

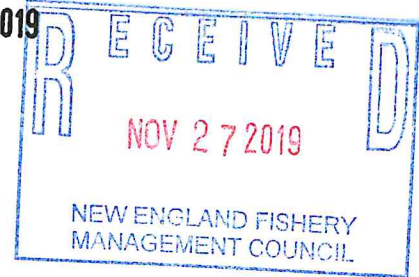
# 89.

ADDITIONAL  
CORRESPONDENCE



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

NOV 26 2019



New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Dear Tom:

At its June 2019 meeting, the New England Fishery Management Council raised questions about the approval of electronic monitoring (EM) for sectors. To address the Council's questions and discussion, this letter outlines our plan to include an EM program option that will meet sector monitoring requirements beginning in fishing year 2021-2022 sector operations plans.

Amendment 16 to the Northeast multispecies Fishery Management Plan (FMP) established a sector requirement for an independent third-party monitoring program to verify area fished, as well as catch and discards by species and gear type for the purposes of catch accounting. Groundfish sectors are required to include an at-sea monitoring (ASM) program in their proposed operations plan as part of the sector operations plan approval process. We review and approve or disapprove each sector's operations plan and associated ASM program. We provide sectors with a guidance document to assist them in this process. The guidance document lays out sector operations plan requirements, including the requirements and standards of the ASM program. Sectors may choose to adopt the NOAA-designed ASM program in their operations plans or sectors may propose a program of their own design to meet the stated goals and objectives.

The regulations at 50 CFR 648.87(b)(1)(v)(B), which describe the sector monitoring requirement, state that "*Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act.*" Since 2016, we have worked with industry and nongovernmental organizations to develop EM and evaluate its use for meeting sector monitoring requirements. Sectors will have the option to submit an EM plan for our consideration in lieu of, or in addition to, an ASM plan as part of the fishing year 2021-2022 sector operations plan approval process.

We are developing a revised sector operations plan guidance document that will include information on EM, which we will distribute in advance of the fishing year 2021-2022 sector operations plan approval process. The guidance document will include information on the EM data and design elements necessary to meet sector monitoring requirements for specific trip types based on gear and area fished. We also intend to include a NOAA-designed EM program based on the audit-model EM program. We are not ready to propose a maximized retention EM (MREM) program at this time because we are still testing MREM with program partners.



However, some sectors may want to pursue MREM, and this does not preclude them from proposing an MREM program as part of their fishing year 2021-2022 sector operations plans.

Under an example NOAA-designed audit-model EM program currently being considered, vessels would turn their cameras on for all sector trips. Vessels would follow catch handling protocols at sea and report their discards on an electronic vessel trip report (eVTR). Video from a subset of those trips would be reviewed to verify the accuracy of eVTR-reported discards. As with some other fisheries, the operational audit-model EM program for groundfish would include a minimum rate of video review that would apply to each vessel in a sector that will be determined consistent with applicable regulatory requirements. This approach incentivizes accurate reporting by keeping video review costs low for vessels that maintain good reporting performance. Vessels that do not maintain good reporting performance may require higher levels of video review at their own expense. We intend to phase-in implementation of a minimum video review rate that is consistent with the regulations. During years 1 and 2, vessels would operate under a higher fixed rate, and a lower minimum video review rate and performance-based auditing would be implemented in year 3. We will also organize industry workshops in year 1 to provide participants with training on catch handling and reporting requirements. This should allow industry time to become familiar with their EM systems, vessel monitoring plans, and program requirements, and will improve participants' likelihood of success with EM.

The NOAA-designed audit-model EM program is expected to audit less than 100 percent of all sector trips, consistent with Amendment 16 monitoring requirements. The program may be modified in the future to comply with any new requirements that may be established in Amendment 23 to the Northeast multispecies FMP or another action. However, 100-percent review may be required for individual EM vessels that routinely fail to meet the requirements of the program. As an example, in a NOAA-designed audit-model EM program, the year 1 video review rate for participating vessels may be fixed at 50 percent of trips. This level of review would allow us to provide frequent feedback to vessels on their catch handling and reporting. In year 2, the video review rate for vessels that maintain good reporting in year 1 could be fixed at 30 percent of trips; the video review rate would remain at 50 percent of trips for vessels that did not meet an established reporting threshold and require more feedback. In year 3, all vessels would start the year at a minimum video review rate of 15 percent of trips. In year 3 and beyond, further review, up to 100 percent of a vessel's trips, may be required based on vessel reporting performance.

We expect the incentive of lower costs from lower audit rates will provide cost-effective monitoring to industry. In addition, subject to available funding, the industry's review costs would be reimbursable by NOAA's National Marine Fisheries Service in years 1 and 2. In year 3 and beyond, we expect that only the minimum video review rate would be reimbursable if funds were available, and industry would be responsible for the cost of any additional video review. Estimated industry costs of various video review rates have been developed by the Northeast Fisheries Science Center and are described in the Amendment 23 draft environmental impact statement cost analysis.

Groundfish sectors that wish to use cameras to meet their monitoring requirements for fishing year 2021-2022 may choose to either adopt the NOAA-designed audit-model EM program or submit a proposed EM program that meets the requirements described in the sector operations plan guidance documents. We will work with sector managers through an iterative process to refine the proposed EM programs as necessary. We intend to propose a basis for deeming EM acceptable for catch accounting, as well as any proposed sector EM programs, as part of the fishing year 2021-2022 sector operations plan rulemaking process.

If you have any further questions, please contact Claire Fitz-Gerald at (978) 281-9255.

Sincerely,



Michael Pentony  
Regional Administrator



conservation law foundation

For a thriving New England

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November 26, 2019

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



Submitted via [comments@nefmc.org](mailto:comments@nefmc.org)

**RE: Framework Adjustment 59 to the Northeast Multispecies FMP**

Dear Dr. Quinn and Mr. Nies:

Conservation Law Foundation (CLF) submits this letter to the New England Fishery Management Council (Council) regarding Framework Adjustment 59 to the Northeast Multispecies Fishery Management Plan (Framework 59), specifically the specifications for Gulf of Maine cod (GOM cod) and Georges Bank cod (GB cod) in fishing years (FY) 2020-2022. CLF has a long history of advocating for sustainable fisheries in New England, and we are increasingly concerned about the failure to end overfishing immediately and rebuild these stocks as quickly as possible consistent with legal requirements of the Magnuson-Stevens Act (MSA). We urge the Council to propose specifications for GOM cod and GB cod that end overfishing and place these stocks on appropriate rebuilding trajectories.

Legal Mandate

As set forth in National Standard 1, the primary mandate of the MSA is to prevent overfishing: “Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”<sup>1</sup> To do so, the MSA requires annual catch limits and accountability measures that end overfishing “based upon the best scientific information available.”<sup>2</sup> Further, for overfished stocks such as GOM cod and GB cod, conservation and management measures must be implemented “to end overfishing *immediately* in the fishery and to rebuild affected stocks of fish.”<sup>3</sup> To date, the Council has repeatedly proposed specifications for Atlantic cod stocks that do not achieve these legal mandates.

<sup>1</sup> 16 U.S.C. § 1851(a)(1).  
<sup>2</sup> *Id.* §§ 1851(a)(2), 1853(a)(15).  
<sup>3</sup> *Id.* § 1854(e)(3)(A) (emphasis added).



## Best Scientific Information Available

Both GOM and GB cod stocks are overfished with overfishing occurring,<sup>4</sup> despite being in rebuilding plans (two for GOM cod) since 2004. The best scientific information available, including the 2019 operational assessments, demonstrate that they **have been subject to overfishing for 100 percent of the time periods covered by the assessments (GOM cod: 1982-2018, GB cod: 1978-2011) and have been overfished for all but two years.**

GOM cod lingers at historic low population levels that are only 6 to 9 percent of its spawning stock biomass target.<sup>5</sup> In addition to a decline in stock size<sup>6</sup> and geographic range,<sup>7</sup> GOM cod also exhibits a severely truncated age structure,<sup>8</sup> which is indicative of a population experiencing high fishing pressure and lack of recruitment. Recruitment remains near record low, with little positive signs of incoming recruitment,<sup>9</sup> guaranteeing that the stock will not meet its 2024 rebuilding date. In fact, five years into the ten-year rebuilding plan, there is only a **0 to 1 percent chance that GOM cod will rebuild on schedule** even under a no-fishing scenario;<sup>10</sup> that is a 26-fold decrease in probability of rebuild in just the last two years.

GB cod fairs no better. Based on the last accepted estimate, the stock was only 7 percent of its spawning stock biomass and experiencing overfishing.<sup>11</sup> Recent survey indices, the primary basis for assessing the fishery without an accepted analytical model, confirm low abundance.<sup>12</sup> The stock also exhibits a severely truncated age structure.<sup>13</sup> Although precise projections cannot be made, there is no reason to expect that GB cod will meet its 2026 rebuilding date.

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<sup>4</sup> NEFSC, Operational Assessment of 14 Northeast Groundfish Stocks, Updated Through 2018 (pre-publication copy), October 3, 2019 at 26 and 38. Available at: <https://www.nefsc.noaa.gov/saw/2019-groundfish-docs/Prepublication-NE-Grndfish-10-3-2019.pdf> (“2019 Groundfish Operational Assessment”); Per NMFS policy, “where a known determination had previously been provided and a new assessment is rejected or the results are inconclusive, the [last] known status will continue to be the official stock status.” Letter from John K. Bullard to John F. Quinn, August 31, 2017, p. 2. Available at: [https://s3.amazonaws.com/nefmc.org/A8\\_170831\\_Bullard-to-Quinn\\_Groundfish-Inadequate-Rebuilding-Progress.pdf](https://s3.amazonaws.com/nefmc.org/A8_170831_Bullard-to-Quinn_Groundfish-Inadequate-Rebuilding-Progress.pdf).

<sup>5</sup> 2019 Groundfish Operational Assessment at 26.

<sup>6</sup> NEFSC 2019. Gulf of Maine Atlantic Cod. 2019 Assessment Update Report Draft Supplemental Tables at 24.

<sup>7</sup> NEFSC 2017. Gulf of Maine Atlantic Cod. 2017 Assessment Update Report Draft Supplemental Information.

<sup>8</sup> 2019 Groundfish Operational Assessment at 29.

<sup>9</sup> *Id.*

<sup>10</sup> Memorandum from Groundfish Plan Development Team to Scientific and Statistical Committee regarding Candidate Groundfish OFLs and ABCs for fishing years 2020 to 2022 (Oct. 10, 2019 & revised Oct. 15, 2019) at 7. Available at: [https://s3.amazonaws.com/nefmc.org/A.8-GF-PDT-memo-to-SSC-re-FY2020-FY2022-Groundfish-OFLs-ABCs\\_20191001-REVISED.pdf](https://s3.amazonaws.com/nefmc.org/A.8-GF-PDT-memo-to-SSC-re-FY2020-FY2022-Groundfish-OFLs-ABCs_20191001-REVISED.pdf).

<sup>11</sup> NEFSC 2013. 55th Northeast Regional Stock Assessment Workshop (55th SAW). Assessment Summary Report. NEFSC Reference Document 13-01.

<sup>12</sup> NEFSC 2019. Georges Bank Atlantic Cod Tables (Draft; Supplement to 2019 Operational Groundfish Assessments) at 10.

<sup>13</sup> 2019 Operational Groundfish Assessments at 40.



### FY 2020-2022 Specifications

To comply with the MSA, the Council must propose in Framework 59 FY 2020-2022 specifications for GOM cod and GB cod that end overfishing immediately and place these stocks on appropriate rebuilding trajectories.

For GOM cod, a stock that cannot rebuild on schedule even without fishing, the ABC control rule is unequivocal: “For stocks that cannot rebuild to  $B_{MSY}$  in the specified rebuilding period even in the absence of fishing, the ABC should be based on incidental bycatch, including a reduction in the bycatch rate (i.e., the proportion of the [cod] stock caught as bycatch).”<sup>14</sup> Given the current status of GOM cod, there is no rationale for the Council to deviate from the ABC control rule. ABCs set at  $75\%F_{MSY}$ , as suggested by the SSC for Framework 59, have repeatedly failed to end overfishing. Further, the SSC relied on anecdotal economic considerations – not relevant to the legal requirement to end overfishing immediately – to recommend an ABC that was even higher than the default control rule. In Framework 59, the Council must propose FY 2020-2022 ABCs, and subsequent ACLs, for GOM cod based on incidental catch, including a reduction in bycatch rate, to end overfishing immediately and support rebuilding of the GOM cod stock as required by the control rule and the MSA.

For GB cod, the Council should use the utmost caution when proposing specifications given the inability to quantifiably assess the stock. To that end, at a minimum, the Council should reject the Groundfish Committee’s recommended ABC, which was derived by an inconsistent utilization of the empirical approach compared to previous years. During the 2015 operational assessment for GB cod – when the analytical model was rejected – “the Operational Assessment Panel recommend[ed] that the *overfishing limit (OFL)* should be a proportion of the most recent 3-year average catch, and that proportion should be determined by recent survey trends.”<sup>15</sup> Using the proportion of the most recent 3-year average catch to recommend *an ABC, not an OFL*, as the SSC and Groundfish Committee have done, is inconsistent with the original intent of this approach and removes a critical scientific uncertainty buffer for the stock, as described in the SSC’s minority report.<sup>16</sup>

Ultimately, however, the empirical approach (and the specifications derived from it) has repeatedly shown itself as being inadequate to end overfishing immediately and rebuild the GB

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<sup>14</sup> Amendment 16 to the Northeast Multispecies Fishery Management Plan at 78-79. Available at: [http://archive.nefmc.org/nemulti/planamen/Amend%2016/final%20amendment%2016/091016\\_Final\\_Amendment\\_16.pdf](http://archive.nefmc.org/nemulti/planamen/Amend%2016/final%20amendment%2016/091016_Final_Amendment_16.pdf).

<sup>15</sup> 2015 Operational Assessment for Georges Bank cod at 39. Available at: [https://www.nefsc.noaa.gov/publications/crd/crd1524/Individual%20Stocks/GB\\_Atlantic\\_cod.pdf](https://www.nefsc.noaa.gov/publications/crd/crd1524/Individual%20Stocks/GB_Atlantic_cod.pdf).

<sup>16</sup> Memorandum from SSC to Tom Nies, “Terms of Reference – Overfishing levels (OFLs) and acceptable biological catch (ABC) recommendations for groundfish stocks for fishing years 2020 to 2022 at 12-13. Available at: [https://s3.amazonaws.com/nefmc.org/3g\\_SSC\\_response\\_GFSpecies\\_Oct17\\_FINAL.pdf](https://s3.amazonaws.com/nefmc.org/3g_SSC_response_GFSpecies_Oct17_FINAL.pdf).



cod stock. Therefore, it should not be used to propose FY 2020-2022 specifications in Framework 59. Given the continued overfished status and known chronic overfishing of GB cod, as well as the stock's unlikely ability to rebuild by 2026, CLF asserts that there should be no directed fishery for this stock. As with GOM cod, specifications should be based on incidental catch with measures to reduce bycatch rate over the FY 2020-2022 period.

Lastly, the Council should consider how to comprehensively address the biases and uncertainties that have resulted from the lack of adequate monitoring in this fishery. As it is currently impossible to set specifications using accurate and precise data, completing Amendment 23 should be the Council's highest groundfish priority in 2020.

Thank you for considering these comments.

Sincerely,

Allison Lorenc  
Policy Analyst

Peter Shelley  
Senior Counsel

Erica Fuller  
Senior Attorney

Cc: Michael Pentony



**Sherie Goutier**

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**From:** Rick Beal <rickbeal520@comcast.net>  
**Sent:** Friday, November 22, 2019 11:02 AM  
**To:** info info  
**Subject:** Fwd: By-Catch and Monitoring



----- Original Message -----

From: Rick Beal <rickbeal520@comcast.net>  
To: jquinnfish@gmail.com, michael.pentony@noaa.gov  
Date: November 22, 2019 at 11:00 AM  
Subject: Fwd: By-Catch and Monitoring

----- Original Message -----

From: Rick Beal <rickbeal520@comcast.net>  
To: m  
Date: November 22, 2019 at 10:43 AM  
Subject: Fwd: By-Catch and Monitoring

----- Original Message -----

From: Rick Beal <rickbeal520@comcast.net>  
To:  
Date: November 21, 2019 at 6:26 AM  
Subject: By-Catch and Monitoring

To All in fisheries

management

Let me start by saying that I speak only for myself and no other person or organization. I have been a commercial fisherman for 53 yrs. I have seen, and in fact been part of, the wasteful practices of the distant past I am a strong advocate for the reasonable and fact based regulations that have been implemented and applaud the management industry for doing so. But today I'd like to speak about the need for, and burden of, increased observer coverage and or electronic monitoring.

It is a fact that total discard is directly proportionate to total effort. Thirty-Five years ago over a hundred boats would leave the shores of Cape Ann daily to fish for ground-fish in the Western Gulf of Maine. Today there are at most a dozen that adds up to a reduction of approx 90%. Add to that the fact that the few of us still here, constrained by either the days at sea program of the past or the quota system of today, now fish half the time we did in the past the percentage of effort is even lower. Consequently total discard must be at an all time low. I am a strong supporter of the at sea observer program and in the past

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have put this in writing. I understand and support the need for real time information to support fact based management. But I also know that a substantial increase in coverage coupled with the shift of financial responsibility to the fleet would, at least to the part of the fleet I am involved in, make operations financially untenable, leaving myself and others unable to support our families.

It's my understanding that electronic monitoring would put the responsibility of sorting by-catch on the vessel and crew. Although this is a small percentage of our catch it would still be an increased burden in terms of time, labor and expense. Over years, first because of lack of fish, and now because of lack of quota, vessels have had to cut back on personnel to remain solvent. Operations that employed 3-4 people now employ 2 and many fish alone.

Recently, due to good management and strict compliance by the fleet, there has been resurgence of several fish stocks. This is seasonal in nature and due to its seasonality does not promote the hiring of additional personnel. At times this leaves 1 and 2 person vessels doing the work that took 3-4 people in the past. Sorting and attempting to return by-catch to sea in a timely manner would undoubtedly increase fatigue. Fatigue's consequences are lapses in procedure and mental awareness. I have been both witness and victim to this and it is dangerous.

These are facts that will likely be ignored, for it has been stated by some in management that they have neither the time nor the inclination to listen to small stakeholders, the people that built industry, or dissenting views. The die has been cast. Consolidation is coming, in fact it's well on its way. An industry that for generations has prided itself on hard work and independence is going the way of the dinosaur and all in the management industry either through advocacy or by complacency will be complicit in its demise.

Richard

Beal Gloucester, Ma