

NORTHEAST SEAFOOD COALITION

December 17, 2012

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

Dear Rip,

The Council is only days away from taking final action on setting the annual catch limits for many groundfish stocks for fishing year 2013. The reductions under consideration by the Council are far more than numbers on a piece of paper – the reductions in the Annual Catch Limits (ACL) for 2013 pose life-altering losses for ALL small businesses that are dependent upon a fishery that is already the subject of a federal Disaster Declaration.

Just last week, permit holders received their first account of how these reductions will impact their businesses, communities and families after receiving the Potential Sector Contribution ("PSC") letter for fishing year 2013 from the National Marine Fisheries Services (NMFS). These letters reflect a travesty of science and management for this fishery.

Those fishermen that have managed to survive until today have complied with an overwhelming array of stringent scientific and management requirements. They have transitioned to a complex hard-TAC catch share system in an almost unthinkable timeframe needed to meet statutory deadlines that were completely arbitrary. Somehow they have succeeded in fishing within exceedingly precautionary Annual Catch Limits (ACLs) for an array of interrelated stocks in an ecosystem so dynamic that the agency says it cannot understand it.

Our fishermen were promised that if by some miracle they were still in business at the end of this extraordinary and overly ambitious experiment they would enjoy the fruits of their struggles and sacrifices. Instead, they find themselves the subject of a cruel joke which, for many fishermen, will likely end once and for all in fishing year 2013. For whatever reasons—in some ways it really doesn't matter—the stock assessment process indicates that notwithstanding this incredibly painful effort many key stocks are simply not responding. The proposed ACLs are simply insufficient to sustain this fishery in 2013. This is indeed a disaster on top of a disaster.

Efforts by our Congressional Delegations to secure economic assistance will be critical to help get at least some of our fishermen through this—to get over the bridge from 'here to there'. But where is there? At some point everyone in the groundfish community—the scientists,

managers and policy-makers—need to accept the reality that the current process is just not working. We need to step back out of the weeds and look at the bigger picture. There are critical elements of the science, management and law that all need to be fixed. We cannot remain in the same box, performing the same rituals and expect a different result. The ‘there’ needs to be a very different place.

This will require leadership and for leaders to recognize what is a solution and what isn’t—what is a priority and what is not. Leadership needs to focus on the real priorities that have brought us to this brink—catastrophic catch reductions and increased operational costs which will now include monitoring. These are the real drivers of fleet consolidation and a loss of fleet diversity. We need fundamental change.

NSC has engaged in the scientific process underlying Framework 48 to an extraordinary degree. This has confirmed to us that many core elements of this process including the quality of the data, the appropriateness of the models and assumptions, and the limits imposed by the National Standard guidelines are the source of many problems. Sadly, it has also revealed disappointing questions about the objectivity of both the process and participants. We need to do better.

Given the timeframe for this meeting and what the Council now has in front of it, NSC offers the following recommendations intended to partially mitigate the immediate short-term impacts of Framework 48 in 2013 consistent with the Disaster Declaration issued by the Secretary of Commerce on September 13, 2012. While these recommendation are limited to a relatively few stocks, it must be recognized that a number of other stocks will be the subject of crushing reductions including witch flounder, American plaice and Cape Cod /Gulf of Maine yellowtail flounder which also need serious attention by the Council. While a much broader and comprehensive management reevaluation is required in order to sustainably manage these stocks and this fishery, there will be no future to enjoy if we can’t get this fishery through fishing year 2013. NSC asks the Council for its most serious consideration.

1) Interim Measures for GOM cod and GOM haddock

Please recall that NSC sent a memorandum to you on August 28, 2012, evaluating and describing in some detail how the Magnuson-Stevens Act (MSA) section 304(e) three-step “interim measures” process might be applied to a number of stocks including those that were the subject of two status update letters from NMFS on January 26, 2012, and May 30, 2012. In these two letters the agency initiated this three step process for both GOM cod

and GOM haddock by notifying the Council pursuant to section 304(e)(7) that the rebuilding plans for each stock have not resulted in adequate progress.

Please further recall that this process was successfully utilized by the Council and agency for Gulf of Maine (GOM) cod in current fishing year 2012 as a crucial mitigation tool for the inshore GOM fleet. We urge each Council member to review this memo. (see attached)

In summary, the NSC memo concludes that there is a very clear and sound legal basis for the Council to request and for the agency to implement interim measures in fishing year 2013 to reduce rather than end overfishing for GOM haddock. This too will be a crucial mitigation tool for the inshore GOM fleet.

NSC strongly recommends that the Council initiate this process by submitting a request to the agency to implement interim measures for GOM haddock to reduce overfishing in fishing year 2013 pursuant to MSA section 304(e)(6).

In summary, the NSC memo also concludes that there is a very clear and sound legal basis for the Council to request and for the agency to implement interim measures to reduce rather than end overfishing for GOM cod for a second year in fishing year 2013. In accordance with MSA section 304(e)(3), the Council has initiated the process to 'prepare and implement' a revised rebuilding program for GOM cod and has up to two years to complete this process. Section 304(e)(6) clearly contemplates that the Council may request and the agency may implement interim measures to reduce rather than end overfishing during this revised plan development process.

Also pursuant to section 304(e)(6), such interim measures are to be promulgated according to the MSA section 305(c) process for 'Emergency Actions and Interim Measures'. This process allows for a specific Interim Measure to be implemented for a total of 366 days. It is critical to understand that MSA section 305(c) does not in any manner preclude the agency from implementing a second Interim Measure for a second year immediately following the first.

Thus, the Council may request and the agency may implement a new Interim Measure for GOM cod for fishing year 2013. This is entirely consistent with the "within two years" time-period expressly contemplated in MSA section 304(e) process for revising the current rebuilding plan and implementing measures for the interim.

NSC strongly recommends that the Council initiate this process by submitting a request to the agency to implement a second interim measure for GOM cod to reduce overfishing in fishing year 2013. Taking such action will be essential to preserving the viability and diversity of inshore GOM fleet.

2) Interim Measures for Southern New England winter flounder (SNE WF)

In its May 30, 2012, letter to the Council the agency officially notified the Council pursuant to MSA section 304(e)(7) that the rebuilding plan for SNE WF has not resulted in adequate progress toward rebuilding the stock. The following is the relevant excerpt from that letter:

Thus, on behalf of the Secretary and consistent with MSA § 304(e)(7), we are notifying you that the American plaice and SNE/MA winter flounder rebuilding programs have not resulted in adequate progress toward rebuilding the stocks. Therefore, revised rebuilding plans must be implemented for both stocks within 2 years, as required by MSA § 304(e)(3). The current FMP measures for these two stocks are effectively preventing overfishing. We expect the council to continue to make use of the current measures, or similar reduction measures in the interim while the rebuilding programs are revisited.

As noted in the excerpt above, this notification triggers the MSA section 304(e)(3) requirement for the Council to ‘prepare and implement’ a revised rebuilding plan. Accordingly, the Council has included this revision as a priority action at its November 2012 meeting.

Further, the agency has indicated that it expects the Council to continue to make use of either “current” or “similar” reduction measures in the interim while the revised rebuilding plan is being developed.

As the agency indicates, the current measures are “effectively preventing overfishing” and, therefore, “similar” measures must meet the same standard. Thus, for fishing year 2013, the agency has indicated the Council may develop “similar” interim measures that effectively prevent overfishing.

NSC strongly recommends that the Council replace the current measures for SNE WF with “similar” interim measures that will prevent overfishing yet mitigate the impacts of the catch reductions for other stocks under Framework 48 in fishing year 2013.

Based on NSC’s analysis, such new interim measures must provide for an ACL of no less than 1,400mt in fishing year 2013 in order to safely allocate SNE WF without the possibility for this stock to become a crippling choke stock for fisheries targeting other stocks. In order to accomplish this

most effectively, NSC urges the Council to request the SSC to provide a revised ABC estimate that will achieve this objective.

NSC anticipates that an ACL of no less than 1400mt will have a very modest impact on the rebuilding rate of this stock and that the associated fishing mortality rate will fall well below the overfishing limit. NSC believes this approach provides an appropriate balance of effectively conserving this stock during the interim development of a new rebuilding plan while providing desperately needed mitigation to the impacts of catch reductions for other stocks in Framework 48.

Finally, NSC notes that current measures for SNE WF include a prohibition on possession and establishes this as an unallocated stock. It should be noted that since implementing the zero possession measure we have effectively foregone nearly all fishery dependent data collection which is counterproductive to the effort of improving scientific assessment capabilities. Thus, NSC strongly recommends that the Council eliminate the prohibition on possession and change the status of SNE WF to an allocated stock as specified in Amendment 16.

3) Georges Bank Yellowtail Flounder (GB YT)

In the absence of an SSC recommendation for an ABC / OFL, the Council is left with selecting an ACL that meets management needs for 2013.

NSC strongly recommends that the Council select an ACL based upon 1,150 mt and to direct the US TMGC to request the Canadian TMGC to reconvene a special meeting to consider the recommendation to modify the 2013 US / CA trans-boundary shared TAC for 2013.

The challenges now facing the Council, the agency and the groundfish fishery are immense and occur on many levels. NSC's recommendations to the Council for GOM haddock, GOM cod, SNE WF and GB YT presented above represent only the most immediate, short-term response to mitigate the groundfish disaster. While there are much broader solutions that NSC is committed to achieving for the long term, those big-picture promises of a brighter future are useless if the fishery does not survive fishing year 2013. NSC respectfully requests the Council's most serious consideration of these recommendations and as always, we appreciate the opportunity to work with you.

Sincerely,

Jackie Odell

Jackie Odell
Executive Director