitoring could result in reduced effort is that sector quotas could become limiting if improved monitoring documents catch that otherwise would have been missed.	Suggestion
7.2.1.1	284	We suggest adding a parenthetical example of model diagnostics (<i>e.g.</i> , retrospective patterns) in long-term impacts bullet 3.	Suggestion
7.2.1.1.2.5	318	We currently expect to be able to fund 100-percent coverage for at least 2 years and we suggest you consider including that in your discussion of available funding.	Suggestion
7.4		We suggest revising the text in the Impacts on Endangered Species and Other Protected Species to discuss the possible trade-offs with a shift from human monitors to electronic monitoring and the possibility that EM adoption could result in less information being collected about protected species. My staff has provided a Word document in track changes reflecting this suggestion.	Suggestion
7.5		We suggest adding to the economic impacts on human communities section a brief summary of the cost-efficiency analyses in the Regulatory Flexibility Act analysis and Regulatory Impact Review.	Suggestion



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
<https://www.fisheries.noaa.gov/region/southeast>

Christopher M. Moore, Ph.D
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901

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

Dear Chris and Thomas,

Thank you for your letters regarding the reporting requirements for the Southeast For-Hire Integrated Electronic Reporting Program (For-Hire Reporting Program). I appreciate the feedback on the additional southeast permit-specific data elements that were incorporated into the Atlantic Coastal Cooperative Statistic Program's (ACCSP) eTrips electronic reporting application. The regulations implemented for permit holders in the charter vessel/headboat Atlantic dolphin wahoo fishery, Atlantic coastal migratory pelagic fishery, and South Atlantic snapper grouper fishery, are requirements of the permit that apply regardless of where the permit holder fishes.

Regarding your concern over the collection of socioeconomic data, the Magnuson-Stevens Fishery Conservation Act (MSA) and the National Environmental Policy Act (NEPA) require NOAA Fisheries to assess the social and economic impacts of management actions. Although some economic data has been comprehensively collected by NOAA Fisheries for the commercial sector (price and revenue) and for headboats (fuel cost), the economic data that was collected from charter vessels historically was episodic and often based on small sample sizes. Further, that economic data was often outdated when socioeconomic analyses were needed for management and regulatory actions. Through the For-Hire Reporting Program, the detailed economic data entered by fishermen in real time through the additional questions added to the eTrips application will enhance the ability of NOAA Fisheries and the fishery management councils to understand potential impacts of proposed management and regulatory change(s) on the for-hire sector (e.g., changing bag limits, area closures, etc.). These data will also allow us to better monitor the economic health of the industry over time. In addition, the economic information will help fishery managers and scientists assess the value of the for-hire sector that will allow for economic recovery in the event of a fishery disaster. Fisheries economists will use these data in their cost-benefit and economic impact analyses for actions and amendments that propose regulatory changes. These data will always be used in a confidential manner. The information can also be used to inform quota allocation decisions, fisheries research, and disaster recovery damage assessments.



During the development of the For-hire Reporting Amendment, the South Atlantic Fishery Management Council (South Atlantic Council) identified all of the data elements to be included and determined that the collection of economic information was essential to the For-Hire Reporting Program.

The NOAA Fisheries' Southeast Regional Office (SERO) and Greater Atlantic Regional Fisheries Office (GARFO) staff identified approximately 300 permit holders that have both GARFO and SERO permits. These permit holders would be required to submit electronic logbook reports to both GARFO and SERO. However, in an effort to reduce possible duplication, ease the reporting burden on permit holders, and create a one-stop reporting platform, staffs from SERO, GARFO, and NOAA Fisheries' Highly Migratory Species Division (HMS) worked with the ACCSP staff to modify an existing reporting application (eTrips) to recognize these multi-region permit holders.

The eTrips application is able to determine which questions the permit holder should see and answer, based on the existing reporting requirements for SERO, GARFO and HMS. If the permit holder has a SERO permit, the eTrips form will include the required four socio-economic questions: fuel price per gallon, amount of fuel used, charter fee, and number of paying passengers. These questions *only apply* when a person has a SERO vessel permit. GARFO permit holders who do not have a SERO permit would not see these additional four socio-economic questions. In addition, eTrips also includes additional data element questions related to HMS (e.g., fight time, estimated weight, hook size, etc.) when any of six HMS species are landed (bluefin tuna, blue marlin, white marlin, roundscale spearfish, sailfish, and swordfish).

The For-Hire Reporting Program is a new data collection process for NOAA Fisheries SERO, and we know that modifications to the program may be needed to fine-tune the program in the future. However, the South Atlantic Council will need to review and recommend any changes to the structure of the program, including changes to the data elements. At their September 2021 meeting, the South Atlantic Council will receive an update on the For-Hire Reporting Program and plans to discuss the concerns you have outlined in your letters.

Sincerely,

Andrew J. Strelcheck
Acting Regional Administrator



New England Fishery Management Council

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

August 9, 2021

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

Dear Mike:

Today, my staff electronically sent the final submission of Amendment 23 to the Northeast Multispecies (Groundfish) Fishery Management Plan, including the Environmental Impact Statement and associated Appendices, to your staff in the Sustainable Fisheries Division at the Greater Atlantic Regional Fisheries Office.

After reviewing the comments received by my staff on July 28, 2021, on the preliminary submission sent on April 30, 2021, the amendment document has been updated to incorporate the changes requested.

As authorized by 16 U.S.C 1852(e)(4), Council Member Ms. Elizabeth Etrie submitted her formal disagreement with this action; it is attached to this letter. The Chair believes the record supports this action and has chosen not to respond to Ms. Etrie's letter.

Please contact me if you have questions.

Sincerely,

Thomas A. Nies
Executive Director

Attachment: Letter of Ms. Libby Etrie to Secretary of Commerce Gina Raimondo in opposition to the submission of Northeast Multispecies Amendment 23

August 9, 2021

The Honorable Gina Raimondo
Secretary, Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Raimondo,

Pursuant to Section 302(e)(4) of Magnusson Stevens Act and in accordance with the New England Fishery Management Council (Council) Operations Handbook, I am submitting the following Minority Report regarding Northeast Multispecies Amendment 23, also known as the Groundfish Monitoring Amendment. This Minority Report reflects my opinions about this management action and offers elaboration and clarification on my vote not to submit Amendment 23 to the Northeast Multispecies Fishery Management Plan as amended by the Council to the National Marine Fisheries Service for rule making.

On September 30, 2020 the following vote was taken to submit Amendment 23 to the National Marine Fisheries Service (NMFS):

Mr. Bellavance moved and Mr. Alexander seconded: *that the Council submit Amendment 23 to the Northeast Multispecies FMP to NMFS as amended today.*

Roll call vote: Yes: Gates, Alexander, Balzano, Bellavance, Godfroy, Patterson, Ware, McKenzie, Olszewski, Pappalardo, Griffin, Reid, Sissenwine and Tracy No: Etrie Abstain: Salerno and Pentony

It was, and continues to be, my strong opinion that the measures contained in Amendment 23 are not well informed by the available analyses. The draft analysis before the Council at the time of the vote did and does not contain adequate information necessary to facilitate decision making to meet the stated purpose, goals and objectives of the action.ⁱ

Since the implementation of Amendment 16, industry funded monitoring has been a key component of the expanded sector management program. However, the Council has

continuously struggled to balance the need for monitoring with the significant financial burdens that an industry funded monitoring program would impose on a fishery already facing financial instability. These concerns were expressed as early as May 6, 2010 when the Council wrote John Oliver, NOAA's Deputy Assistant Administrator for Operations, expressing the "very serious fiscal issues pending for the 2012 New England Groundfish fishing year," which was the first year¹ that industry was slated to shoulder the cost of At Sea Monitoring (ASM) and Dockside Monitoring (DSM).² With the ink not even dry on Amendment 16, the Council was already grappling with the realities of what an industry funded monitoring program would mean for a fishery struggling to be profitable. Since Amendment 16, there has not been development of monitoring options that are both cost effective and technically feasible for the fishery to address the tenuous balance between the need for monitoring and the financial burden it imposes. Instead, the fishery has continuously relied upon either the Agency to cover expenses or Congress to appropriate monies, as well as assurances that electronic monitoring options would become available and be less expensive than the human at-sea monitoring program.

When embarking on Amendment 23, I had hoped the Council would move away from management decisions that rely on federal funding and assurances about monitoring tools in their infancy. It was my hope the Council would instead make well-informed decisions based on sound analyses that actively worked towards striking the necessary balance between ensuring accurate catch accounting and affordability that preserves a diverse groundfish fishery and its communities. It is my opinion that did not happen, and the Council based its decisions on assurances and appropriated funds and positioned this fishery for failure when federal monies cease to be available.

The primary goal of sector at sea monitoring is to verify area fished, catch and discards by species and gear type, which should be met via the most cost effective means practicable.³ A critical element of the Amendment 23 discussion revolved around analyses that looked at

¹ NEFMC had postponed industry's responsibility to pay for at-sea and dockside monitoring in Amendment 16 till Fishing Year 2012

² Correspondence from NEFMC to Deputy Assistant Administrator for Operations NOAA/NMFS dated May 6, 2010

³ Goals of ASM were established in Framework 48, and reaffirmed in Framework 55

whether observed trips were reflective of unobserved trips. The Groundfish Plan Development Team conducted a variety of analyses aimed at assessing potential differences between observed and unobserved trips. However, the analyses did not provide information on the magnitude of these potential differences.

Understanding the magnitude of any problem is essential to developing effective and prudent responses. Understanding the magnitude of this particular problem is essential to understand whether we are forcing the fishery to shoulder the cost of monitoring because of the actions of a few or because of the actions of many. It is my opinion that the Council should strive to make its decisions based on the best available science, and that when presented with recommendations on how to make analyses more informative to our management alternatives, that the Council should pursue those recommendations. The Science and Statistical Committee (SSC) Sub-Panel tasked with reviewing the PDT analyses related to observer bias and groundfish catch ratios concluded that, *“The analyses do not quantify the magnitude of the problem of unaccounted discards.”*⁴ This conclusion was in response to the Term of Reference 8 asking *“Are the data, methods, and analytic tools sufficient for the Council to identify and analyze monitoring alternatives for the Northeast Multispecies FMP Amendment 23 management action?”* However, the Sub-Panel did note that two of the reviewed analyses, (methods to predict groundfish catch in the presence of an observer and methods to evaluate groundfish catch ratios), *“could be used to provide estimates of total quantity of unreported discards relative to ACLS or ABCs with some additional refinement.”*⁵ By way of offering some potential pathways forward, the Sub-Panel listed numerous suggestions on these analyses and others that could have been included to better understand the magnitude of the problem. Had these recommendations been followed, it is my belief the Council could have accurately ensured management alternatives were carefully crafted to fulfill the purpose of this amendment while being consistent with the goals of the FMP and various legal mandates such as National Standard 2. Instead, the Council choose to forgo these suggestions to inform Amendment 23

⁴ Amendment 23 FEIS prelim. Submission (April 2021) Appendix V page 19

⁵ Amendment 23 FEIS prelim. Submission (April 2021) Appendix V page 19

because of concerns it would impact the timeline. The Council choose expediency over making decisions based upon the best available science.

As the comment period came to a close, roughly one month prior to taking final action on Amendment 23, a sub-panel of the SSC reviewed work commissioned by the Council that sought *“analyses that demonstrate the potential impact of underestimated catch on fisheries management performance.”*⁶ This analysis was not incorporated into the DEIS that went out for public comment, nor was it part of the materials presented. I do not believe that trust in the Council process is facilitated when detailed analyses such as this are conducted and presented while an ongoing action is out for public comment. Furthermore, I have seen this particular analysis used to foster arguments for high levels of target coverage, which has been a misrepresentation of the analysis and the results.

“Evaluating the Impact of Inaccurate Catch Information on New England Groundfish Management” was a simulation testing exercise. The analysis does not confirm bias in catch data nor does it quantify the magnitude of said bias. This work used the PDT conclusions about bias and simulated what would happen in the stock assessment process if the only misspecification at hand was unreported catch. It did not quantify the problem; instead it simulated potential impacts to ending overfishing if certain percentages of catch biases existed. These distinctions are important because anyone who attempts to look at this analysis and find benefits from higher levels of coverage will be ignoring the complexities of our stock assessment process and its many uncertainties, e.g., natural mortality, recruitment assumptions, model formulations, gear efficiency assumptions, assumed age distribution in the fishery, fishing mortality (direct and indirect fisheries), survey conversions, etc. As the report notes, *“Currently, there is no data available that links the level of monitoring in the groundfish fishery to an associated level of accuracy in catch reporting. Thus, this analysis cannot be used to infer a level of monitoring that will achieve a desired level of accuracy in catch data. Furthermore, because the magnitude of bias in catch reporting is uncertain, the intention of this work was not to assess the plausibility of different levels of catch misreporting, but to simulate a*

⁶ Amendment 23 FEIS prelim. Submission (April 2021) page 255

range of values with the aim of providing insight on the consequences of inaccurate catch information on the performance of assessment and management.”⁷

When federal monies are no longer available, industry members enrolled in sectors will be responsible for the cost of monitoring mandated under Amendment 23. This cost has the potential to significantly reengineer the groundfish fishery to a handful of multiple permit owners who predominantly conduct multi-day groundfish trips. Further, it has a high likelihood of devastating many small remote ports of which groundfish revenues play a critical component. The DEIS of Amendment 23 clearly documents this reality, yet the discussion at the Council seemed to mostly ignore this possibility. This lack of Council concern is puzzling in light of the enormous amount of time and effort the Council put toward the Amendment 18 “Fleet Diversity” action. Amendment 18 was pursued to *“maintain the diverse makeup of the fleet, as well as an interest in keeping active and thriving fishing ports throughout the Northeast.”⁸* This action was intended to resolve concerns that the expanded catch share system and low catch limits set to encourage rebuilding had magnified the possibility of excessive consolidation and reduced fleet diversity.

In addition to the A23 DEIS analysis, the Council heard repeatedly during the comment period from current active members of the groundfish fishery what this action would do to their business when the federal monies run out. Many active members in the groundfish fishery indicated their businesses could not absorb the extra expenses associated with monitoring be it human or the EM strawmen presented. I understand many Council members believed when taking final action that the current federal appropriations would carry this fishery until either a new process could be started to determine an appropriate level of target coverage, or the fleet at-large adopted electronic monitoring technologies. Amendment 23 however provides no structure towards either of these assurances.

Contrary to belief, Amendment 23 does not authorize electronic monitoring as an option for sectors. GARFO has had the ability to approve electronic monitoring options in Sector Operation Plans since the adoption of Amendment 16. Specifically, noting sectors responsibility

⁷ Amendment 23 FEIS prelim. Submission (April 2021) Appendix VIII

⁸ Amendment 18 Final EIS Page 5 <https://www.nefmc.org/library/amendment-18-information>

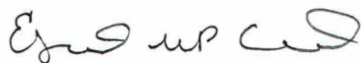
to fund ASM starting in FY 2012, Amendment 16 states *“Electronic Monitoring may be used in place of actual observers or at-sea monitors if the technology is deemed sufficient for a specific trip based on gear type and area fished.”*⁹ GARFO has had the ability to approve EM in a sector At-Sea Monitoring program since Fishing Year 2012. However, because of the novelty of these programs, we have had a series of experimental fishing permits issued over the years to help industry, GARFO and NEFSC understand and work out numerous programmatic design questions. GARFO notified the Council it was operationalizing the Audit EM program beginning in Fishing Year 2021. This is currently the only approved operationalized system, and it should have been the only electronic monitoring tool analyzed to evaluate its ability to meet the goals and objectives of Amendment 23. Including Maximized Retention as a monitoring tool in Amendment 23 inaccurately infers this tool is available for broader adoption and it equally draws many conclusions and assumptions that directly impact cost analysis which may or may not be feasible when the Agency finally operationalizes this monitoring tool. Even though GARFO notified the Council of its intent to operationalize Audit EM for FY 2021, its equally important to note that those design elements were not incorporated fully into the DEIS, in part because GARFO is still designing them and did not develop an implementation timeline to facilitate the Council discussion or stakeholder engagement.

I believe in the Council process. I believe that it is meant to afford all stakeholders an open and transparent deliberative forum to identify problems and craft solutions. In my seven years on the Council I have approached every task placed before me with this belief, and I have focused on honoring the Oath I took as a Council member. It has never been about “winning” for me, nor has it been about crafting solutions that benefit the few at the expense of the many, and it most certainly is not about making decisions based on assurances that the details that impact the very viability of the fleet will be worked out after the fact. For me, voting to submit this Amendment would have been a blatant disregard of my Council Oath and therefore I could not support moving this forward.

⁹ Amendment 16 Final EIS page 109 <https://www.nefmc.org/library/amendment-16>

I appreciate the opportunity afforded to offer my views through this Minority Report and I encourage you to carefully consider these deficiencies and remand this action back to the Council for further analysis and consideration.

Sincerely,



Elizabeth M.P. Etrie,
New England Fishery Council Member

ⁱ Amendment 23 FEIS prelim. Submission (April 2021) Page 63-65

3.2 Purpose and Need

The purpose, or potential solutions considered in this action focus on measures that adjust the current monitoring program to improve accounting and accuracy of collected catch data. It is the Council's intent that the catch reporting requirements are fair and equitable for all commercial groundfish fishermen, while maximizing the value of collected catch data, and minimizing costs for the fishing industry and the National Marine Fisheries Service. The need, or problem this action was developed to address is: the need to implement measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is precise and accurate representation of catch (landings and discards). Accurate catch data are necessary to ensure that catch limits are set at levels that prevent overfishing and to determine when catch limits are exceeded.

3.3 Goals and Objectives

3.3.1 The goals and objectives of the Northeast Multispecies FMP remain as described in Amendment 13 (for example, manage the Northeast multispecies complex at sustainable levels, consistent with the National Standards and other required provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law; achieve, on a continuing basis, optimum yield for the U.S. fishing industry), as well as the goals in Amendment 18, and will continue to frame the long-term management of the resource and fishery. Section 2.3 of Amendment 13 presents the overall goals and objectives of the Northeast Multispecies FMP, and Section 3.3.2 of Amendment 18 includes a description of the goals that were added to the overall program specific to promoting fleet diversity and several other goals.

3.3.2 Goals and Objectives of Groundfish Monitoring Program

Framework 48 to the Multispecies FMP specified the overall goals and objectives of the groundfish monitoring program. Framework 55 clarified that the primary goal is to verify area fished, catch, and discards by species and

gear type; and should be done in the most cost effective means practicable. Framework 55 further clarified that all other goals and objectives of groundfish monitoring programs at §648.11(l) are considered equally-weighted secondary goals. The goals and objectives of the groundfish monitoring program, are as follows:

Goal 1: Improve documentation of catch

Objectives:

- Determine total catch and effort, for each sector and common pool, of target or regulated species.
- Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

Goal 2: Reduce cost of monitoring

Objectives:

- Streamline data management and eliminate redundancy.
- Explore options for cost-sharing and deferment of cost to industry.
- Recognize opportunity costs of insufficient monitoring.

Goal 3: Incentivize reducing discards

Objectives:

- Determine discard rate by smallest possible strata while maintaining cost-effectiveness.

Collect information by gear type to accurately calculate discard rates.

Goal 4: Provide additional data streams for stock assessments

Objectives:

- Reduce management and/or biological uncertainty
- Collect information by gear type to accurately calculate discard rates.

Goal 4: Provide additional data streams for stock assessments

Objectives:

- Reduce management and/or biological uncertainty.
- Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

Goal 5: Enhance safety of monitoring program

Goal 6: Perform periodic review of monitoring program for effectiveness



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 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