



New England Fishery Management Council

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C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

July 26, 2013

Mr. John Bullard
Regional Administrator, Northeast Region
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Re: Proposed Rule to Allow Sector Vessels Access to Year-Round Closed Areas (*78 Federal Register 41772*)

Dear John:

On July 11, 2013 a Proposed Rule was published that requests comments on the Proposed Rule to Allow Sector Vessels Access to Year-Round Closed Areas (*78 Federal Register 41772*). I am concerned that the actions that are under consideration will inhibit the ability of vessels in sectors to mitigate the low catch limits that were adopted by the Council in Framework Adjustment 50. The industry, the Council and the Agency spent an enormous amount of time and effort to craft limited opportunities for sector vessels to target stocks such as Georges Bank haddock, pollock and redfish. One of these opportunities was the ability for sectors to request access to parts of the existing year-round closed areas. The imposition of the requirement for the industry to fund all at-sea monitoring (ASM) coverage for closed area access may prevent any participation in this program. Given the fragile economic state of many participants, the increased costs to fund observers may not be affordable. As a result, there will be little economic benefit to closed area access.

This concern was first raised in my letter of March 29, 2013 commenting on the FY 2013 Sector Operations Plan Proposed Rule (*78 Federal Register 16220*). These comments were deemed "not relevant" to that action and were not addressed in the interim final rule (*78 Federal Register 25591*). To ensure that they are addressed, I am reiterating and expanding those comments below.

A requirement in the Proposed Rule is that vessels accessing portions of year-round closed areas must have 100 percent observer coverage of all trips and that this coverage must be entirely funded by the industry. The Council opposes this new requirement. The Council did not choose to require 100 percent ASM coverage as a condition for access to year-round closed areas. Little, if any, justification is provided other than general statements that without higher coverage rates "discard rates would be difficult to estimate because there is little catch history in these areas" and the higher coverage would "allow NMFS to monitor whether vessels are interacting with protected species." Neither argument is convincing for the following reasons.

First, the implication that catch history is needed in order to accurately estimate discard rates is not supported by the Standardized Bycatch Reporting Methodology (SBRM) methods. Nothing in that document conditions the accuracy of discard estimates on past catch history. When new fishing modes have been adopted in recent years – loosely analogous to a new fishing opportunity inside a closed area – there has not been any requirement for increased coverage levels so that discard estimates will be accurate in spite of a lack of catch history. Second, the SBRM does not indicate that 100 percent observer coverage is necessary in order to accurately monitor protected species interactions. Third, there is no evidence that the Agency considered a coverage level that is higher than in open areas but less than 100 percent.

The Proposed Rule also states that “this level of monitoring would also provide an ancillary benefit of gaining additional fishery dependent data from the catch in these areas.” This is a false hope. The requirement for industry funding will probably discourage many vessels from fishing in the areas. It is also not clear that NMFS has considered whether the benefits of this additional data is worth the significant costs to the industry.

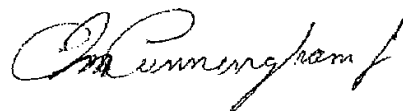
Even assuming that 100 percent coverage can be justified, the Agency’s rationale for requiring that it be funded by the industry is not convincing. The Atlantic herring FMP allows herring mid-water trawl vessels to fish in the groundfish closed areas only when an observer, funded by the National Marine Fisheries Service, is onboard. It is not clear why this approach is not also permitted for the groundfish fishery.

The Agency expresses concern that allowing vessels to use NEFOP coverage in these areas would encourage vessels to use the exemption if selected for an observer. It is difficult to understand why this is a problem, seeing as how it would encourage fishing on healthier stocks. If the concern is that these trips will reduce observer coverage for other trips, we note that the adopted FY 2013 coverage standard is much higher than that needed for the required CV for almost all stocks so there would appear to be some slack in the coverage requirements. In addition, the number of vessels that are capable of fishing in CAI and CAII is relatively small and would not greatly affect overall observer coverage rates. There should not be a concern that these trips are not representative of standard sector trips since the Proposed Rule indicates closed area access trips will be stratified separately. These are just a few examples of alternative ways to address this issue; I’m sure that industry representatives could identify many others.

Finally, the Regulatory Flexibility Act analyses in the Proposed Rule appear to ignore the substantial costs associated with the monitoring program. It is not clear that different monitoring alternatives were considered that might increase the positive economic impacts of the proposed action.

Thank you for considering these comments. Please feel free to call me with any concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Cunningham". The signature is written in a cursive, somewhat stylized font.

C.M. “Rip” Cunningham
Chairman

cc: William Whitmore, NERO