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Honorable Gary Locke,
Secretary
Department of Commerce
Washington, DC

Dear Mr. Secretary,

Pursuant to section 302(e)(4), I am submitting a minority report requesting that you remand sections 4.3.3.3.4 (Sector Baseline Calculations) and 4.3.5 (Allocation to commercial/ and recreational fisheries) of Amendment 16 to the Northeast Multispecies Plan, back to the New England Fisheries Management Council (NEFMC) for reconsideration.

Congress has clearly and repeatedly established that making fair and equitable allocations among various user groups is a fundamental priority of US fishery management policy. It is also clear they anticipated that different sectors of the fishery might try to use the Council political process to secure unfair allocations that could be highly disruptive to the affected fisheries and fishing communities. Consequently, Congress has placed an extraordinary level of emphasis on ensuring such fairness and equity is achieved in the following provisions:

Section 301(a)(4) also known as National Standard 4:

“(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.”

Section 303(a)(14), Required Provisions:

“Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably

among the commercial, recreational, and charter fishing sectors in the fishery and”

Section 304(e)(4), Rebuilding Overfished Fisheries:

“(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and”

Adding to Congressional emphasis on this policy, there are numerous additional references to the need to achieve fairness and equity throughout the Magnuson-Stevens Fishery Conservation and Management Act.

Recent votes of the NEFMC, in my opinion, violated these specific provisions and fundamental statutory policy by allocating to the two existing commercial fishery sectors their best 5 year period of Georges Bank cod and to the recreational fishery its historic 5 year high allocation of Gulf of Maine cod and haddock. The remainder of the commercial fishery was allocated the period of 1996-2006 based on catch history. Since two user groups received their historic high allocation of the most important New England groundfish species then, effectively, all other fishermen received less. Such allocations are neither fair nor equitable. They will provide an excessive share of the fishing privileges to a select few fishermen. They will be highly disruptive to the affected fisheries and fishing communities.

This problem could have been easily remedied by establishing a common, fair and equitable baseline of 1996-2006 for all user groups. Although this point was made repeatedly by Council members at the recent Council meeting, the message was lost in the din of special interest groups clamoring for more than their fair share of the allocation. The result was a particularly large reduction in Gulf of Maine cod for the vast majority of commercial fishermen.

Left in its present form I believe this allocation scheme will almost certainly result in a lawsuit that could hold up implementation of Amendment 16. To paraphrase one fisherman who is part owner of three headboats, one six passenger charter boat, and a commercial boat; “Even though our business won big time, what was the Council thinking?...anyone with half a brain would see this is unfair...” Disenfranchised commercial fishermen are using a three word sentence, not fit for inclusion in a public document, to describe their unfair treatment by these allocation measures. Council member David Goethel voted against submission of Amendment 16 package because I believe the allocation decision is a fatal flaw in an otherwise well developed amendment that is full of painful and very difficult decisions.

Because Amendment 16 is vital to ongoing efforts to rebuild New England’s groundfish stocks I urge the Secretary to remand the above referenced sections back to the New England Fisheries Management Council with clear instructions to put all user

groups on a level playing field and comply with Congressional policy so clearly stated in the statute. I urge this action be taken prior to publication of Amendment 16 as a proposed final rule. While this may delay the implementation date by several months, this would be preferable to potentially having the Amendment held hostage for months in Federal court.

I do not undertake submitting this report lightly but feel that the Council process must remain transparent, fair and equitable to all user groups. The truth is that disenfranchised fishermen have less interest in rebuilding fish stocks and consequently make management more challenging.

Sincerely,

David T. Goethel
Member
New England Fishery Management Council