



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

JAN 26 2012

Mr. C.M. "Rip" Cunningham, Jr., Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Dear Mr. Cunningham: *Rip*

The final results of the 53rd Stock Assessment Workshop were released on January 23, 2012.¹ As has been widely discussed, the final results confirm that Gulf of Maine (GOM) cod is overfished and overfishing is occurring. In addition, the assessment results indicate that the GOM cod stock cannot rebuild by 2014 even in the absence of all fishing mortality.

Given the final results from the GOM cod assessment, and particularly the fact that rebuilding could under no circumstances be achieved within the current rebuilding timeframe, the Secretary of Commerce has determined, pursuant to Section 304(e)(7)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), that the Northeast Multispecies Fishery Management Plan (FMP) has not resulted in adequate progress toward ending overfishing and rebuilding GOM cod. This lack of adequate progress was not due to any failure on the part of the New England Fishery Management Council (Council) to take necessary action to meet the requirements of the Magnuson-Stevens Act, nor was it due to any failure on the part of fishery participants to act in compliance with applicable regulatory measures. Rather, the lack of adequate progress is due to a new and significantly revised understanding of the condition of the stock since the 2008 assessment was completed.

Now that the Council has been notified of this lack of progress in rebuilding GOM cod and ending overfishing, the Council, pursuant to § 304(e)(3) of the Magnuson-Stevens Act, must prepare and submit to the Secretary an action that will end overfishing immediately in the fishery and revise the rebuilding program for GOM cod, consistent with the new stock assessment information. Although Framework 47 was originally intended to implement annual catch limits for GOM cod in fishing year 2012 consistent with the new stock assessment, it is our understanding that, based on recent Executive Committee and Groundfish Committee meetings, the Council does not intend to establish an annual catch limit for GOM cod in this framework. Rather, Council members have expressed that they will likely request the Secretary to implement

¹ Northeast Fisheries Science Center. 2012. 53rd Northeast Regional Stock Assessment Workshop (53rd SAW) Assessment Summary Report. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 12-03; 33 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026



an emergency or interim action to reduce rather than end overfishing and include additional management measures to mitigate impacts of a reduced annual catch limit for the next fishing year, while the Council develops revisions to the FMP in response to the new assessment. Such a request, based on legal advice, appears to be consistent, within limits, with section 304(e)(6) of the Magnuson-Stevens Act, which allows the Secretary to implement interim measures to reduce but not end overfishing.

We understand that the Council plans to develop some recommendations for NOAA's National Marine Fisheries Service during its February 1 groundfish discussion at the upcoming Council meeting indicating preferences for 2012 fishing year GOM cod catch levels and management measures for use in the emergency/interim action. We believe this will be very beneficial if we decide to implement Secretarial emergency or interim measures for 2012. We are hopeful that the Council will consider a wide array of management measures, including measures for the recreational fishery.

Any emergency/interim action taken by the Secretary in response to the Council's anticipated request must make a substantial reduction in overfishing and must, at a minimum, not further deteriorate the condition of the stock. Additionally, any action under section 305(c) cannot exceed one year in duration. Because GOM cod is already under a plan designed to prevent overfishing, any temporary reprieve from addressing overfishing requirements immediately while the Council revises its rebuilding program can only be justified for fishing year 2012. Therefore, measures that would end overfishing on the GOM cod stock must be implemented effective May 1, 2013.

As provided in § 304(e)(3), the Council's revised GOM cod rebuilding program must be implemented no later than two years following this notification. However, we hope that the Council can develop a revised rebuilding plan for implementation at the beginning of fishing year 2013 so that it will coincide with the measures to end overfishing at the same time. We will work closely with you on the development of this rebuilding plan to achieve that goal and will provide guidance on the appropriate rebuilding period.

As NMFS and the Council consider pursuing this unprecedented approach to addressing the unique situation we are now in with GOM cod, we recognize there are many policy determinations that must be addressed for the first time and that the Council will require guidance from the agency. We appreciate your patience and collaboration as we move ahead through the process to set appropriate measures for the coming years.

We recognize fully the importance of the GOM cod fishery to both stakeholders and the Council. I believe the response from both the Council and the agency to date reflects the extraordinary circumstances we find ourselves in, as well as the extraordinary steps all parties have undertaken to try and find the optimal way forward. Much remains to be decided and done, but we stand ready to continue these efforts moving forward and look forward to collaborating with the Council to incorporate the new stock assessment advice into managing the GOM cod stock. Given the evolving nature of both the agency and Council response, I expect we or our staff will

be in frequent contact in the months leading up to the May 1 start of the fishing year. I will be attending the upcoming Council meeting along with many of my key staff working on this issue and look forward to seeing you then. Should you have questions or concerns over this letter, please contact George Darcy, Assistant Regional Administrator for Sustainable Fisheries at 978-281-9331.

Sincerely,



Samuel D. Rauch III
Acting Assistant Administrator
for Fisheries

cc: Paul Howard, New England Fishery Management Council Executive Director
Daniel Morris, Acting Northeast Regional Administrator
Dr. William Karp, Acting Director, Northeast Fisheries Science Center