

**An Independent Governance Assessment of  
the Gloucester Fishing Community  
Preservation Fund**

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**I. EXECUTIVE SUMMARY**

The Gloucester Fishing Community Preservation Fund (the “Fund”) was established as a non-profit organization in 2007 to distribute fishing rights to individuals who participate in the Gloucester fishing industry. The Fund’s board of directors (the “Board”) consists of prominent members of the Gloucester community, most of whom have longstanding involvement in the Gloucester fishing industry. The Board and Fund have been targets for regular criticism from the outset, including publicly in articles and blogs published in *The Gloucester Daily Times*. The Board decided in August 2012 to retain Proskauer Rose LLP (“Proskauer,” “we,” or “us”) to conduct an independent investigation of all of these allegations in light of the governance and operational conduct of the Fund.

In particular, the Board asked Proskauer to investigate allegations of wrongdoing including conflicts of interest, nepotism, “insider trading,” improper kickbacks and other monetary improprieties and unfair business advantages. After an extensive review, including legal and factual research, board member interviews and interviews of members of the Gloucester fishing industry and general community, we have completed our investigation and have prepared this report for such action as the Board deems appropriate.

As detailed in our report, we have made three key findings in connection with our investigation:

First, we found that the Fund has played a vital role in the Gloucester fishing community. Its mission and leadership are industry lifelines and its existence is a critical force in preserving the local business community. It is this very success, as well as the prominent roles in

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Gloucester of members of the Board, that seems to have triggered the allegations directed at the Fund and its alleged governance flaws, or the appearance thereof.

Second, we quickly found that all allegations emanate from a handful of individuals in the community who asserted allegations and engaged in an unfounded negative media blitz against the Fund and its members, particularly Executive Director Vito Giacalone.

Third, we found that the regulatory structure overseeing the fishing industry is complex to the point that many people in Gloucester, in addition to individuals in the fishing community, do not understand how it works. Similarly, many of the individuals with whom we spoke do not understand how the Fund was created, how it operates, how the Board makes decisions, how it ensures that the proper checks and balances are in place and that its transactions are transparent and fair. Lacking a real understanding of both the regulatory structure and the Fund, some are willing to accept allegations of conflict and collusion among the Fund, the Board and others as fact, innocently or otherwise.

Based on our investigation, we conclude that there is no credible basis to support the allegations of wrongdoing. To the contrary, they are without merit. Accordingly, we found:

- a) No violations of the fiduciary duties of care, loyalty, and independence by any board member;
- b) No failure on the part of the Board to adhere to accepted charitable governance and operational policies and procedures; and
- c) No reasonable or credible factual basis on which to conclude that any members of the Board obtained an unfair business advantage, took kickbacks, engaged in

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collusion, or in any other way engaged in conduct constituting a conflict of interest.

Nevertheless, we propose a handful of simple and common sense governance improvements to serve as a road map for the Board so that it may avoid similar baseless allegations or misperceptions in the future. These changes, following best practices for non-profits of the Fund's size, scope and history, will help it continue to serve the Gloucester fishing industry.

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## II. THE DECISION TO UNDERGO AN INDEPENDENT REVIEW

The Fund's Board consists of prominent and respected members of the Gloucester community with years of service to, and experience in, the fishing industry from a variety of perspectives – namely, Angela Sanfillipo, President, Gloucester Fishermen's Wives Association; Giacalone, prominent industry advocate, fisherman and businessman; Dale Brown, former Community Development Director for the City of Gloucester; and Jackie Odell, executive director of the Northeast Seafood Coalition ("NSC"). The Board was represented by attorney Jeff Hurwit during its formation, and continues to seek counsel on best practices and Board expansion.

Since its formation, the Fund has focused on its primary mission and purpose – distributing fishing rights to the participants in the historic local fishing industry in Gloucester. Though generally well-regarded by the community and regulators, the Fund's Board came under fire from a small group of individuals, competitors and critics almost from the outset. More recently, the Fund was made aware of a letter dated December 2, 2011, from a fisherman to the National Oceanic and Atmospheric Administration's ("NOAA") National Marine Fisheries Service ("NMFS"), which accused Board member Giacalone of being involved in a "cartel" with other prominent fishermen in New Bedford.<sup>1</sup> This accusation of collusion was eventually printed in *The Gloucester Daily Times* by reporter/editor Richard Gaines and quickly attracted a local following.<sup>2</sup>

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<sup>1</sup> See **Exhibit 1**.

<sup>2</sup> *The Gloucester Daily Times* is uniquely positioned in the Gloucester community, as it is the only local newspaper (and newspaper in Massachusetts) that reports all news relating to the Gloucester fishing industry in the detail that it

In an effort to respond to these allegations, and answer any questions, Giacalone and John Bell, the former Mayor of Gloucester and president of the NSC, met with state Senator Bruce Tarr and state Representative Ann Margaret Ferrante (prominent local elected officials who are intimately familiar with the Fund, its history, purposes, and importance, and highly influential in the Gloucester community) to clear the air and provide them with any and all information they sought. Senator Tarr and Rep. Ferrante sent a follow-up letter to Giacalone and Bell on February 9, 2012. The elected officials, while admitting they did not have any specific facts to support, or the ability to ascertain, the credibility of the allegations, suggested that, among other things, the Fund consult with legal counsel, if only to have an independent evaluation of the potential appearance of conflicts on the Board.<sup>3</sup>

During our investigation, Senator Tarr and Rep. Ferrante made it clear that the letter was solely a formality and nothing more – and never meant it to be seen by anybody other than Giacalone or Bell. It was meant, they said, to cover them in the event the allegations ever were substantiated, and they repeatedly indicated their support for the Fund, its Board, its good work and critical role. Despite this, the letter was eventually provided to *The Gloucester Daily Times*, which ran editorials suggesting the allegations were true.<sup>4</sup>

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does. Its writers are often dedicated to writing daily stories when “fish news” is happening. Though such information can be informative, it can also fan the flames of long-simmering rivalries. And the newspaper’s anonymous comment section on its website provides a forum for back-and-forth bashing and unchecked accusations.

<sup>3</sup> See a copy of this letter at **Exhibit 2**.

<sup>4</sup> Giacalone and Bell, the recipients of this letter, insisted the elected officials must have leaked the letter to *The Gloucester Daily Times* since there was no other way that the newspaper could have gotten a copy of it. Rep. Ferrante and Senator Tarr adamantly denied providing the letter to *The Times*. While nobody has admitted to us how *The Times* got its hands on the letter, an article dated July 17, 2012 in *The Times* (entitled “Fishing groups at center of conflict”) states: “A copy of Tarr and Ferrante’s letter was given to the Times by the legislators last week in response to a formal request by the newspaper.”

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From there, according to the Board, these allegations were escalated by local attorney Paul Muniz and other local critics who alleged collusion and other legal and fiduciary violations, though they did not bring any specific concerns to the Fund itself. The Board, however, remained steadfast in its insistence that all of the allegations against it were false. Consistent with its fiduciary duties, it decided to end the debate by retaining, as suggested, independent governance counsel to conduct a comprehensive review of the allegations in light of the Fund's governance, and to advise the Board of its findings and any recommendations for governance improvements.<sup>5</sup>

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<sup>5</sup> The Fund retained Scott Harshbarger, the former Massachusetts Attorney General and current Senior Counsel to the law firm of Proskauer, as its independent legal and governance counsel. See Scott Harshbarger Biography, **Exhibit 3**.

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### III. METHODOLOGY

To evaluate the Fund's management and operations and fairly investigate the allegations of wrongdoing and conflict of interest, we needed to understand the context and environment that led to the Fund's creation and the mechanics and nature of the fishing industry today. Therefore, we engaged in an intensive review of the regulatory structure of the fishing industry, a thorough statutory analysis, and a review of relevant documents.

This report sets forth our understanding of the fishing industry and the operation of the Fund, for background knowledge and context, and to outline the multiple layers of regulatory and industry oversight that exist in this complicated fishery system. In addition, we outline the background of the various agencies, industry groups and organizations that have evolved organically with the assistance of multiple groups and individuals, in response to the dramatic reductions in fish populations, the consequent increase in regulation, and the major debates that continue to exist about how best to preserve and protect this industry.

With this context and background, we undertook an extensive document review of the Fund's operations and history in concert with interviews of the Fund's Board members, including Giacalone, Executive Director, and a member of its Board. Given the nature of the allegations against the Fund, and in particular Giacalone, we wanted to have a detailed understanding of the Fund and how it developed and operates in terms of policy, procedures, priorities, and governance.

Our next step involved outreach into the fishing community, which included a host of interviews over a two-month period with elected government officials, industry regulators,

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community members and fishermen. To achieve a fair and balanced set of views and perspectives, we spoke with a wide range and number of individuals – those who have direct knowledge of and working relationships with the Fund; those who have positive views and who consider themselves friends of the Fund; as well as those who are critical of the Fund, and who have made specific allegations of what they believe to be improprieties, or the appearance thereof.

In addition to interviews conducted by the Proskauer Team, Harshbarger engaged Bob Long of Bob Long Investigations Group LLC to conduct interviews.<sup>6</sup> Long interviewed dozens of fishermen, vessel owners, fish graders, on-shore suppliers, dock-side sources, vessel and permit brokers, industry regulators, NEF Sector II and III managers, Fund and NSC Board members, and other law enforcement sources.

Long also remained in constant contact with Attorney Muniz, the most vocal critic of both the Fund and Giacalone, who initially contacted Harshbarger and supplied Proskauer and Long with a list of names of individuals he wanted to see interviewed, claiming they could provide evidence of wrongdoing with respect to the Fund and Giacalone. Included in Muniz's list were his cousin Billy Muniz, Don King, Danny Bubb and Larry Ciulla. Muniz stated he did not represent his cousin Muniz, King or Bubb, and insisted he was working pro bono as an advocate for the fishermen in general. But he did admit ultimately he represents Ciulla, which he had denied in an earlier interview with Harshbarger and his Proskauer team.

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<sup>6</sup> Long is a prominent private investigator, who had a distinguished career as a Massachusetts State Police Detective Lieutenant, and Commander of Detectives assigned to the Middlesex County District Attorney's Office, overseeing the homicide, major crimes and the narcotic task force. He has achieved major recognition, the past twenty years as a licensed private investigator, conducting high profile, multifaceted investigations both nationally and abroad. Mr. Long is also a Certified Fraud Examiner (CFE). See Bob Long Biography, **Exhibit 4**.

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Muniz requested that he be able to sit in on those four interviews, and his request was granted. Long suggested to Muniz that the interviews be tape-recorded. Long explained the purpose of recorded statements was: first, to ensure an interviewee could not later deny saying something he had said, and vice versa; and second, Long wanted to ensure he retained all the details from every interview, and feared it might be difficult to capture every word if the interviewees spoke quickly. Muniz refused to allow the interviews to be recorded.

In an effort to be as transparent as possible with Attorney Muniz, and to ensure we captured all the allegations accurately, Long took the unusual step of sending Muniz draft reports of his interviews of Muniz, King, Bubb and Ciulla for editing purposes before they were finalized. Long also did this with several other interviewees by either reading their interview reports back to them over the phone or sending it to them via email for any corrections.

This approach not only provided the interviewees the opportunity to add anything they may have neglected to discuss, elaborate more on what they had discussed, or correct anything that was mistakenly reported. It also ensured we made every effort possible to identify each and every serious accusation of wrongdoing.

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#### IV. BACKGROUND

##### A. Organizational and Governance Structure of the Fund

###### 1. The Creation of the Fund

Over the past decade, the fishing industry has faced formidable obstacles resulting from a dwindling fish population and, in turn, increased government regulation and oversight. Prior to the 2007 fishing season, the NMFS, with input from local fishing organizations, enacted new regulations to combat the decline in fish stocks.<sup>7</sup> These new regulations, referred to as Framework 42, effectively cut in half the number of days Gloucester fishermen were permitted

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<sup>7</sup> The NMFS, a division of the Department of Commerce, is charged with regulating the fishing industry. The NMFS has six regional offices located throughout the country, including its Northeast Regional Office (“NERO”) located in Gloucester, MA. In performing its functions, NMFS regional employees solicit advice and guidance from “Regional Councils.”

Across the country, eight Regional Councils (established by the Magnuson Fishery Conservation and Management Act of 1976, since renamed the Magnuson-Stevens Act), develop management plans and measures for the fisheries within their respective territories. The NMFS works with these Regional councils to review, approve and implement these plans and measures. Though the NMFS looks to the Regional Councils for guidance, it is ultimately the NMFS that retains responsibility for decisions made, meaning that the power of the Regional Councils is constrained by the NMFS’s ultimate oversight. As the US Regional Fishery Management Council website explains:

*“The Regional Council system was designed to allow regional, participatory governance by knowledgeable people with a stake in fishery management. The eight Regional Councils develop management plans for marine fisheries in waters seaward of state waters of their individual regions. Plans and specific management measures (such as fishing seasons, quotas, and closed areas) are developed based on sound scientific advice, and are initiated, evaluated, and ultimately are adopted in a fully transparent and public process. These plans and measures are implemented by the National Marine Fisheries Service.”*

<http://www.fisherycouncils.org/>.

Membership on a Regional Council is not a full time job. The Northeast Regional Council, called the New England Fishery Management Council (the “NEFMC”), is located in Newburyport and manages fishery resources within the Exclusive Economic Zone off the coasts of Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut. Nomination and membership on a Regional Council are open and transparent, to the extent that NOAA prepares a yearly report to Congress detailing the apportionment of membership on each Regional Council. For reference, the 2011 Report to Congress is included here as **Exhibit 5**.

The NEFMC is currently comprised of 12 individuals, eight of whom represent commercial fishing interests. Of these eight, three are from Maine, three from Massachusetts, and two are from New Hampshire. None are from the Fund.

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to fish off the coast of Gloucester.<sup>8</sup> Given the drastic cuts imposed on Gloucester’s fishing community, it became clear to Gloucester’s fishermen that absent a mechanism to obtain additional fishing permits and, ultimately, more DAS (see footnote 9), it was likely that they would be forced to sell their remaining permits and quit the industry. Thus, Framework 42 was a driving force behind the establishment of the Fund – namely, to protect the Gloucester fishing community from an ever-tightening regulatory environment.

At that time, liquefied natural gas (LNG) deep water ports were being constructed off the coast of Gloucester. As part of a \$47 million mitigation package negotiated in part by Giacalone, acting on a volunteer basis as an advocate for the Gloucester fishing community, with the support of the Massachusetts Department of Environmental Protection, GDF Suez and Excelerate Energy agreed to apportion approximately \$12 million to the Gloucester community for the establishment of a fishing permit bank to mitigate the environmental and economic impact of the LNG project. To try to protect the Gloucester fishing community from an ever-tightening regulatory system, this permit bank, which would eventually become the Fund, was designed to purchase permits using the mitigation funds and then lease out DAS to the Gloucester fishing community so that the playing field would be leveled for those affected by this differential counting.

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<sup>8</sup> The Northeast multispecies fishery, better known as the New England groundfish fishery, is the fishery at issue here. This fishery formerly utilized an effort-based management system using “Days at Sea” (“DAS”) and vessel capacity as the allocation capacity for permits. This “currency” system unfortunately did not bode well for fish stocks, and the government intervened. After the adoption of Amendment 13 to the Fishery Management Plan (“FMP”) in 2004, which approved a DAS leasing program among fishermen, multiple “framework” adjustments to the FMP were drafted by NEFMC and approved by the NMFS to address the dwindling fish stocks off the New England coast. Most notably, Framework 42 was passed and went into effect for the 2007 fishing season. Framework 42 not only upheld Amendment 13’s reduction in unrestricted DAS, it went further by implementing differential counting of DAS in particular parts of the fishery, whereby every day (or every hour) fished within a specific area would cost a fisherman two days (or two hours, as the case may be). Gloucester was one of the areas affected by differential counting.

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While these negotiations were ongoing, Giacalone, along with Odell, Brown, and Sanfilippo retained Hurwit to oversee the creation of a non-profit corporation that would serve as the central repository and exchange for the distribution of DAS to fishing vessels based in Gloucester. In accordance with the terms of the LNG mitigation agreement, the Massachusetts Executive Office of Energy and Environmental Affairs (“EOEA”) reviewed and approved the Fund’s Articles of Incorporation.

The Fund continues to be run by these four individuals, who seek to fulfill the Fund’s mission of keeping Gloucester families in business.

## **2. Valuation of Permits**

Upon receiving the mitigation funds, the Fund began to purchase permits to lease DAS to Gloucester’s fishermen. The Fund devised an objective formula to value individual permits for sale. This formula takes into account multiple variables that affect permit value, ultimately generating a narrow dollar value range for the permit. The Fund buys permits for no more than the price that is generated through the formula. The Fund’s decision-making and valuation process is fully vetted by the Board and documented in meeting minutes.<sup>9</sup>

Consistent with its mission and objectives, the Fund purchased 17 permits on the open market in 2007. The Fund now has over 40 permits, half of which came from Gloucester. The Fund hired Gloucester attorney Stephen Ouellette, a specialist in admiralty, maritime and fisheries law, to represent it in all purchases and leases of permits made by the Fund. The Fund

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<sup>9</sup> We also learned that permit values are partly measured by how much the individual species of fish tied to a permit are selling for at the time of valuation. For that reason, the Fund, the Cape Cod Commercial Hook Fisherman’s Association (the “Cape Permit Bank”) and the permit bank in Maine regularly exchange information to ensure they are all consistent in their valuation of permits.

has maintained a copy of all legal documentation of every purchase and sale it has made since its inception, all of which have been handled by Attorney Ouellette (and his partner, David Smith).

### 3. Leasing Quota

The Fund owns permits solely to lease fishing privileges to Gloucester's fishing community.<sup>10</sup> This is accomplished by leasing quota (formerly, DAS) to the fish harvesting cooperatives, known as sectors, in which Gloucester fishermen are members – usually at below market rates.<sup>11</sup> The sectors, each of which has its own governing board, officers and staff, distribute quota to their members by circulating forms to each of them offering various quota packages.<sup>12</sup> To determine how much quota can be offered to each fisherman, the total amount of quota held by the Fund for each species is divided by the number of qualifying fisherman within NEF Sectors II and III so that each qualifying fisherman within NEF Sectors II and III is able to elect to lease the same amount of quota.

After the first round of quota election, inevitably some quota will remain, as smaller operations will not be able to utilize all quota made available to them by the Fund. As such, the sectors conduct additional elections until no sector member opts to purchase additional quota. Should any quota remain, the Fund will offer the remaining quota to NEF Sectors II and III non-qualifying members, followed by the other NEF Sectors. Every transaction with the Fund is an *inter-sector* transaction and therefore it is logged on a government server.

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<sup>10</sup> The original “currency” attached to permits was DAS. This changed with the adoption of Amendment 16 in 2009, when the NEFMC effectively eliminated the DAS system in favor of a “catch share” quota system, which allocates annual catch entitlements, or “ACE.” ACE is essentially a percentage of each species of fish permitted to be harvested per permit, based upon a permit's catch history.

<sup>11</sup> The creation and development of the sector system is discussed more fully below. Gloucester fishermen are members of Northeast Fishery Sectors (“NEF” Sectors) II and III. The Fund is a member of NEF Sector IV, which does not engage in any fishing, and is precluded from harvesting fish.

<sup>12</sup> A copy of this form is attached as **Exhibit 6**.



#### **4. Right of First Refusal (“ROFR”)**

To keep permits in their original communities and to honor the mutual reliance that is inherent among fishermen in a sector system, the sale of a permit in the sector system is subject to two layers of member-to-member rights of first refusal, a system approved by NMFS. When a fisherman chooses to sell a permit, he must first offer it to individuals in his home sector. Should no one in the home sector want to purchase the permit, it is offered to the entire NEF Sector network. Should no one in any NEF Sector exercise the right to purchase, only then can a non-NEF Sector member buy the NEF sector-owned permit.<sup>13</sup> This ROFR system was created by and for the fishermen who belong to the NEF Sectors, based on other ROFR systems that were already in operation in other fishing cooperatives in the country.<sup>14</sup>

#### **5. Mission: Community Impact**

Regardless of personal perceptions of the Fund and its management, every person we interviewed (from federal employees who oversee the fishery to sector managers and individual fishermen) acknowledged that the Fund serves a vital role in the Gloucester community. One interviewee went so far as to say that without the Fund, “half of Gloucester would be out of business.” Most others echoed this sentiment in one way or another, in particular citing Giacalone’s “genius” foresight in organizing the Fund and his critical role as a leading spokesman for the Gloucester fishing community.

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<sup>13</sup> By letter to Odell dated June 13, 2012, the Acting Regional Administrator of the NMFS Northeast Region, Daniel Morris, acknowledged that “a sector contract is a private agreement between a fisherman and the sector” and that “the regulations do not specifically prohibit a sector from establishing a right of first refusal or right of first offer, and we found this provision to be appropriate for a sector operations plan,” thereby approving the existence of such provisions in the NEF Sectors’ operations plans.

<sup>14</sup> NEF Sector IV, the Fund’s sector, does not have a right of first refusal.

**B. The Northeast Seafood Coalition**

**1. The Creation of the NSC**

The NSC is a non-profit organization formed to advocate for and represent over 250 commercial fishing entities in the northeast United States on political and policy issues affecting their interests as participants in the groundfish fishery and the sector program in the Northeast multispecies groundfish fishery.<sup>15</sup> Its mission is to unite the commercial fishing industry under one voice. In addition to its large membership base, the NSC board of directors is currently comprised of 21 individuals, all of whom are experienced and educated members of the industry from all over New England and are fully aware of the regulatory process that governs the fishing industry, as well as the challenges facing the industry that exist at the local, state, regional, and national levels. This industry, like the family farm in agriculture, is being driven into increasing consolidation, which threatens to erode, if not eliminate, the small local fishing businesses in the northeast.

The purpose of the NSC is to advocate on behalf of the fishing industry, both to ensure that fish stocks remain viable and that fishermen may continue to earn a living. The NSC represents industry members both big and small and it works to carefully and methodically craft solutions to complex fishery problems that will aid all of its members. The NSC's board has a voice and a vote in all the initiatives the NSC undertakes.

One of the NSC's Board members and active advocates is Giacalone, who serves in a volunteer capacity. The executive director of the NSC, Odell, also a member of the Fund Board,

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<sup>15</sup> [www.northeastseafoodcoalition.org](http://www.northeastseafoodcoalition.org)



gave Giacalone the title of “Policy Director” for use when he testified before the NEFMC and Congress. This formalization of his title in no way changed Giacalone’s role within the NSC, and Giacalone’s voting rights as a member of the NSC board are no different than those of any other board member. Giacalone is not an officer on the NSC board.

Seeking further regulation of the fishing industry, in 2009 NMFS implemented Amendment 16 to the Northeast Multispecies FMP, which, in addition to changing the permit currency from DAS to catch shares (ACE), implemented a sector system and authorized the creation of 19 sectors. The idea of a sector system originated with the Cape Cod Commercial Hook Fishermen’s Association, and not with the Fund or Giacalone, as critics allege. In fact, initially the NSC was adamantly opposed to the implementation of a sector system for multiple reasons, and instead advocated for a “point” system, which was rejected by the NEFMC. Indeed, in his testimony to the Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard of the United States Senate Committee on Commerce, Science and Transportation in March 2011, Giacalone explained,

“While Northeast Seafood Coalition is now both deeply invested in and committed to making the existing sector system work, *sector-based management was not the preferred choice of the Northeast Seafood Coalition, nor were a number of key aspects of the current sector system.* Nevertheless, because it was clear the Council was firmly committed to adopting the sector approach notwithstanding our input to the contrary, we felt a strong obligation to our members to fully engage in the sector system in order to protect their best interests as best we could.”

See Testimony of Vito Giacalone at **Exhibit 7**. It was on that basis – the desire to protect Gloucester fishermen during the inevitable change to the sector system – that the NSC decided to participate in the creation of the sector system. Giacalone and Odell sent in a proposal for the

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development of 12 sectors on behalf of the NSC during the public comment time for Amendment 16.

**C. Sector Management and Governance**

Sectors are governed by private contract and a plan of organization. Membership offers fishermen access to the sector's allocation of quota from the NMFS in exchange for an agreement to abide by certain additional fishing regulations. The sectors in turn have a contractual relationship with the Northeast Sector Service Network ("NESSN"), a 501(c)(5) organization. NESSN, which provides all the administrative support for the individual sectors, is governed by a board comprised of three NSC members and one member from each of the sectors.

Originally, the sectors' organizational documents were prepared by attorney Joe Sullivan of the law firm Mundt MacGregor, and reviewed by NEFMC. Sectors (all of which are 501(c)(5) organizations) are governed by individual boards, which conduct regular meetings at least annually. Specific rules govern the membership and actions of the sectors. In order to be allowed to fish and to receive quota, each sector must submit an Operations Plan to the NMFS by September 1 to be approved for the following fishing year. Once approved, the fishermen are free to contract amongst themselves within each sector.<sup>16</sup>

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<sup>16</sup> Fishermen are free to leave the sector system, taking their permits with them. In addition, they are able to move from sector to sector once a year, subject to such receiving sector's approval to enter. Practically, there are political and friendship barriers which may restrain movement from sector to sector, but no legal prohibition on changing sectors. Most fishermen belong to a sector because it is in their best interest to do so. Those individuals who choose not to join a sector would essentially be a part of a "common pool" – a group of "sector-less" fisherman who act as their own unregulated sector of sorts. The quota allocated to the common pool is equal to the cumulative shares of all individuals who did not join a sector.

**V. ALLEGATIONS OF CONFLICT AND WRONGDOING: COMMENTS AND FINDINGS**

Our review focused on three general areas raised by critics:

First, the concerns about whether the Fund and Board had in any way violated their fiduciary duties by their conduct as Board members and by virtue of their prominence and involvement in various community and professional roles within the industry;

Second, allegations that Board members, specifically Giacalone, had – individually and on behalf of the Fund – engaged in misconduct, violated their duty, and abused their position for personal gain; and

Third, accusations that there is an appearance of conflict of interest that, in the view of some community members, warrants a change in the Board and/or Fund management and governance.

For reasons set forth in this report, we conclude that, in each case, the allegations are without merit. We do, however, make recommendations for some changes to the Fund's governance in order to enhance its governance going forward.

In the course of our review and investigation, we used as our standard the general guidelines for charitable organizations as to governance and management in evaluating the Fund and its Board. In making our findings and conclusions, given the range and type of issues presented, we applied this standard: Is there credible evidence upon which a reasonable person could conclude this allegation is accurate?

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**A. General Findings and Comments**

A critical part of our review of the governance and operations of the Fund involved interviews with the Fund's Board members, friends, beneficiaries, competitors, critics, and observers. We spoke with federal employees who oversee the fishing industry, sector managers, and individual fishermen. With very limited exceptions, we received overwhelmingly positive feedback on both the Fund and its management. The Fund serves a vital role in the Gloucester community, and has had a real world positive impact on this community and its capacity to remain in the fishing industry business. The leased quota has resulted in revenues for Gloucester's fisherman, and has had a positive economic impact on the Gloucester community.

Ultimately, the Fund's most significant challenge is a community that lacks information about the Fund and how it operates. Certainly, the Board needs a better system for fostering communication and transparency, but most of the responsibility for the campaign against the Board falls on a small number of individuals who have knowingly spread incorrect and inaccurate information about the Fund. Many of our interviewees mentioned unidentified third parties influenced by Giacalone or something they heard or suspected Giacalone did but, when pressed for details, were unable to produce any actual evidence of wrongdoing. Rather, individuals, including Mike Walsh, a Boston fisherman who was in competition with Giacalone for the LNG funds; Alicia McDevitt, attorney for the EOEAA during the founding of the Fund; Bruce Nicholls, former counsel to the Fund; Mark Grant, NOAA regulator who is responsible for the oversight of the Northeast fishery; Steve Ouellette and David Smith, Fund counsel on all permit transfers; and John Bell, former Mayor, all emphatically commend Giacalone for his

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independence when acting for the Fund and insisted that he goes out of his way to give up personal gains for the good of the Fund.

Almost every person we spoke to noted a general lack of information about how the Fund works and said that, like in any other tight-knit community, politics, rumors, suspicions and conspiracy theories have the potential to grow unchecked. Given the prominence of the Fund and its Board members in the Gloucester area and in the fishing community, it is not surprising that they have become the subjects of rumor and innuendo. This tendency toward rumor, in addition to the hardships created by an ever-increasing scarcity of fish, and criticisms of federal regulators by leading elected officials and *The Gloucester Daily Times*, taken in concert with a misunderstanding of how the Fund works and who it benefits, is the context for many of the allegations.

This environment allows competitors, enemies and critics, specifically of Giacalone and Odell, to sow their seeds of discontent. Led by Attorney Muniz, the Fund's critics set forth a variety of allegations, ranging from Giacalone luring fishermen to Fisherman's Wharf with the promise of additional quota, to lower quota prices for friends of the Fund, to allegations of kickbacks and cartel-like business relationships with Richard and Ray Canastra and Carlos Rafael. These allegations go far beyond mere allegations of a perception of conflict which were raised by self-proclaimed friends of the Fund, Senator Tarr and Rep. Ferrante, both of whom repeatedly praised the Fund, its impact and leadership, in spite of the undefined "concerns" about "appearances" they apparently heard.

According to multiple sources, Muniz's allegations were triggered initially by Larry Ciulla, the former owner of the Gloucester Seafood Display Auction, and one of Muniz's

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clients.<sup>17</sup> The Gloucester Seafood Display Auction was the only auction in Gloucester prior to the opening of Fisherman’s Wharf – a fish auction run by Giacalone’s sons, but owned by the Canastras. Ciulla alleged that Giacalone, through his “control” of the Fund, funneled business away from Ciulla’s auction to his sons. Ciulla and Muniz, his attorney, launched these criticisms as early as 2008 or 2009 to the Department of Environmental Protection, the Attorney General’s Office and in direct negotiations with the Fund itself. To date, based on our investigation, we have found no credible factual basis for the Ciulla or Muniz complaints.

We spoke with Muniz at length, gathered his long list of allegations against the Fund (and, more specifically, Giacalone), which continued to be brought to our attention over the course of many weeks. Every allegation was personally followed up by our principal investigator, Long. When first interviewed by the Proskauer team, Muniz clearly stated that he had no client, nor was he speaking with us on behalf of any particular person, but rather came to us proactively on behalf of “concerned fishermen” in Gloucester, most of whom he indicated did not want to be identified. He specifically stated that he no longer represents Ciulla. When Long questioned Muniz, he admitted that he represented Ciulla.

Our investigation revealed that many of these “concerned” individuals are fishermen who sold their permits prematurely against the advice of the Fund, have never been part of the sector system, or have suffered from significant ongoing emotional and financial difficulties due to changes in the regulatory landscape.

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<sup>17</sup> Ciulla is a longtime client of Muniz, and Muniz has been entrenched in various legal battles on behalf of various members of the Gloucester community over the years, and has contributed to articles written in *The Gloucester Daily Times*. Muniz is now actively representing Ciulla, though he denied such representation at our first meeting with him.

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We found that the current regulatory structure has multiple layers of oversight and has developed organically over the years through an active, public, and transparent public hearing process.<sup>18</sup> It would have been virtually impossible for any one person or organization to have manipulated this system for personal gain, originally or now. Even the current permit and quota system is highly formalized, public, and layered.

When we asked many of our interviewees with knowledge of the industry about the allegations against the Fund and Giacalone and whether they could have exercised any undue influence, they were quick to point out that the NSC, the individual sectors and the Fund are run by boards of directors. As many individuals said, barring massive collusion, Giacalone could not have exerted the influence over regulators and quota allocation for self-benefit that Muniz and others have alleged. In addition, all inter-sector permit leases, which would include all of the leases to the sectors, must go through a NOAA database system known as Sector Information Management Module (“SIMM”), which adds yet another barrier (or at least disincentive) for the Fund to engage in improper behavior.

## **B. Findings as to Specific Allegations**

Given the variety of serious allegations of misconduct and malfeasance made against the Fund and its Board leadership, allegedly made by many but actually voiced by very few, we have chosen to address each of them specifically. We applied our standard of “credible evidence” in evaluating all the individuals with whom we spoke, and the “facts” that underlie the allegations, considering also any obvious bias, self-interest, or misleading nature, of statements made –

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<sup>18</sup> We believe that Giacalone became disfavored by some people in the fishing community who had not heard about Amendment 16 and did not realize that the sector system was realistically their only option, and did not participate in the public hearings. The process by which Amendment 16 came to be was transparent and open to public comment throughout its adoption.

which would render the credibility of the individuals and allegations highly suspect in a court of law or before a jury.

**1. Allegation: Fund Board member conflicts of interest abound.**

Despite allegations that the Fund's Board members hold conflicting roles in the Gloucester fishing communities, we find no evidence of actions furthering any Board member's self-interest, or in violation of any fiduciary duty. We do see that there are overlapping and potentially conflicting interests with the NSC, the Gloucester Fishermen's Wives Association, and the Board of the Fund.

Individuals voiced general concern that Giacalone acts as a Board member and policy director of the NSC (for which he receives no salary or other pay), Board member and executive director of the Fund (from which he receives a salary), runs his own commercial fishing business, is a real estate owner and developer, and his sons operate one of the two fish auctions in Gloucester. These various roles are widely known to the Board and the public, though they obviously have the potential to create conflicts. They are, though, neither inherently conflicting, nor *per se* violations of duties owed to the Fund since we found that there are appropriate Board conflict of interest policies and procedures in place and followed. Indeed, it is common for non-profit organizations to have Board members who are knowledgeable about an industry or mission, professionally and personally. When forming any new organization, the logical candidates for Board membership are individuals who have substantive knowledge regarding that organization's mission and industry.

Our investigation did not reveal – and even the Fund's harshest critics failed to present – any credible evidence of actual conflict, collusion or inappropriate behavior on the part of

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Giacalone or any Board member. Most of their allegations were prefaced with some variation of “it’s believed,” or “it’s suspected.” We have learned that Giacalone has consistently turned down opportunities to engage in decision-making roles, for instance as a member of the Local Fisheries Commission or the NEFMC, so that his current involvement in the industry would not be questioned. To be clear, Giacalone’s only policy involvement with the NSC, for example, is as a volunteer member of its board – with no more voting power than any other NSC board member. In this position, Giacalone assists the NSC in generating policy positions on behalf of fishermen. At all times, policy decisions are made by the NEFMC, NMFS, and Congress – not Giacalone.

We agree that Giacalone’s various roles could raise an appearance of a conflict of interest. However, the appearance of conflict does not automatically mean a true conflict exists or that the Board has in any way violated its fiduciary duties and obligations. The Fund had conflict of interest policies in place to deal with conflict of interest or appearance issues since its inception, and its records reflect that those policies were followed appropriately and consistently. The Fund’s Board has been made aware of Giacalone’s roles in both NSC business and in his private capacity as a commercial fisherman and has documented its decisions pertaining to such potential conflicts in meeting minutes.<sup>19</sup>

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<sup>19</sup> For instance, the Fund was made aware that Giacalone was interested in exercising his personal right of first refusal, as a member of NEF Sector II, to purchase two permits from a NEF Sector VIII fisherman. This transaction became the subject of the heated letter (mentioned above) from Pat Kavanagh to NOAA administrator Patricia Kurkul, in which Kavanagh accused Giacalone of improperly utilizing the Fund to obtain permits that Kavanagh – a non-NEF Sector member – believed he should have been able to purchase. Before Giacalone exercised his personal right of first refusal to purchase the permits, he disclosed to the Fund Board that he planned to do so, and the Board fully discussed the possible ramifications of this transaction. The discussion of this transaction is fully documented in Fund Board meeting minutes. We also note that we spoke with Nelson Long Jr. of the Athearn Marine Agency, Inc., the broker for the seller and Giacalone in the transaction about which Kavanagh complained, and Nelson Long indicated that Giacalone conducted himself professionally and ethically throughout the duration of the transaction.

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Indeed, as long as Giacalone discloses his various roles to the boards of the NSC and the Fund (which we confirm that he has done at every possible opportunity), continues to disclose any additional potential conflicts that arise, and recuses himself from any decision-making that could benefit him personally, there is no conflict of interest violation. Whether it is professionally or personally wise in this context and environment for Giacalone to continue to play so many key roles in this community, there is no evidence that Giacalone or anyone else on the Board of the Fund is participating in any collusion or kick-back scheme with any other individual or entity in the fishing community.

To the contrary, this is a highly regulated industry with policies openly and hotly debated, with clear winners and losers openly identified, making illegal collusion or “cartel” like behavior highly unlikely.

In conclusion, no credible evidence exists upon which a reasonable person could conclude these allegations to be accurate.

2. **Allegation: Giacalone uses his position on the Fund to benefit his sons’ fish auction business.**

Giacalone, in his personal capacity, owns property on the Gloucester harbor front currently known as Fisherman’s Wharf. Giacalone purchased the property in 2003, spending the next several years repairing damage to the property caused by a 1998 fire. Giacalone’s sons,

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We also spoke with Acting Regional Administrator of the NMFS Northeast Region, Dan Morris, who indicated that he personally reviewed the Kavanagh complaint and determined that Giacalone had engaged in no wrongdoing.

Other interviewees mentioned that they heard that the Fund rented its office space from Giacalone, who owns the building where the Fund’s offices are, to Giacalone’s financial gain. Our review of the Fund’s finances and comparable rental costs indicates that, in fact, the Fund rents its space from Giacalone at a greatly discounted rate. The Board was made fully aware that the space belonged to Giacalone when it decided to rent there, and partly made the decision to rent from Giacalone to save money for the Fund.

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Chris, Vito Jr. and Nick, began offloading fishing boats at this property, initially using it solely as an offloading point for fish bound for the Boston Seafood Display Auction. In June 2011, Giacalone's sons began running an auction, owned by Richard and Ray Canastra of New Bedford, out of Fisherman's Wharf, creating a direct competitor to the now-defunct Gloucester Seafood Display Auction.<sup>20</sup>

Almost immediately after Fisherman's Wharf opened its doors, critics and competitors (specifically, the Ciulla family) began accusing Giacalone of offering additional Fund quota to fishermen willing to offload their catch at Fisherman's Wharf. Muniz claimed that Danny Bubb said he could not have access to quota unless he unloaded at Giacalone's docks. Muniz also claimed the Canastras, through Giacalone, offered fishermen \$100,000 to take their business to his sons during an informal meeting of carefully-selected fishermen.

Based on our investigation, personal interviews conducted by our team, and by an in-depth review of the fishing industry's regulatory landscape, there is no basis for any allegation that the Fund or Giacalone has or can use its or his control of fishing permits for any personal gain. Furthermore, we have found no evidence of improper allocation of quota. Our interviewees neither have witnessed nor could point to any verifiable instance of Giacalone using permit quota to bring business to his sons. Quite to the contrary, many individuals we interviewed stated that Giacalone actively avoids any potential for collusion, even when doing so prevents him from obtaining legitimate business for himself in his role as a commercial fisherman. In fact, when questioned, Bubb said he was never promised extra quota by

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<sup>20</sup> It should be noted that while Giacalone owns the property at Fisherman's Wharf, he leases the space to a third party, which operates the auction. And while Giacalone's sons manage the auction's day-to-day operations, they are independent contractors working for the auction's owners, the Canastras.

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Giacalone. He said Giacalone's docks were not even up and running at the time he lost his vessels and was banned from fishing in the sectors.

In addition, our review of the regulatory structure in which the Fund operates demonstrates that this kind of alleged misallocation is simply not plausible. Once quota is allocated to the Fund, all inter-sector permit leases must be approved by and recorded with NOAA's Northeast Regional Office. The Fund, which is a member of NEF Sector IV, only leases permits outside of its own sector and as such must fill out a form indicating the lessee and the price paid for each lease. As such, any "misallocation" of permits by the Fund or Giacalone would have to first be approved by NOAA. And since individual fishermen obtain their quota through their sectors, and not from the Fund directly (or from Giacalone), it is implausible that Giacalone would be able to influence how quota is distributed once it is leased to the sectors, barring collusion with sector management.

According to a number of our interviewees, Ciulla's accusations stem directly from the fact that he was in direct competition with Giacalone's sons,<sup>21</sup> and believed that Giacalone was funneling business away from his auction to Fisherman's Wharf by misappropriating quota. However, we have seen no evidence that Giacalone has in fact influenced any fishermen to patronize his sons' business, let alone divert them from other auctions.

With specific regard to the accusation by Muniz that Giacalone offered cash payments in exchange for patronage at Fisherman's Wharf, no one present at that meeting that we

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<sup>21</sup> The Ciullas sold the Gloucester Seafood Display Auction in September 2011 and then filed for bankruptcy (allegedly to avoid a lawsuit by fishermen who claimed the Ciullas were skimming money from them). The Ciullas started the Gloucester Seafood Display Auction in 2000. Kristian Kristensen, the president of Zeus Packing Co., a fish processor that had been a tenant at the Ciulla's facility, purchased the Gloucester Seafood Display Auction and changed the name to the Cape Ann Seafood Exchange. The sale only involved the auction business and not the Ciulla's harbor front property, which was only recently conveyed to Kristensen in a separate transaction.

interviewed has provided any confirmation that such a statement was made. Quite to the contrary, one attendee, Enzo Russo, told us that the notion of a \$100,000 bribe was “laughable,” and explained that no one could afford such a payment without going out of business. Multiple other attendees, including Joe DiMaio, Corrado Buccheri and Joe Orlando, told us the above offer was never made.<sup>22</sup>

Lastly, Muniz claimed Russell Sherman received \$20,000 from the Fund to buy quota in Maine because he could not buy a local permit, and as a result, Giacalone earned himself another “happy customer at his son’s docks.” Muniz said his source for this information was Don King. When King was interviewed, he only said the Fund paid for the leasing of DAS on behalf of Russell Sherman and two other Gloucester vessel owners, because the Fund did not have a permit that fit their vessels. He did not know if Giacalone gave Sherman and the other vessel owners the money directly or whether Giacalone reimbursed them. King thinks this “gratuity” was a misuse of the intent of the Fund.

To the contrary, our investigation indicates the three vessels were treated the same as the other vessels in the Fund program. In 2008, the Fund was in the process of acquiring permits as the first community-based source of reasonably priced DAS in the New England groundfish fishery. The DAS management system limited the number of days a vessel was permitted to fish. During this time period, there was a ban on sub-leasing DAS which prohibited the Fund

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<sup>22</sup> We were able to confirm that Richard and Raymond Canastra provided a loan of approximately \$100,000 to Joe DiMaio, who had expressed interest in leaving Kristensen’s auction but could not do so without paying off an existing loan to Kristensen. The conditions of this loan provided that DiMaio would drop his fish at Fisherman’s Wharf for a period of one year. After receiving the loan, DiMaio did in fact patronize Fisherman’s Wharf for a short time, but shortly thereafter repaid the loan and returned to Kristensen’s auction after Kristensen offered DiMaio more money for his fish if he returned.

from providing DAS to fit a permit of Sherman's vessel's size. Consequently, the Fund could not go into the commercial market to obtain DAS to fit larger capacity permits and then lease them at a reasonable price, as they did with smaller permits. To enable Sherman and others to obtain a comparable amount of DAS from the commercial market, the Fund reimbursed them the difference they had to pay for permits compared to those with smaller capacity permits. This was the most expedient way to make sure everyone in the community was treated fairly.

Later, the Fund acquired and made available for direct lease larger permits with DAS that would fit Sherman's vessel. Sherman believed this reimbursement affected himself, Tom Testeverde, and Joe DiMaio. Reimbursement did not continue after larger capacity permits were purchased by the Fund. This was only a stop-gap temporary measure, not to favor anyone with cash, but to assure that vessel owners received the same DAS benefit as the rest of community.

The core of the problem we see here, again, is the appearance of a conflict, which has been hijacked by a small group of misinformed individuals to create a sensationalized version of the truth. Giacalone is in a public and powerful role, which is bound to attract negative attention – and it has.

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.

**3. Allegation: Giacalone benefits from “insider trading” and improperly influences industry legislation.**

Some of the individuals we spoke with accused Giacalone of “insider trading” based on information that he learns through his various industry roles. For example, we have heard allegations from the Fund's critics that the Fund leadership was able to anticipate the shift from

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DAS to a quota system due to their leadership positions and purchased permits that quickly became valuable based on that knowledge. This allegation is simply not true and a further example of lack of information and knowledge by the Fund's critics. Our review has shown that any prior knowledge of the shift from DAS to a catch share system was obtained solely from the Board members' active participation in the industry's self-governance and public comment period – again, a process that any concerned citizen could have participated in and learned from.

Indeed, the NSC worked tirelessly to help its members through the sector transition process and the new allocation system. It was the only industry group that advocated at the NEFMC for an allocation formula that considered factors besides pure catch history when the DAS system was being replaced. The NSC commissioned an independent report regarding the allocation issue, and assisted the NSC fishermen in obtaining their permits' catch history from NMFS. The NSC held multiple emergency meetings to provide information to its members and to discuss allocation options prior to the passage of Amendment 16. Thus, the insinuation that Giacalone obtained information about changes to the allocation formula before anyone else did, and hid that information so that he alone could take advantage of it, is simply untrue.

Others have inferred that due to his various roles, Giacalone is able to pinpoint where boats in NEF Sectors II and III are successfully landing fish, and provides that information to fishermen who agree to drop their fish at his sons' auction. Our investigation has shown this allegation to be entirely without merit. Speaking with Dave Leveille and Rob Banks, sector managers of NEF Sectors II and III, respectively, we learned that while they do in fact collect information from their fishermen about where they land fish, no one else receives that data, and Giacalone has never asked either of them where fishermen are landing their catch.

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Regardless of whether Giacalone did in fact possess this information (he doesn't), this information is essentially worthless for the purposes of tracking and catching fish. Fishermen usually only enter one point (e.g. GPS location), not necessarily where fish are actually caught. It could be where they started fishing or ended fishing. As a result, they could be landing fish anywhere within 240 square miles from their point of origin.

As to the allegation that Giacalone has single-handedly influenced industry legislation to benefit himself in his commercial endeavors, the regulatory oversight of the fishing industry renders it nearly impossible for any one person to improperly influence legislation. As described more fully in footnote 9, the NMFS oversees the fishing industry. Working with the NMFS are the Regional Councils, which provide input and draft regulations for review and implementation by the NMFS.<sup>23</sup> Below the Regional Councils are the sectors, to which the NMFS allocates quota in the form of ACE.<sup>24</sup> These sectors are all independently governed non-profit corporations, charged with allocating quota among sector members. It would be nearly impossible for one person to infiltrate so many independent Boards unless, as stated above, the industry was manipulated through massive collusion. Even the harshest critics of Giacalone and the Fund were unable to offer tangible proof or reasonable inferences to suggest that such collusion occurred.

Giacalone's volunteer role with the NSC is only to develop policy positions; policy decisions are made at a much higher level. As such, any allegation of undue influence over

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<sup>23</sup> Based on the research we conducted (going back to 2008), it does not appear that any member of the Fund's Board has been a member of the NEFMC.

<sup>24</sup> Morris' June 13, 2012 letter also stated, "[a]s you are aware, we allocate ACE only to sectors and state-operated permit banks. Accordingly, we have not allocated ACE to the Northeast Seafood Coalition or the Northeast Sector Service Network."

NEFMC policy or insider information being improperly delivered to the Fund appears to be categorically untrue. It is, in fact, a function of the kind of misunderstanding of the current regulatory system that plagues the community and regulators.

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.

**4. Allegation: Giacalone gets access to quota before any other fishermen.**

Attorney Muniz alleged that Giacalone received advance notice of available quota from Sector V before Sector II and III members received notice. If Muniz was inferring potential wrongdoing by Giacalone in this regard, we have confirmed that this is not so. As the manager of NEF Sector IV, Giacalone, along with all other sector managers, does receive notice of available quota and is responsible for distributing such information to their sector members. This scenario was business as usual.

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.

**5. Allegation: The Fund made improper payments to other permit banks.**

We have been confronted with several interviewees who pointed to the allocation of approximately \$2 million from the Fund to the Boston Sustainable Fishing Community Preservation Fund and the South Shore Fishing Community Preservation Fund. Essentially, some allege that the Fund in some way violated its bylaws by making this donation, while Muniz claims the transfer was not required by the Fund's operating documents. Alternatively, it has been referred to as "shut-up money."

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Regardless of its specific nature, this accusation has no merit. In a letter dated September 14, 2009 from the EOE, Attorney Alicia McDevitt specifically authorized the transfer of funds, noting that such allocation was within the scope of the Fund's stated purpose. This letter is attached here as **Exhibit 8**.

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.

**6. Allegation: Giacalone overpaid for permits in exchange for a kickback, and took advantage of another permit seller.**

Attorney Muniz claimed the fund paid an inflated price for permits bought from a friend of the Fund and Giacalone. Muniz claimed the permits (which sold for over \$1 million) were only worth \$400,000 and it was suspected that Giacalone received a kickback on the excess. Based on our interview with the individual who sold the permit at the center of this allegation and another potential buyer, we conclude that this charge has no merit.

In this particular instance, a Gloucester-based fisherman decided to sell his permits, believing that the industry was overregulated to the point that no one would be able to continue to make a living by fishing. He approached both the Fund and the Cape Cod Fisheries Trust to solicit offers for his permits. The seller said the Cape Cod Fisheries Trust offered him \$1.3 million for his permits, and the Fund offered him \$1.146 million. After careful consideration, the seller opted to sell his permits to the Fund, receiving \$100,000 less than he might have – a choice he informed us was based solely on his desire to see his permits remain in the Gloucester community.

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We spoke with Paul Parker, Director of the Cape Cod Fisheries Trust, who indicated that the seller had asked the Cape Cod Fisheries Trust for \$1.5 million for his permits, a number which Parker explained was high (his records indicate that the seller's permits were valued at approximately \$1.1 million at that time), but that the Cape Cod Fisheries Trust may have been willing to pay the \$1.5 million for the seller's permits if the seller had been willing to accept payment over the course of several years.

On November 8, 2012, we met with Nelson Long. According to industry sources, as well as Muniz, Nelson Long is one of the most recognized and respected experts in the New England area in the field of appraising vessels and fishing permits. When reviewing the specifics of the permit at issue, Nelson Long stated as follows:

“I’m not giving you an official valuation because I would have to research the values that each species were going for at the time of the sale, however, to the best of my memory the price the [Fund] paid for the permit is not out of whack at all.”

Given this statement, we conclude that there is no credible evidence upon which a reasonable person could conclude that these very serious allegations are accurate.

Attorney Muniz also claimed that local store owner Don King had alleged that a fisherman had complained to him he felt “taken advantage of” when he sold his permit to Fund. However when we spoke with this fisherman, he told us that he never felt that way, never indicated to anyone that he felt that way and, even more, did not even know who Don King was. This fisherman also told us that he was very happy with the money he received for his permit, which enabled him to stay in his home.

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.

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7. **Allegation: Giacalone instructed sector members not to cooperate with this investigation.**

Several individuals, including Attorney Muniz and King, have claimed that a threatening email was circulated by Dave Leveille to NEF Sector II members instructing them not to discuss this investigation without first consulting Giacalone. A copy of Muniz’s accusation is attached here as **Exhibit 9**, in which he calls Giacalone “the target” (while still maintaining that he, Muniz, is an “unpaid advocate” for local fisherman). We found it unusual that an attorney would make such a quick accusation without attempting to independently verify its truth, especially when the actual email could easily be located.

Though King refused to provide a copy of this email due to confidentiality provisions of the NEF Sector II bylaws (a claim we were not able to verify as true), we were able to obtain a copy of the email in question, attached here as **Exhibit 10**. Having read the email, we can conclusively state that this allegation is without merit. Quite to the contrary, Giacalone’s email specifically states that he encouraged members to join in working with Harshbarger to complete his thorough review.

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.<sup>25</sup>

8. **Allegation: Giacalone uses the Fund’s money to finance personal purchases.**

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<sup>25</sup> Attorney Muniz and King also alleged repeatedly that fishermen would not speak to us out of fear of retaliation by Giacalone. To the contrary, we found no one, except Kavanagh, who declined to speak to us, or sought confidentiality in any way.

Attorney Muniz indicated that there is a perception that Giacalone uses the Fund's mitigation money as a personal revolving loan fund, and specifically that Giacalone used these funds to purchase the NEF Sector VIII vessels and permits that Kavanagh had also sought, and that Giacalone misappropriated funds in 2010 to himself, paying back the Fund at a later time.

After speaking with the Fund's accountants at Horvitz & Frisch, we can conclude these allegations are without merit. Horvitz & Frisch, who have been preparing the Fund's financial statements since its inception in 2007, told us that they have never seen any unusual activity during the year of Giacalone's private purchase of the vessels and permits, or otherwise. We also conducted a review of the Fund's operations account for the year 2011, and noted no significant amount of money going out to Giacalone (the only money disbursed to Giacalone was for reimbursement of travel expenses) and no money coming into the account from Giacalone. Additionally we reviewed the finance documents pertaining to Giacalone's purchase of the vessels and permits referenced above and none of the financing came from the Fund.

Finally, we note that the second accusation is likewise false. After reviewing the Fund's financial records, we found that in 2010, a bookkeeper mistakenly deposited \$84,461.10 with NEF Sector IV, which should have gone directly to the Fund. The error was properly recorded and reported to the Attorney General as part of the Fund's annual report.<sup>26</sup>

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.

**9. Allegation: Giacalone is under investigation by the U.S. Coast Guard and "Homeland Security."**

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<sup>26</sup> An additional complaint from some fishermen was that they could not get copies of the Fund's by-laws, yet these by-laws, like the Fund's annual Form 990, are readily available on the Attorney General's website. In addition, they are and have been readily available on request at the Fund's office.

During our interview with him, Attorney Muniz stated that he was contacted by officers from Homeland Security and the U.S. Coast Guard regarding Giacalone and another individual relating to immigration violations, drug trafficking, money laundering and fisheries violations. In addition, Attorney Muniz stated that during his conversation with Homeland Security and the Coast Guard, he was informed that the two agencies wanted to know about Giacalone’s “cash flow.”

During our follow-up investigation, a high-ranking member of the Coast Guard informed us that Giacalone is not now, nor has he been, the subject of any investigation being conducted by them. We were also informed that rather than the Coast Guard contacting Muniz for information, Attorney Muniz proactively contacted the Coast Guard to suggest they investigate Giacalone. Further, our source informed us that the Coast Guard (a) never informed Muniz that Giacalone may be a suspect in immigration, drug trafficking, money laundering, or fishery violations, since the Coast Guard has absolutely no information to that effect concerning Giacalone, and (b) neither the Coast Guard nor Homeland Security has been “interested” in Giacalone’s cash flow, and certainly never told Attorney Muniz that they were.

In conclusion, we find no credible evidence upon which a reasonable person could conclude these allegations about Giacalone to be accurate.

#### **10. Miscellaneous Allegations.**

The above categories of specific accusations capture the accusations we heard repeatedly, from multiple sources. We also investigated a number of other accusations, ranging from accusations by Muniz that Giacalone had funded the lawsuit brought against Ciulla for “skimming” by Gloucester fishermen and single-handedly overruled NEF Sector votes, to

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accusations by local fisherman Danny Bubb of Giacalone’s supposed strong-arm tactics.<sup>27</sup> Our investigation revealed that all of these allegations ran contrary to actual facts.

In conclusion, no credible evidence exists upon which a reasonable person could conclude the allegations to be accurate.

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<sup>27</sup> By way of example, attorney Muniz pointed to an email sent by Giacalone to the Fund’s transactional attorney Steve Ouellette, included here as **Exhibit 11**. Muniz claims this email indicates Giacalone’s conflict of interest, insofar as Giacalone states that he sees a need to “cover everybody’s asses.” We have investigated the underlying issues discussed in this email, and concluded that this accusation is baseless. Rather, the underlying context of the email refers to Giacalone’s attempts to assist Bubb, who, according to Giacalone in the email, “generally either hears what he wants to and blocks out what he doesn’t OR he just plain uses the conversation to support whatever he want (sic) to say to help his cause later.” Given Giacalone’s concerns regarding Bubb’s motivations and future actions, it is entirely understandable that he desires to “keep an open line of communication and good documentation.”

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## **VI. GOVERNANCE AND OPERATIONS: FINDINGS AND RECOMMENDATIONS**

As we have repeatedly noted in this report, we have concluded that the Board and its members have not violated their fiduciary duties in their performance as Board members to date. We found that the Board consistently sought to comply with the standards and guidelines for non-profits in their policies, procedures, management and operations, and did so in the face of major industry and regulatory challenges, local competitors, and critics. We have determined that the Fund's recent problems are ones of perception, levied against the Fund primarily as the result of competitive jealousies by a community that is skeptical of the Fund's success. This skepticism is inflamed by limited knowledge about the fishery regulatory structure and origins and the Fund's operations and role.

Therefore, the Fund has both the obligation and opportunity to remedy this by expanding its Board and, through active community outreach, providing more transparency and education to the community. The changes we recommend are primarily designed to remedy this issue of perception and knowledge, as the best form of protection for the Fund and Board going forward.

### **A. The Board of Directors Should be Expanded**

As reflected by the legal work of the Fund's non-profit counsel during the development of the Fund's governance documents in 2007 and as referenced in meeting minutes and votes of the establishing committee that nominated a transitional Board on April 9, 2007, it was always intended that the Board would expand beyond its current membership. When the Fund's non-

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profit counsel resigned in 2008 due to a conflict of interest,<sup>28</sup> the Board lacked counsel and, busy with its daily (and oftentimes overwhelming) operations, its members felt they could not proceed to expand the Board. The Board recognized how important it was for the Fund to add additional, well-qualified individuals to its membership, as documented in Board meeting minutes over the years, but were concerned with their capacity to identify individuals who could add value. With the best interests of the Fund in mind, rightly or wrongly in their judgment, the Board decided to wait until it retained new legal counsel to ensure new Board members who possess the necessary skills and expertise to enhance the operations and governance of the Fund. At this time, as originally planned, the Board should expand its membership, with all deliberate speed.

An expanded Board, with independent members, will be the most effective way to prevent even the perception of conflicted interests. The Board should forthwith begin the process of recruiting at least two new members. We have already had discussions with the Board as to the qualifications for Board membership but, for clarity, we re-emphasize here that ideal candidates will have experience and expertise in non-profit governance; hold legal, academic, or financial leadership positions; and have no financial stake in the Fund's business, or that of the fishermen it serves, so that they can be deemed completely "independent." We believe the Board should retain legal counsel and/ or a non-profit Board consultant, to establish and implement a process for evaluating and selecting new Board members. We believe the expansion of the Board to at least six members should occur within 60 days, and, ideally, to eight members within six months.

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<sup>28</sup> Hurwit felt compelled to resign because, inter alia, he was special counsel at Burns and Levinson, Muniz's firm, and Muniz advised him of the potential or actual adversity of his client, apparently Cuilla, to the Fund.

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In general, while not required, it is “best practice” to separate the role of Board members and the executive staff of an organization. For this reason, we recommend that the Fund separate the role of the executive director from its Board membership. Since the Fund’s current executive director is also a member of the Board, we recommend once the Board’s membership has been expanded, no employee of the Fund, other than a lawyer or an accountant, should be a Board member. This policy change need not take effect immediately, since it will likely take some time for the Board to be effectively expanded with the right members, to ensure a smooth governance transition, but it should occur promptly once there are suitable replacements.

Furthermore, even though the fishery has been transformed from individual operators receiving DAS to a sector-based structure in which the Fund seeks advice from the boards of the sectors, we also recommend building upon the committee structure contemplated by the Fund’s founding documents. To that end, we recommend forming some kind of community “advisory” committee that will provide the Fund with additional advice, guidance, and input from the community, such as shore-side businesses. The members of this committee should not be members of the Board. They should convene and meet at least twice annually to discuss issues that affect the Fund and other members of the local community.

**B. Publication of Permit Allocation Process**

The Fund struggles to overcome the assumption that it distributes quota directly to individual fishermen and that it does so selectively. To overcome this misconception and to explain how the sector system board works within the current regulatory scheme, the Fund should publish all written procedures and rules for the allocation of permits publicly so the community at large will have a better idea of how the Fund operates.

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**C. Review Process for Qualifying Fishermen**

To ensure a clear, fair, and open process for selecting “qualifying” fishermen, we recommend that a reevaluation be undertaken before each fishing year to determine if additional sector members should be reclassified as qualifying. We also recommend that an objective mechanism be used to evaluate individuals and that this system be put in place as soon as possible. This process will replace the original one established by a committee of fishermen who were tasked with establishing qualifying criteria when the Fund was first created.<sup>29</sup>

**D. Updated Conflict of Interest Policy**

The Fund has had a conflict of interest policy in place since it was founded. Our review of the Fund’s records confirms that the Fund has consistently formalized its official business in writing, including key disclosures of potential conflicts to the Board. Formally, consistently and meticulously recording is the best way to ensure that any future accusations of conflict can be vetted and responded to quickly.

In February 2012, the Fund adopted a new, more comprehensive conflict of interest policy which applies to its Board. This policy is in line with non-profit governance best practices. The Board should meticulously follow the procedures laid out in Article IV of its conflict of interest policy, which details how the Board should record all disclosures of potential conflict. Provided the Board continues to abide by the terms and conditions of this policy, we

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<sup>29</sup> For example, one fisherman who resided out of state when the Fishing Advisory Council first established the qualifying criteria, has since become a resident of Gloucester since 2009, has paid Gloucester taxes for the past three years, drops his groundfish on Gloucester docks since 2006, uses local crew members, purchases all supplies in Gloucester, yet has not been able to qualify in recent years.

believe all other accusations of Giacalone’s “too many hats” are and will continue to be without merit.

The Board should also create a governance committee, composed of a majority of independent Board members, to enforce and monitor the conflict of interest policy. This committee should also assume the formal role of an audit committee. This committee can work with and oversee the independent auditor and review and update the financial oversight policies (for example, ensuring two signatures on every check over \$1,000, a gap we noted in our review).

**E. Ongoing Legal Counsel**

The best and most effective protection for any Fund or non-profit of this size, visibility, and importance is to ensure effective, skilled legal counsel and expertise to ensure best and most appropriate governance and legal processes and practices. While an expense if not obtained pro bono, it is one that this entire episode and review alone demonstrates is vital. Ongoing legal counsel can provide critical, independent advice and counsel to ensure implementation in practice of governance policies, and avoid future unsubstantiated attacks. Such legal counsel, which, of course, is a role we neither can, nor seek to, play, could also address matters that have arisen outside the scope of this independent review, given the importance of the Fund to Gloucester.

**F. Increased Transparency as a Key Protection**

Most, if not all, of the criticisms voiced and accusations levied against the Fund stem from a misinformed community or deliberately uninformed critics and skeptics. While the Fund is not responsible for others’ jealousies or tendencies toward conspiracy theory, it can provide

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information to the public about its operations on a regular basis to keep the community informed. Therefore, we recommend that the Fund invest in transparency, publish information about its actions, and welcome and answer any legitimate questions about its operations.

As part of its increased communications to enhance transparency, we recommend that the Fund welcome questions and concerns (a sort of “suggestion box”) from members of the community, which it agrees to respond to publicly on a website or otherwise. Furthermore, we recommend an annual public community meeting (or perhaps one that is held as part of a City Council meeting), where all members of the community are invited to voice their concerns, ask questions, and engage in an open and honest dialogue with the Fund’s Board.

In today’s social media world, the use of a website that provides organizational and operational information about the Fund to the public, plus e-newsletters and other instant communications, can make all the difference. By involving the public, city officials, civic leaders, plus other similar associations in community education efforts, the Fund will be able to ensure its voice and record are heard and also be held accountable in a responsible manner.

## **VII. CONCLUSION**

We found that the Fund plays a vital role in the Gloucester community. Its track record is impressive in realizing its objectives. For the reasons set forth above, we found that the Board has fulfilled its fiduciary duties and responsibilities but that its future may well be determined by how effectively and credibly it seizes the opportunity this crisis offers. The Fund must build on the lessons learned, expand its membership and increase its transparency, accountability and both its community and educational networks. If the Board is able to do all of this, it will ensure that

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its mission and vision can continue to be realized in this time of great economic challenge to the industry and community that it serves.

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# **EXHIBIT 1**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**

Dec 2, 2011

Ms. Pat Kurkul, Regional Administrator  
National Marine Fisheries Service

Dear Ms. Kurkul:

The unencumbered movement of annual catch entitlement (ACE) between groundfish sectors is critical to the ultimate success of catch share management.

I have experienced unreasonable roadblocks to transactions that I have made with individuals enrolled in Northeast Fishery Sectors (NFS) 7 and 8 (both under the same management).

Last year, I entered into a contract with a member of NFS 7 to lease ACE. The sector manager refused to sign off on the lease, and as you know, only sector managers are authorized to submit a request to NMFS for transfer of ACE. In this case, the NFS 7 manager did not offer a first refusal to NFS 7 members. Instead, the manager transferred the ACE in my agreement to NFS 9.

The most egregious event involved a purchase and sale agreement that I made with an individual in NFS 8 to acquire a multispecies permit. The NFS 8 manager, in accordance with the sector's operations plan notified members of their right of first refusal as the member was under contract to sell his permit to someone who is not a member of the NFS 8. The NFS 8 members declined to act on that right of first refusal, and subsequently, the membership of NFS 8 voted to accept my membership in that sector via the sale of the permit.

At this point both the seller and I believed we had met all of the contractual obligations of members of NFS 8. However, shortly thereafter the manager of NFS 8 provided a right of first refusal on my deal to all members of the NFS Network, and NFS 4 acted on the right of first refusal and bought the permit out from under me.

I am writing to ask you to prohibit the Northeast Fishery Sector Network from requiring that members submit a right of first refusal for any deal (lease or sale) by members of the Network. A right of first refusal within one sector should be sufficient to protect the individual sectors, and would allow a more fluid movement of ACE between sectors.

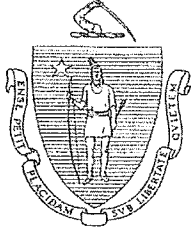
This letter might look familiar to you because I believe I brought this to your attention in July but a recent event prompted me to follow up. A friend of mine from Sector 7 advertised his ACE to the Sustainable Harvest Sector (my sector). An offer was submitted by our manager to his manager, my friend never received that offer but instead got a personal phone call from Carlos Raphael, Sector 9, who leased his ACE. Busting the Raphael/Canastra/Vito cartel would be a wonderful legacy for you and Christmas present for the N.E. fishing industry.

I admire your tenacity in staying in New England through this tumultuous period.

Sincerely,  
Pat Kavanagh  
K & K Fishing

# **EXHIBIT 2**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**



COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

February 7, 2012

John Bell  
257 East Main Street  
Gloucester, MA 01930

Vito Giacalone  
8 Edgewood Road  
Gloucester, MA 01930

Dear Vito and John,

We are writing this letter as a follow up to the meeting that you requested with us.

During the meeting, we had discussed the Gloucester Daily Times editorial which alleges a fisheries "cartel" amongst the management of the Northeast Seafood Coalition (NSC), Gloucester Preservation Fund (GPF), Base Auction, including Vito's sons and the Canastra brothers, and fishermen, most notably Carlos Rafael.

You were clear to explain that you had taken a number of steps as leaders of the NSC and GPF to ensure that, through a process of board protocols and criteria, there is no inappropriate behavior or misconduct in the operation of these organizations.

We also shared with you that we had received phone calls from some in the industry complaining that there were conflicts of interests and unfair business advantages as a result of some, most notably Vito Giacalone, "wearing too many hats."

As we stated at the meeting and as we want to reiterate here, in this letter, ethics laws, regulations and fiduciary responsibilities that pertain to those who serve as directors of non-profit organizations can be particularly strict, detailed, varied and numerous.

Because of the nature and the complexity of these regulations, neither of us has the ability to ascertain whether the protocols that you have put into place nullify any potential, actual or perceived conflict of interest, unfair trade practice and/or any other type of violation.

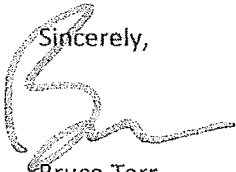
Therefore, we strongly recommend that the Northeast Seafood Coalition and/or Gloucester Preservation Fund seek advice from legal counsel concerning their respective obligations under the law. As discussed at the meeting, we would have no standing to request an advisory opinion from the

Attorney General on NSC's or GPF's behalf and thus, any request for advice from the Attorney General would need to be initiated by one or both of the boards. Please consult your legal counsel for further direction about communicating with the Attorney General's Office.

Certainly, there are instances where we have ethical questions as elected officials and we will seek the advice of legal counsel and/or the State Ethics Commission in order to avoid the appearance or actual conflict of interest. Seeking the advice of the Charities Division from the Attorney General's office may be appropriate under the circumstances, but again, we strongly recommend that you seek advice from legal counsel regarding this matter.

Thank you for your time and attention to this letter. Please note that neither the contents of this letter, nor the substance of our meeting, should be construed as legal advice or the formation of an attorney-client relationship. Please do not hesitate to contact us should you have any questions.

Sincerely,



Bruce Tarr  
State Senator

Sincerely,



Ann-Margaret Ferrante  
State Representative

# **EXHIBIT 3**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**

### Scott Harshbarger Law Firm Biography

Scott Harshbarger is a Senior Counsel in the Boston office. His practice focuses on strategic counsel and litigation, corporate investigations and defense, corporate and not-for-profit governance and government regulation. Scott's distinguished career has included major public office, not-for-profit executive management, numerous board directorships and private legal counsel.

Now senior counsel at Proskauer Rose in Boston, Mr. Harshbarger represents public and private sector officials under investigation, as well as a diverse array of other clients in litigation, corporate and not-for-profit governance, and strategic counsel. He is an acknowledged expert in fiduciary responsibilities, governmental inquiries and regulation, fraud investigations, compliance, ethics issues and crisis management, and has written several articles on these topics, as well as appearing regularly as a keynote speaker. He also chairs his firm's national Pro Bono Initiative. In the fall of 2009, he famously conducted an independent investigation into the governance and performance of the public interest advocacy group ACORN, and that December issued a comprehensive report of his findings (available at <http://www.proskauer.com/files/uploads/report2.pdf>). Most recently, at the request of the Massachusetts Supreme Judicial Court, he chaired the Task Force on Hiring and Promotion of the Judicial Branch, created to respond to the highly-publicized Boston Globe series which focused on alleged patronage and corruption in the state's Probation Department. The Task Force had issued five major reports recommending major reforms. (<http://www.mass.gov/courts/sjc/tf-hiring-judicial-branch.html> )

Scott's lengthy record in public service as a public defender, civil rights attorney, district attorney and Massachusetts Attorney General provides him with the experience to offer strategic counsel and legal advice to CEOs, general counsel, trustees, public officials and boards on such matters as fiduciary responsibilities, governmental inquiries and regulation, fraud investigations, compliance, ethics issues and crisis management.

During his two terms as Massachusetts Attorney General (1991–1999), Scott was the first Attorney General in the nation to engage the health care community in developing hospital and HMO benefit guidelines. In leading Massachusetts' efforts against Big Tobacco, Scott was among the first AGs nationally to recover the costs of health care associated with tobacco use, resulting in payments by the tobacco companies to the Commonwealth totaling \$300 million per year over the next 25 years. In private practice, Scott has advised many different health care organizations, interest groups and full hospital systems on their governance practices, internal controls and regulatory matters. His practice encompasses major national entities, as well as smaller not-for-profit groups with local service bases.

During his tenure as AG, Scott was elected President of the National Association of Attorneys General (NAAG). As the leading law enforcement officer of Massachusetts, he led major initiatives against white collar crime, public corruption, insurance and Medicaid fraud, environmental abuses and high-tech crime. Scott built the first Family and Community Crimes



Bureau, a department focused on domestic violence, elder and child abuse prosecution and prevention, and his Conflict Resolution/Violence Prevention Project (SCORE) earned a Ford

Foundation Excellence in Government Award. Scott received national praise for his Safe Neighborhoods Initiative to reduce urban crime and violence, and sponsored unprecedented Brownfields legislation to help stimulate economic growth in formerly depressed neighborhoods. In conjunction with the Safe Neighborhoods Initiative, Scott was the first AG to use consumer protection and safety regulations to combat handgun availability.

Scott served as President and CEO of Common Cause (1999-2002) in Washington, D.C., the national not-for-profit citizens' lobby and government watchdog group founded by John Gardner. His term marked a major reform and renewal for the organization and thrust Common Cause into the public interest mainstream. Common Cause led the coalition of national business and public interest advocacy groups, including grassroots organizations. Scott helped organize the push to pass the "McCain-Feingold" campaign finance reform bill in 2002. He also launched Common Cause's corporate governance project and dramatically expanded the organization's national agenda to include election reform and executive agency monitoring.

In 1998, the Democratic Party nominated Scott for Governor of Massachusetts and he received 48% of the vote, losing by a narrow margin to an incumbent governor. In 2003, Scott was appointed by Governor Mitt Romney to head the Governor's Commission on Corrections Reform, following the murder of a defrocked priest. The Reform's Report received national attention, as did the Report on Public Pension Reform issued by the Blue Ribbon Commission he chaired in 2004. During his tenure as District Attorney of Middlesex County, the largest county in Massachusetts (with a population greater than 13 individual states), Scott received national attention for his initiatives in public protection, juvenile justice, child abuse, law enforcement training, partnerships with schools on drug and alcohol abuse, and violence prevention, receiving the Livingston Hall Award from the American Bar Association. Scott's public service continues with his chairmanship of Proskauer's national Pro Bono Initiative and various other positions and memberships in the legal community. In 2011, Scott was honored by the Citizens for Juvenile Justice with its Leadership Award.

Scott taught professional responsibility and legal ethics at Boston University School of Law for 20 years and was a Visiting Professor (government lawyer and public policy) at Harvard Law School for three years. He was a Hadley Distinguished Professor at Northeastern Law School and College of Criminal Justice. Scott also has authored numerous articles on topics in the field of corporate and not-for-profit governance and regulatory strategies. He is Vice-Chair of the board of the Ethics Resource Center (ERC) in Washington D.C., and Chair of the board of Community Resources for Justice (CRJ) in Boston. He regularly speaks to state and national business groups, industry associations and legal, business and college audiences. Scott appears often in the national media and routinely appears on New England television as a commentator and news analyst.

Scott's experience as a strategic, regulatory and crisis counselor/advisor, as well as his corporate and not-for-profit governance, litigation and independent counsel practice, combined with his public, not-for-profit and private advocacy networks and contacts, add value to Proskauer's diverse and first-class client base in many fields, industries and locations.



# **EXHIBIT 4**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**



**Robert J. Long, CFE, CHS**

**Licensed Private Investigator in the  
States of Massachusetts and Florida**

Robert J. Long is certified in both fraud investigation (CFE) and homeland security (CHS). He holds multiple degrees in the criminal justice field, including a Master of Arts in Criminal Justice from Anna Maria College; a Bachelor of Science in Law Enforcement from Northeastern University; and an Associates Degree in Criminology from the City College of San Francisco.

Mr. Long has been recognized in the Massachusetts court system as an expert in the science of investigations. In addition, he has been appointed as a specially designated investigator for both the New Hampshire and Massachusetts Federal Bankruptcy Courts for the purpose of locating and seizing fraudulently conveyed assets, both domestically and abroad.

Mr. Long is the President of Bob Long Investigations Group LLC, a private investigative firm that provides high net-worth individuals and clients in the legal, corporate, financial and business communities, with high level due diligence, investigative, and security consulting services.

Previously, he served as the senior managing director for two global investigative and risk management firms, Vance International and Garda World. He was responsible for overseeing client relations and operational oversight for both company's full line of investigative and security consulting services within the New England and Florida areas.

Prior to joining Vance International, Mr. Long was President and Managing Partner of LCF Associates, a white-collar investigations and security consulting firm serving the legal, corporate and financial communities. The company was sold to SPX Corporation, a Fortune 500 company, and Mr. Long became part of Vance in 2002.

During his private sector work, Mr. Long managed the investigative efforts in a large number of high profile, complex and protracted litigation matters including the litigation for the prevailing plaintiffs in the DeMoulas vs. DeMoulas litigation. The case resulted in the longest civil trial in Massachusetts history along with an \$800 million judgment. He also managed the investigative efforts for the prevailing doctor defendants in the Lewis vs. Mudge et al litigation brought by the widow of former Boston Celtics' captain Reggie Lewis, as well as for a number of high stakes product liability cases.

Prior to his private sector career, Mr. Long had a highly-decorated 22 year career with the Massachusetts State Police. When he stepped down, he held the senior officer rank of Detective Lieutenant Inspector. In that position, Mr. Long received dozens of commendations, including those from a U.S. President, FBI director, a number of governors, and area business groups.

Highlights of his career with the Massachusetts State Police include:

- In 1974, Mr. Long was the recipient of the prestigious State Police “Trooper of the Year Award” for his high success rate in a number of criminal investigations involving members of the Hells Angels motorcycle gang and other major narcotics traffickers.
- From 1977-1979, Mr. Long supervised a joint State Police-FBI undercover investigation into truck-hijacking in the northeast corridor of the United States. The effort resulted in the arrest of 46 individuals involved in organized crime, truck-hijacking and kidnapping and they achieved a remarkable 100% conviction rate. The investigation, code named “Operation Lobster,” has been referred to in U.S. Congressional testimony as a “national model.”
- From 1980-1981, Mr. Long developed the probable cause, and carried out the first court ordered electronic surveillance, on serial killers and mobsters James J. “Whitey” Bulger and Stephen “The Rifleman” Flemmi. His efforts later served as the foundation for subsequent investigations and indictments.
- From 1983-1990, Mr. Long served as the Chief Investigator for the Office of the Middlesex County District Attorney. During his tenure there he spearheaded a number of high profile criminal investigations involving multiple homicides, organized and white-collar crime, as well as police and political corruption. These successful investigations included the infamous “Depositors Trust Robbery and Exam Scam” that led to the arrest and incarceration of several police chiefs and other senior ranking law enforcement officials. His last investigation before retiring from the State Police led to the arrest and conviction of a fellow State Police officer, known as “The Trooper Rapist.”

Mr. Long has been a public speaker and guest lecturer for a variety of business and civic organizations, and he remains an active member of numerous intelligence-gathering networks including the World Association of Detectives.

Mr. Long has been quoted in various media outlets during his career including *The New York Times*, *USA Today*, *Boston Globe*, *Boston Herald*, *Banker and Tradesman*, *Newsweek's The Daily Beast*, and the *Boston Business Journal* on investigations and security related matters. He has also appeared on national television shows including, *Frontline*, *Masterminds*, and the *Biography Channel* relating to his investigations, as well as most of New England's local and cable news shows.

Upon taking elected office, Attorney General Tom Reilly selected Mr. Long for his Transition Committee on Public Safety. In June 2009, Mr. Long was asked by Boston Police Commissioner Edward F. Davis to serve as a member of the Board of Directors for the Boston Police Foundation, a non-profit organization seeking to assist the Boston Police with private funding for implementing innovative and effective strategies in reducing violent crime in the City of Boston. In 2012, Mr. Long was elected president of the Boston Police Foundation.

Mr. Long is a member of the Ancient and Honorable Artillery Company of Massachusetts, the third oldest military organization in the world and the oldest in the western hemisphere. Members have included four presidents of the United States and nine Medal of Honor winners. Mr. Long is also a former member of the Board of Directors of the Massachusetts Cystic Fibrosis Foundation, and one of the founders of the extremely successful, Cystic Fibrosis Walkathon. In 2004, Mr. Long was named recipient of the Frank Maletesta Award, the highest award given out at its annual dinner.

# **EXHIBIT 5**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**

2011 REPORT TO CONGRESS

ON APPORTIONMENT OF MEMBERSHIP

ON THE

REGIONAL FISHERY MANAGEMENT COUNCILS

PURSUANT TO SECTION 302(b)(2)(B) OF THE  
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

PREPARED BY  
U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL MARINE FISHERIES SERVICE

2012





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## **A. BACKGROUND**

Section 302(b)(2)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to report annually to Congress on the achievement, to the extent practicable, of a “fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of [each] Regional Fishery Management Council [RFMC].”

There are 114 voting members on the eight Councils. The voting members of each Council include the principal State official (or the official’s designee) with marine fishery management responsibility and expertise in each constituent State, who is appointed by the Governor; the regional administrator of the National Marine Fisheries Service (NMFS) for the geographic area concerned (or the regional administrator’s designee); and members required to be appointed by the Secretary in accordance with Sections 302(b)(2) and (5) of the Magnuson-Stevens Act. In addition, non-voting members represent the United States Coast Guard, U.S. Fish and Wildlife Service, U.S. Department of State, and the Marine Fisheries Commissions.

This report is the 20th in a series related to the status of voting members appointed to the RFMCs by the Secretary.<sup>1/</sup> In addition to assessing the annual apportionment of RFMC membership, this report discusses significant fishery management issues and related actions for 2012.

## **B. FAIR AND BALANCED RFMC MEMBERSHIP**

The consideration of balance and fairness between commercial and recreational fishing sectors is an important element in the Secretary’s appointments. Equally important is the stewardship responsibilities of RFMCs and the appointment of individuals who can work collectively with other members to achieve the conservation standards under the Magnuson-Stevens Act. Successful nominees, therefore, are those who are qualified in accordance with the provisions at 50 CFR 600.215 and who will best contribute to the stewardship of marine fishery resources.<sup>2/</sup>

Generally, the most qualified nominees are those whose records indicate they:

1. Have achieved a level of leadership in promoting stewardship of the marine fishery resources under the jurisdiction of the RFMCs to which they would be appointed; and
2. Participate in, or represent commercial fishermen participating in, one or more commercial fisheries under the RFMCs’ jurisdictions; or

<sup>1/</sup>The initial report assessed the RFMC membership in 1991 and 1992, and was submitted to Congress on September 1, 1992.

<sup>2/</sup>The qualifications for appointment are derived from Section 302(b)(2)(A) of the Magnuson-Stevens Act and are also included in regulations contained at 50 CFR 600.215.

3. Participate in, or represent recreational fishermen participating in, one or more recreational fisheries under the RFMCs' jurisdictions; or
4. Are otherwise experienced and/or knowledgeable in leadership of organizations whose members participate in a fishery or in management and conservation of natural resources, or are representatives of consumers, teachers, journalists, writers, consultants, lawyers, or marine fishery researchers.

### Standard for Apportionment

Before evaluating each RFMC with respect to fairness and balance, the Secretary must first have a standard for such judgments. Unfortunately, the amendments to the Magnuson-Stevens Act and legislative history do not provide specific guidance for judging whether the Secretary's appointments meet the statutory standard. The National Oceanic and Atmospheric Administration's (NOAA) NMFS, however, has addressed the requirement by reasoning that, in the ideal case, voting members should be individuals with prescribed qualifications related to commercial or to recreational fishing within the RFMC's area of jurisdiction, or individuals with qualifications in one of the "other" (See preceding paragraph 4) related fishing interest categories, who are personally committed to meeting the RFMC's trusteeship responsibilities for living marine resources. This continues to be the yardstick for judging whether an individual member of a RFMC will strive towards the conservation and management of fisheries resources.

Over the past decade, fishery management issues have become increasingly complex. Therefore, RFMC members who possess the necessary background and abilities to address complex issues are critical to the ultimate success of the RFMCs. A significant consideration in appointing members is their specific knowledge of the conservation and management issues and fisheries in which each RFMC is expected to be involved. Also important is the level of nominees' participation in the fishery management process, and the support for the nominees from the fishing sector communities and other individuals, largely through endorsement letters to the Secretary.

For the purposes of this Report, three general fishing interest sectors are discussed: the commercial fishing sector, the recreational fishing sector, and an "other" sector. The "other" sector is made up of appointed members with knowledge of and experience in biological, economic, or social sciences; environmental or ecological matters; consumer affairs; and associated fields.

Nominees may be categorized as participating in more than one of the three general fishing interest sectors. In these cases, NMFS' determination about a nominee's primary interest sector is the result of NMFS' interpretation of: (1) supporting background information provided by the nominating governor; (2) background information provided by the nominee, reflecting the nominee's demonstrated principal participation; and (3) other supplemental information provided.

### **C. APPORTIONMENT OF RFMC MEMBERSHIP**

RFMC members are appointed from among qualified individuals nominated by the governors of the RFMCs' constituent states and, in the case of tribal representation on the Pacific Fishery Management Council (PFMC), from among Indian representatives nominated by the appropriate Tribal Governments. Appointed members serve 3-year terms and can be reappointed to serve three consecutive terms. A major factor in meeting the requirement to balance membership is the cooperation of the governors of the constituent states in nominating qualified individuals who are knowledgeable regarding conservation and management of the commercial or recreational harvest of fishery resources. The process works best when governors provide the Secretary with a variety of highly qualified nominees who meet the requirements of the Magnuson-Stevens Act.

For governor-nominated seats, the Secretary will select an appointee for an obligatory seat (state-specific) from the list of qualified nominees submitted by the governor of that state. In filling expiring at-large seats (regional), the Secretary will select an appointee from the list of all qualified candidates submitted by constituent state governors.

In 2011, the Secretary announced the appointment or reappointment of 22 voting obligatory and at-large RFMC members. Table 1 shows the current totals in the distribution of Secretary-appointed RFMC voting members by interest sector for 2009, 2010, and 2011 (page 6). In June 2011, 9 members were appointed from the commercial fishing sector, 5 members were appointed from the recreational fishing sector, and 8 members were appointed from the "other" sector.

Because of the limited number of RFMC seats, not all sectors and localities can be represented on each RFMC. In addition, the Secretary's appointments are constrained by the nominations submitted by the governors. Within these parameters, the Secretary aims to select appointees who possess the breadth of knowledge and experience to collectively provide a balance on each RFMC, and who pursue their RFMC roles as stewards and trustees of living resources. To the extent practicable, the appointments also seek to rotate membership, thereby distributing participation among all sectors of the fisheries-specific actions. The distribution of representation on each RFMC are also adjusted, where possible, to achieve a balance of interest sectors or to provide needed experience to address changing priorities.

Where sector or gear components are not represented on a RFMC, membership on the various RFMC advisory panels and committees is also crucial to providing those sectors with representation during RFMC deliberations, as well as with a voice on specific issues of interest.

#### Women and Minority Representation

Eight women currently serve on the RFMCs. Governors are encouraged to nominate qualified female and minority candidates.

**D. RFMC MEMBERSHIP VACANCIES DURING 2011**

Table 2, page 7, lists the 31 RFMC members whose terms will expire on August 10, 2012. Table 3, page 8, sorts the 31 RFMC members into the three general fishing sector categories.

The Magnuson-Stevens Act prohibits the reappointment of RFMC members to a fourth consecutive term. As a result, 10 of the 31 members whose terms expire in 2012 will be ineligible to be renominated at this time.

**TABLE 1: APPOINTED RFMC MEMBERS SORTED NUMERICALLY BY FISHING SECTOR INTERESTS (2009-2011)**

	Year	Commercial	Recreational	“Other”	Total
NEFMC	2009	7	3	2	12
	2010	7	3	2	12
	2011	8	3	1	12
MAFMC	2009	5	3	5	13
	2010	4	4	5	13
	2011	4 <sup>3/</sup>	3	5	12
SAFMC	2009	3	4	1	8
	2010	3	4	1	8
	2011	3	4	1	8
GMFMC	2009	4	4	3	11
	2010	4	5	2	11
	2011	4	4	3 <sup>4/</sup>	11
CFMC	2009	2	1	1	4
	2010	2	1	1	4
	2011	2	1	1	4
PFMC	2009	3	4	2	9
	2010	3	4	2	9
	2011	2	3	4 <sup>5/</sup>	9
NPFMC	2009	6	1	0	7
	2010	6	1	0	7
	2011	5	1	1 <sup>6/</sup>	7
WPFMC	2009	2	3	3	8
	2010	2	3	3	8
	2011	2	3	3	8
ALL RFMCs	2009	32	23	17	72
	2010	31	25	16	72
	2011	31	22	19	71

<sup>3/</sup>In October 2011, an out of cycle vacancy occurred on the Mid-Atlantic Council.

<sup>4/</sup>In 2011, fishing sector changes occurred for Robert Shipp from the recreational sector to the “other” sector.

<sup>5/</sup> This total includes the Tribal representative, who, for the purposes of this table, is counted as a representative of the “other” sector.

<sup>6/</sup>In 2011, fishing sector changes occurred for John Henderschedt from the commercial sector, to the “other” sector.

TABLE 2: RFMC MEMBERS' TERMS EXPIRING AUGUST 10, 2012  
GROUPED BY OBLIGATORY OR AT-LARGE APPOINTMENT

OBLIGATORY MEMBERS	APPT. DATE	CONSEC. TERMS SERVED	AT-LARGE MEMBERS	APPT. DATE	CONSEC. TERMS SERVED
<u>New England</u> MA: R. Avila/C	2003	**3	G. Libby/ME (C)	2009	1
RI: D. Preble/R	2006	2			
CT: S. McGee/O	2003	**3			
ME: J. Odlin/C	2003	**3			
<u>Mid-Atlantic</u> NJ: C. Zeman/O	2009	1	S. Schafer/NY (C)	2009	1
VA: P. deFur/O	2009	1	P. Pate/NC (O)	2009	1
<u>South Atlantic</u> GA: C. Harris/R	2003	**3	B. Currin/NC (R)	2003	**3
FL: B. Hartig/C	2009	1	C. Phillips/GA (C)	2009	1
<u>Gulf of Mexico</u> FL: R. Gill/C	2006	2	H. Pearce/LA (C)	2006	2
LA: D. McKnight/R	2009	1	T. McIlwain/MS (O)	2006	2
AL: J. Greene/R	2009	1			
<u>Caribbean</u> VI: C. Farchette/O	2009	1	M. Hanke/PR (R)	2003	**3
<u>Pacific</u> CA: D. Crabbe/C	2009	1	D. Myer/WA (C)	2006	2
OR: D. Lowman/O	2009	1	W. Brizendine/CA (R)	2009	1
WA: D. Sones (Tribal Seat)	2006	2			
<u>North Pacific</u> WA: D. Benson/C	2003	**3	There are no at-large seats on the North Pacific Council.		
AK: H. Hull/C	2009	1			
AK: R. Dersham/R	2008	*1			
<u>Western Pacific</u> GU: M. Duenas/C	2003	**3	There are no at-large seats on the Western Pacific Council in 2012.		
AS: S. Haleck/R	2003	**3			
HI: S. Martin/C	2003	**3			
21 Obligatory Members					
10 At-Large Members					

C = Commercial Sector

R = Recreational Sector

\*This member replaced another member who left office during a term. In accordance with the Magnuson-Stevens Act, any term in which an individual is appointed to replace a member who left office during a term shall not be counted in determining the number of consecutive terms served by that Council member.

\*\*These members have served three consecutive terms; therefore, they are ineligible by law for reappointment to a fourth consecutive term.

TABLE 3: RFMC MEMBERS' TERMS EXPIRING AUGUST 10, 2012  
GROUPED BY GENERAL FISHING SECTOR CATEGORIES

COMMERCIAL	RECREATIONAL	OTHER	TOTAL
<u>New England</u> Rodney M. Avila James A. Odlin Glen A. Libby	David E. Preble	Sally E. McGee	5
<u>Mid-Atlantic</u> Steven F. Schafer		Peter L. deFur Preston P. Pate Christopher J. Zeman	4
<u>South Atlantic</u> Benjamin C. Hartig III Charles M. Phillips	Benjamin M. Currin Charles D. Harris		4
<u>Gulf Council</u> Robert P. Gill Harlon H. Pearce	John R. Greene Jr. Damon P. McKnight	Thomas D. McIlwain	5
<u>Caribbean</u>	Marcos R. Hanke	Carlos F. Farchette	2
<u>Pacific</u> David M. Crabbe Dale D. Myer	William L. Brizendine II	Dorothy M. Lowman David B. Sones (Tribal representative)	5
<u>North Pacific</u> David W. Benson Howard D. Hull	Robert E. Dersham		3
<u>Western Pacific</u> Manuel P. Duenas II Sean C. Martin	Stephen Haleck		3
<b>TOTAL 14</b>	<b>TOTAL 9</b>	<b>TOTAL 8</b>	<b>TOTAL 31</b>

## Removal of Members

On occasion, after appointments have been made, RFMC constituents have advised the Secretary of concerns about (or indicated disagreement with) some of the Secretarial appointment decisions. In some cases, constituents have called for the revocation of particular appointments. All such concerns are noted. However, in accordance with Section 302(b)(6) of the Magnuson-Stevens Act, the removal of a Council member is limited to the following circumstances:

- a) The Secretary may remove for cause any Secretarially appointed RFMC member only when the RFMC concerned first recommends removal of the member by not less than two-thirds of the RFMC voting members, and the RFMC submits such removal recommendation to the Secretary in writing, together with a statement of the basis for the recommendation; or
- b) After notice and an opportunity for a hearing in accordance with Section 554 of Title 5, United States Code, the member is found by the Secretary to have committed an act prohibited by Section 307(1)(O) of the Magnuson-Stevens Act, which pertains to compliance with financial disclosure requirements.
- c) A Council member's appointment is conditional until such time as the member's background investigation has been favorably adjudicated. The Secretary will revoke the member's appointment if that member receives an unfavorable background investigation.

## **E. THE SECRETARY'S 2011 APPOINTMENTS/2012 REPORT RECOMMENDATIONS**

As a result of the annual appointments announced on June 2, 2011, 21 members were seated on August 11, 2011. In addition, the Secretary announced the reappointment of John McMurray on the MAFMC who was seated on October 9, 2011, for a total of 22 voting obligatory and at-large RFMC members whose 3-year terms will expire on August 10, 2014.

The following sections update RFMC appointment rosters, specify apportionment totals for RFMC members, discuss fishery management issues and challenges being addressed by each RFMC, and make Secretarial recommendations for future nomination and appointment considerations. The latter reflects information included in letters sent to the constituent State governors requesting nominees, consistent with regulations at 50 CFR 600.215. The governors are required to submit their nominees by March 15 of each year.

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**1. New England Fishery Management Council (NEFMC)**

**BACKGROUND SUMMARY:**

Four NEFMC members’ terms expired in 2011. As a result of the 2011 appointments, the composition of fishing sector representatives is eight commercial, three recreational, and one “other,” which reflects a change from seven commercial, three recreational, and two “other.” The current geographical balance regarding the distribution of at-large seats on the NEFMC remains unchanged. The appointees and reappointee are as follows:

**New Member/Fishing Sector**  
 Peter T. Kendall/commercial  
 Laura F. Ramsden/commercial  
 Thomas D. Dempsey/commercial  
 Mary Beth Nickell-Tooley

**Outgoing Member/Fishing Sector**  
 Michael P. Leary/commercial  
 James J. Fair Jr./ “other”  
 John W. Pappalardo/commercial (ineligible, by law, for a fourth consecutive term)  
 Reappointment

The following table lists the Secretarial appointees currently on the NEFMC:

2011 NEW ENGLAND FISHERY MANAGEMENT COUNCIL (12 Members)				
Obligatory/ At-large	Appointed Members	State	Appt. Ends	Interest Sector
O	AVILA, RODNEY M.	MA	2012	C
O	PREBLE, DAVID E.	RI	2012	R
O	GOETHEL, DAVID T.	NH	2013	C
O	MCGEE, SALLY E.	CT	2012	O
O	ODLIN, JAMES A.	ME	2012	C
A	CUNNINGHAM, COLIN M. JR.	MA	2013	R
A	KENDALL, PETER T.	NH	2014	C
A	RAMSDEN, LAURA F.	MA	2014	C
A	DEMPSEY, THOMAS D.	MA	2014	C
A	LIBBY, GLEN A.	ME	2012	C
A	BLOUNT, FRANCIS W. JR.	RI	2013	R
A	NICKELL-TOOLEY, MARY BETH	ME	2014	C

**EXPIRING TERMS:**

The following members’ terms will expire on August 10, 2012:

1. Rodney M. Avila – commercial fishing sector – Massachusetts' obligatory seat; by

law, Mr. Avila, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.

2. David E. Preble – recreational fishing sector – Rhode Island’s obligatory seat
3. Sally E. McGee – “other” sector – Connecticut’s obligatory seat; by law, Ms. McGee, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.
4. James A. Odlin – commercial fishing sector – Maine’s obligatory seat; by law, Mr. Odlin, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.
5. Glen A. Libby – commercial fishing sector – at-large seat (Maine)

## **2012 REPORT RECOMMENDATIONS:**

The stocks within the NEFMC’s geographical area that are managed by the Council are primarily associated with commercial fisheries. Of the seven members whose terms do not expire in 2012, five are from the commercial harvesting sector and two are from the recreational fishing sector. Members from the commercial harvesting sector have experience in the groundfish, scallop, herring, and monkfish fisheries, utilizing gillnet, trawl, dredge, purse seine, and longline gear. The recreational fishing sector members are rod-and-reel fishermen and/or involved in charter/party fishing.

The five upcoming vacancies include three outgoing members from the commercial sector, one from the recreational sector, and one from the “other” sector. Governors are encouraged to nominate qualified nominees from the commercial and recreational fishing sectors. Also, governors are encouraged to nominate nominees from the “other” sector, including people with knowledge and experience in the conservation and management of marine resources and their habitats, and ecosystem approaches to management.

## **DISCUSSION:**

The NEFMC is responsible for six Fishery Management Plans (FMPs): Northeast (NE) Multispecies, Atlantic Sea Scallop, Atlantic Herring, Deep-sea Red Crab, Northeast Skates, and Atlantic Salmon. In addition, the NEFMC and Mid-Atlantic Fishery Management Council (MAFMC) are jointly responsible for two FMPs (Spiny Dogfish and Monkfish). The NEFMC has the lead responsibility for the Monkfish FMP, while the MAFMC has the lead responsibility for the Spiny Dogfish FMP.

The species managed by the NEFMC are primarily commercial; however, the multispecies fishery has an important recreational component (party/charter and private vessels). The Atlantic salmon fishery is considered recreational, although possession of Atlantic salmon is prohibited in the Exclusive Economic Zone (EEZ) under the Atlantic Salmon FMP, and there is no

commercial or recreational fishery for Atlantic salmon in the EEZ. Management of all of the fisheries must take into consideration effects of the fisheries on habitat, and must consider ways to minimize bycatch. Fishing gear technology and selectivity are areas of great interest—to allow healthy stocks to be harvested at or near their optimum yields while protecting overfished and rebuilding stocks, particularly in the multispecies fishery. Also of concern are measures protecting marine mammals, threatened and endangered species.

In 2011, the Council's management actions included:

- **Northeast (NE) Multispecies**  
The Council completed Framework 45 to modify the Georges Bank yellowtail flounder rebuilding schedule and issues regarding Transboundary Resource Assessment Committee quota-setting; Framework 46, which revised the haddock cap in the herring fishery; and Amendment 17, to assist the states in establishing and operating permit banks, which help local fishermen remain active in the groundfish fishery. The Council also initiated development of Framework 47, which will set catch limits for the 2012-2013 fishery; Amendment 18, which will consider accumulation caps in the groundfish fishery; and Amendment 19, which will establish Annual Catch Limits/Accountability Measures (ACLs/AMs) for the small-mesh groundfish stocks (whiting and red hake).
- **Atlantic Sea Scallops**  
The Council completed Amendment 15, which implemented ACL/AM measures and revised the scallop overfishing definition. The Council also completed Framework 22, which set specifications for the 2011-2012 fishery. The Council initiated development of Framework 23, which will require gear changes to protect sea turtles and make changes to the Northern Gulf of Maine scallop fishery.
- **Atlantic Herring**  
The Council completed Amendment 4, which added ACLs/AMs to the FMP; and continued development of Amendment 5, which will address monitoring and bycatch issues in the fishery, including catch of river herring.
- **Monkfish**  
The Council completed development of Amendment 5, which added ACLs/AMs to the FMP and set specifications for the 2011-2013 fishing years, and began development of Amendment 6, which will consider new catch share programs for this fishery. The Council also completed Framework 7, which set catch limits for the Northern Management Area, and adjusted trip limits and days-at-sea based on new scientific information.
- **Skates**  
The Council completed Framework 1 to adjust possession limits and triggers to extend the fishery, and developed specifications for the 2012-2013 fishery.
- **Deep-sea Red Crab**

The Council completed Amendment 3, which added ACLs/AMs to the FMP and set specifications for the 2011-2013 fisheries.

- **Habitat**

The Council continued development of an omnibus habitat amendment, which will amend the essential fish habitat (EFH) designations in the Council's FMPs and provide additional measures to protect habitat. Phase I, to better define EFH, has been completed, and work on Phase II, to develop management measures to protect EFH, is continuing.

Council priorities for 2012 include:

- Continue development of Phase II of a two-part omnibus amendment to address issues regarding EFH across all of the Council's FMPs;
- Initiate an action to address how to manage the sub-ACL of yellowtail flounder allocated to the scallop fishery;
- Continue development of Amendment 6 to the Monkfish FMP to consider sectors and/or Individual Transferable Quotas (ITQs) for the monkfish fishery;
- Complete Amendment 19 to the NE Multispecies FMP, to add ACLs/AMs for the small-mesh groundfish stocks and to set specifications for fishing years 2011-2013;
- Complete Herring Amendment 5, to address monitoring and bycatch issues in the fishery, including catch of river herring;
- Complete Herring Specifications for 2013-2015 using new stock assessment information;
- Complete Scallop Framework 23, which will require gear changes to protect sea turtles and make changes to the Northern Gulf of Maine scallop fishery;
- Initiate an action to better control bycatch of groundfish in the scallops fishery;
- Complete Scallop Framework 24 to set ACLs and specifications for fishing years 2013-2014;
- Continue development of NE Multispecies Amendment 18 to consider accumulation caps and fleet diversity issues;
- Complete NE Multispecies Framework 47, to set ACLs and other specifications for the 2012-13 fishery;
- Develop an action to adjust the ACLs for nine stocks of groundfish after assessment results are received, and to consider measures to help the fishery achieve optimum yield, including adjustments to the carryover provisions;
- Develop an action to adjust ACLs for the recreational groundfish if warranted by new data;
- Initiate an action to consider a limited access program for the whiting fishery;
- Initiate an omnibus action to implement a standardized bycatch reporting methodology for all managed fisheries; and
- Initiate an omnibus amendment to revise and simplify vessel baseline regulations.

**2. Mid-Atlantic Fishery Management Council (MAFMC)**

**BACKGROUND SUMMARY:**

Five MAFMC members’ terms expired in 2011. As a result of the 2011 appointments, the composition of fishing sector representatives was five commercial, three recreational, and five “other,” which represents a change from four commercial, four recreational, and five “other.” Due to an out of cycle vacancy in October 2011, the composition of fishing representatives is four commercial, three recreational, five “other” and one vacancy. The current geographical balance regarding the distribution of at-large seats on the MAFMC remains unchanged. The appointees and reappointees are as follows:

**New Member/Fishing Sector**

John G. McMurray/recreational  
 G. Warren Elliott/recreational  
 Jule D. Wheatly/commercial  
 Howard J. King III/ “other”  
 Laurie A. Nolan/ “other”

**Outgoing Member/Fishing Sector**

Reappointment  
 Eugene J. Kray/recreational  
 Reappointment  
 Reappointment  
 Patrick H. Augustine/recreational  
 (ineligible, by law, for a fourth consecutive term)

The following table lists the Secretarial appointees currently on the MAFMC:

2011 MID-ATLANTIC FISHERY MANAGEMENT COUNCIL (13 Members)				
Obligatory/ At-large	Appointed Members	State	Appt. Ends	Interest Sector
O	MCMURRAY, JOHN G.	NY	2014	R
O	ZEMAN, CHRISTOPHER J.	NJ	2012	O
O	ELLIOTT, G. WARREN	PA	2014	R
O	DEFUR, PETER L.	VA	2012	O
O	<del>WHEATLY, JULE D.</del>	NC	2014	€
O	KING, HOWARD J. III	MD	2014	O
O	ANDERSON, LEE G.	DE	2013	O
A	SCHAFFER, STEVEN F.	NY	2012	C
A	ROBINS, RICHARD B. JR.	VA	2013	C
A	BERG, ERLING A.	NJ	2013	C
A	LINHARD, STEPHEN E.	MD	2013	R
A	PATE, PRESTON P. JR.	NC	2012	O
A	NOLAN, LAURIE A.	NY	2014	C

**EXPIRING TERMS:**

The following members' terms will expire on August 10, 2012:

1. Christopher J. Zeman – “other” sector – New Jersey’s obligatory seat
2. Peter L. deFur – “other” sector – Virginia’s obligatory seat
3. Steven F. Schafer – commercial fishing sector – at-large seat (New York)
4. Preston P. Pate Jr. – “other” sector – at-large seat (North Carolina)

### **2012 REPORT RECOMMENDATIONS:**

Of the eight members whose terms do not expire in 2012, three are from the commercial sector, three are from the recreational sector, and two are from the “other” sector. The remaining commercial sector members’ experiences include harvesting, processing, and seafood marketing, while the recreational members are all rod-and-reel fisherman.

The four upcoming vacancies include one outgoing member from the commercial sector and three from the “other” sector. Governors are encouraged to nominate individuals from both the commercial sector and the recreational sector. Also, governors are encouraged to nominate individuals from the “other” sector, including people with knowledge and experience in the conservation and management of marine resources and their habitats, and ecosystem approaches to management.

### **DISCUSSION:**

The MAFMC is exclusively responsible for five existing FMPs: Summer Flounder, Scup, and Black Sea Bass; Atlantic Mackerel, Squid, and Butterfish; Surfclam and Ocean Quahog; Tilefish; and Atlantic Bluefish. In addition, the MAFMC and the NEFMC are jointly responsible for two other FMPs (Spiny Dogfish and Monkfish). The MAFMC has the lead responsibility for the Spiny Dogfish FMP, and the NEFMC has the lead responsibility for the Monkfish FMP.

Some of these fisheries are primarily commercial (e.g., surfclam, ocean quahog, tilefish, spiny dogfish, monkfish, squid, Atlantic mackerel, and butterfish); others have significant recreational components (bluefish, summer flounder, scup, and black sea bass). Management of all fisheries must take into consideration effects of the fisheries on habitat, and must consider ways to minimize bycatch.

In 2011, the Council’s management actions included:

- **Summer Flounder/Scup/Black Sea Bass**

The Council developed annual specifications and recreational measures for these three fisheries for 2012.

- **Surfclams/Ocean Quahogs**

The Council continued development of Amendment 15 to the FMP to define excessive shares in the ITQ portion of the fishery, to develop a cost-recovery program for the ITQ fishery, and to update EFH.

- **Squid/Mackerel/Butterfish**

The Council developed annual specifications for these fisheries for 2012. The Council also completed Amendment 11, which established a limited access program for Atlantic mackerel, and continued development of Amendment 14, which will improve monitoring of the fishery and add measures to reduce bycatch of river herring.

- **Spiny Dogfish**

The Council developed the 2011 specifications for this fishery. The Council also continued development of Amendment 3 to consider a male-only fishery, timing issues in the management of the fishery, and other issues.

- **Atlantic Bluefish**

The Council developed specifications for the 2012 recreational and commercial Atlantic bluefish fisheries.

- **Omnibus ACLs/AMs**

The Council completed an omnibus amendment to add ACLs/AMs to all of its FMPs in order to comply with new requirements of the Magnuson-Stevens Act.

Council priorities for 2012 include:

- Complete Amendment 14 to the Atlantic Mackerel/Squid/Butterfish FMP, which will improve monitoring and add measures to reduce bycatch of river herring and shad;
- Continue development of Surfclam/Ocean Quahog Amendment 15, which will define excessive shares, provide a cost recovery system for the fishery, and update EFH;
- Complete Amendment 3 to the Spiny Dogfish FMP, which may provide for a male-only fishery and address timing issues in the management of the fishery, among other issues;
- Complete specifications for the summer flounder/scup/black sea bass (commercial and recreational), mackerel/squid/butterfish, spiny dogfish, surfclam/ocean quahog, and bluefish fisheries, including research set-asides, as warranted;
- Continue development of Amendment 17 to the Summer Flounder/Scup/Black Sea Bass FMP to provide for state-by-state or regional management options for black sea bass;
- Initiate an omnibus action to implement a standardized bycatch reporting methodology for all managed fisheries; and
- Initiate an omnibus amendment to revise and simplify vessel baseline regulations.

- Continuing a visioning project to develop objectives for future management of Mid-Atlantic fisheries.



**3. South Atlantic Fishery Management Council (SAFMC)**

**BACKGROUND SUMMARY:**

Two SAFMC members’ terms expired in 2011. As a result of the 2011 appointments, the composition of fishing sector representatives remains unchanged at three commercial, four recreational, and one “other.” The current geographical balance regarding the distribution of at-large seats on the SAFMC remains unchanged. The appointee and reappointee are as follows:

**New Member/Fishing Sector**

David M. Cupka/ “other”  
John W. Jolley/recreational

**Outgoing Member/Fishing Sector**

Reappointment  
George J. Geiger/recreational (ineligible, by law, for a fourth consecutive term)

The following table lists the Secretarial appointees currently on the SAFMC:

2011 SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL (8 Members)				
Obligatory/ At-large	Appointed Members	State	Appt. Ends	Interest Sector
O	HARRIS, CHARLES D.	GA	2012	R
O	HARTIG, BENJAMIN C. III	FL	2012	C
O	BURGESS, THOMAS E.	NC	2013	C
O	SWATZEL, THOMAS L. III	SC	2013	R
A	CURRIN, BENJAMIN M.	NC	2012	R
A	CUPKA, DAVID M.	SC	2014	O
A	JOLLEY, JOHN W.	FL	2014	R
A	PHILLIPS, CHARLES M.	GA	2012	C

**EXPIRING TERMS:**

The following members’ terms will expire on August 10, 2012:

1. Charles D. Harris – recreational fishing sector – Georgia’s obligatory seat; by law, Mr. Harris, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.
2. Benjamin C. Hartig III – commercial fishing sector – Florida’s obligatory seat
3. Benjamin M. Currin – recreational fishing sector – at-large seat (North Carolina); by

law, Mr. Currin, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.

4. Charles M. Phillips – commercial fishing sector – at-large seat (Georgia)

## **2012 REPORT RECOMMENDATIONS:**

Of the four members whose terms do not expire in 2012, one is from the commercial sector, two are from the recreational sector, and one is from the “other” sector. The commercial member’s experience includes harvesting, while the recreational members are rod-and-reel fishermen. The governors are encouraged to nominate nominees from both the commercial and recreational sectors so that the Secretary can achieve a balance between these two interest groups. While nominees to help balance the commercial and recreational sectors are important, the governors are also encouraged to nominate nominees from the “other” sector, including people with knowledge and experience in the conservation and management of marine resources and their habitats, and ecosystem approaches to management.

## **DISCUSSION:**

The SAFMC has prepared FMPs and amendments for the following fisheries or living marine resources in the South Atlantic EEZ: shrimp (penaeid and rock); coral, coral reef, and live/hard bottom habitats; golden crab; dolphin/wahoo; *Sargassum*; and the snapper-grouper species complex. The SAFMC and the Gulf of Mexico Fishery Management Council have prepared joint FMPs for spiny lobster and coastal migratory pelagic (CMP) species in the South Atlantic and Gulf of Mexico.

In 2011, the Council’s management actions included:

- **Snapper-Grouper**

Snapper-Grouper Amendment 17A, which would end red snapper overfishing and rebuild red snapper.

Snapper-Grouper Amendment 17B, which would reduce bycatch of deepwater species and establish ACLs and AMs for eight snapper-grouper species experiencing overfishing.

Snapper-Grouper Amendment 18A, which would limit effort in the black sea bass pot sector of the snapper-grouper fishery; and improve data reporting.

Snapper-Grouper Amendment 18B, which changes the golden tilefish fishing year and limit effort in the golden tilefish commercial sector.

Snapper-Grouper 18C, which would extend the management range of snapper-grouper north of the Council’s current jurisdiction.

Snapper-Grouper Amendment 20A, which would distribute inactive wreckfish in the Individual Transferable Quota (ITQ) program for wreckfish to active shareholders.

Snapper-Grouper Amendment 20B, which would bring the ITQ program into compliance with the Magnuson-Stevens Act.

Snapper-Grouper Amendment 21, which would consider a catch share program for some snapper-grouper species.

Snapper-Grouper Amendment 22, which would consider long-term management measures for red snapper as the stock rebuilds.

Snapper-Grouper Amendment 24, which would consider a rebuilding program for red grouper.

Regulatory Amendment 9, which would consider trip limits for vermilion snapper, gag, and greater amberjack, and a change in the bag limit for black sea bass.

Regulatory Amendment 10, which would eliminate a closure for snapper-grouper species approved in Amendment 17A.

Regulatory Amendment 11, which would eliminate the deep water closure for six snapper-grouper species approved in Amendment 17B.

- **Coastal Migratory Pelagics**

Coastal Migratory Pelagics Amendment 18, which would include ACLs and AMs for king mackerel, Spanish mackerel, and cobia.

Coastal Migratory Pelagics Amendment 19, which would eliminate bag limit sales for species in the FMP.

Coastal Migratory Pelagics Amendment 20, which would modify boundaries for Gulf migratory group king mackerel and change the opening date for Gulf migratory group king mackerel in the Western Zone.

- **Comprehensive ACL**

Comprehensive ACL Amendment, which would establish ACLs and AMs for species in FMPs that are not experiencing overfishing.

- **Comprehensive Ecosystem-Based Amendment (CE-BA) 2**

CE-BA 2, which would specify status determination criteria, ACLs and AMs for octocorals in the South Atlantic; remove octocorals off Florida from the Coral FMP; modify management of South Carolina special management zones; and amend Council FMPs as needed to designate new (or modify existing) EFH and EFH-habitat of particular concern.

- **Comprehensive Ecosystem-Based Amendment 3**

CE-BA 3, which would consider actions to protect speckled hind and warsaw grouper, expand or establish new Marine Protected Areas (MPAs), consider a prohibition on the use of powerheads off North Carolina, and assess the impacts of the wreckfish sector on bottom habitat.

- **Spiny Lobster**

Spiny Lobster Amendment 10, which would modify the tailing permit; modify the federal 50 short rule that allows use of undersized spiny lobster as attractants; allow the public to remove trap line, buoys, or otherwise make unfishable, any spiny lobster gear found in the EEZ off Florida; and specify ACLs and AMs.

Spiny Lobster Amendment 11, which would limit spiny lobster fishing in certain areas in the EEZ off Florida to address Endangered Species Act (ESA) concerns for staghorn and elkhorn corals, and require gear markings so all spiny lobster trap lines in the EEZ off Florida are identifiable.

- **Golden Crab**

Golden Crab Amendment 6, which would consider a limited access privilege program for golden crab.

- **Shrimp**

Shrimp Amendment 9, which would modify the protocol for states to request concurrent closure of the EEZ during severe weather and revise the definition of minimum stock size threshold for pink shrimp.

- **Other Council Actions**

Administered and actively participated in the Southeast Data Assessment and Review (SEDAR) process for South Atlantic black sea bass and South Atlantic golden tilefish.

Continued to support NMFS, by participating in activities of the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee and the Highly Migratory Species (HMS) and Billfish Advisory Panels.

Council priorities for 2012 include:

- Submit Snapper-Grouper Amendment 18A to the Secretary;
- Submit Snapper-Grouper Amendment 18B to the Secretary;
- Submit Snapper-Grouper Amendment 24A to the Secretary;
- Submit Snapper-Grouper Amendment 20A to the Secretary;
- Submit Spiny Lobster Amendment 11 to the Secretary;
- Submit Golden Crab Amendment 6 to the Secretary;
- Submit Coastal Migratory Pelagics Amendment 19 to the Secretary
- Continue development of Snapper-Grouper Amendment 22;
- Continue development of Coastal Migratory Pelagics Amendment 20;
- Continue development of CE-BA 3;
- Continue development of Shrimp Amendment 9; and

- Participate in the SEDAR process for South Atlantic Spanish mackerel and cobia.

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**4. Gulf of Mexico Fishery Management Council (GMFMC)**

**BACKGROUND SUMMARY:**

Three GMFMC members’ terms expired in 2011. As a result of the 2011 appointments, and fishing sector change for Robert L. Shipp from recreational to “other sector, the composition of fishing sector representatives is four commercial, four recreational, and three “other,” which represents a change from four commercial, five recreational, and two “other.” The current geographical balance regarding the distribution of at-large seats on the GMFMC remains unchanged. The appointees and reappointee are as follows:

**New Member/Fishing Sector**

Robert L. Shipp/ “other”  
 Pamela L. Dana/recreational  
 Patrick Riley/commercial

**Outgoing Member/Fishing Sector**

Reappointment/ “recreational”  
 Edward W. Sapp/recreational  
 Joseph P. Hendrix Jr./commercial  
 (ineligible, by law, for a fourth consecutive term)

The following table lists the Secretarial appointees currently on the GMFMC:

2011 GULF OF MEXICO FISHERY MANAGEMENT COUNCIL (11 Members)				
Obligatory/ At-large	Appointed Members	State	Appt. Ends	Interest Sector
O	BOYD, DOUGLASS W.	TX	2013	R
O	GILL, ROBERT P.	FL	2012	C
O	MCKNIGHT, DAMON P.	LA	2012	R
O	WILLIAMS, HAROLYN K.	MS	2013	C
O	GREENE, JOHN R. JR.	AL	2012	R
A	SHIPP, ROBERT L.	AL	2014	O
A	DANA, PAMELA L.	FL	2014	R
A	RILEY, PATRICK F.	TX	2014	C
A	ABELE, LAWRENCE G.	FL	2013	O
A	PEARCE, HARLON H.	LA	2012	C
A	MCILWAIN, THOMAS D.	MS	2012	O

**EXPIRING TERMS:**

The following members’ terms will expire on August 10, 2012:

1. Robert P. Gill – commercial fishing sector – Florida’s obligatory seat
2. Damon P. McKnight – recreational fishing sector – Louisiana’s obligatory seat

3. John R. Greene Jr. – recreational fishing sector – Alabama’s obligatory seat
4. Harlon H. Pearce – commercial fishing sector – at-large seat (Louisiana)
5. Thomas D. McIlwain – “other” sector – at-large seat (Mississippi)

## **2012 REPORT RECOMMENDATIONS:**

Of the six members whose terms do not expire in 2012, two are from the commercial sector, two are from the recreational sector, and two are from the “other” sector. The two remaining commercial members’ experience includes harvesting, processing and seafood marketing, while the two recreational members are rod-and-reel fishermen.

The five Council members whose terms expire in 2012 include two outgoing members from the commercial sector, two from the recreational sector, and two from the “other” sector. The reauthorized Magnuson-Stevens Act requires a governor of a state submitting a list of names of individuals for appointment by the Secretary to the GMFMC to include at least one nominee each from the commercial, recreational, and charter fishing sectors, and at least one other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

## **DISCUSSION:**

The GMFMC has prepared FMPs and amendments for the following fisheries or living marine resources in the Gulf of Mexico EEZ: reef fish, shrimp, coral and coral reefs, red drum, and stone crab. The GMFMC and the SAFMC have prepared joint FMPs for the spiny lobster fishery and CMP species in the Gulf of Mexico and South Atlantic. In June 2011, the Council repealed its Stone Crab FMP, determining continued federal management is not needed. Without this FMP, Florida (where almost all stone crabs are harvested) can extend its regulations into federal waters of the Gulf. Rulemaking to repeal this FMP is effective October 24, 2011.

In 2011, the Council’s management actions included:

- **FMP Amendments and Associated Rulemaking**  
Greater Amberjack Accountability Measures (AMs) and Commercial Quota Closure: NMFS published a rule on April 29, 2011, adjusting the recreational and commercial quotas for greater amberjack. Both sectors exceeded their quotas for 2010; therefore established payback AMs were enacted. In addition, NMFS announced that it projected the commercial sector would meet its quota and should close at 12:01 a.m. local time, June 18, 2011. Based on updated commercial landings for both 2010 and 2011 that indicated less of the quota had been harvested, NMFS reopened the commercial sector from September 1 through October 30, 2011.



Red Snapper Regulatory Amendment: The GMFMC approved, and NMFS implemented a regulatory amendment on April 29, 2011, increasing the commercial and recreational red snapper quotas in the Gulf of Mexico from 3.542 and 3.403 million pounds (mp) to 3.66 and 3.525 mp in 2011, respectively. Additionally, the rule set the 2011 recreational red snapper season from June 1, 2011, through July 18, 2011.

Greater Amberjack Recreational Seasonal Closure: The GMFMC approved and NMFS implemented rulemaking, effective May 31, 2011, establishing a June 1 through July 31 seasonal closure for recreational harvest of greater amberjack in or from the Gulf of Mexico federal waters. The intended effect of the rule is to reduce the likelihood of exceeding the recreational quota for greater amberjack.

Gag Interim Rule: Until the GMFMC could complete the development of Amendment 32 to the Reef Fish FMP, the GMFMC requested NMFS publish a temporary rule, which became effective June 1, 2011, to reset the commercial quota of gag at 430,000 pounds (lbs), continue the suspension of the use of red grouper multi-use IFQ commercial allocation, and set a gag recreational season from September 16 through November 15. NMFS extended the effective date of the interim rule to June 2, 2012, to allow the sufficient time for NMFS to approve Reef Fish Amendment 32 and publish a final rule implementing that amendment.

Spiny Lobster Amendment 10: At its June 2011 meeting, the GMFMC and SAFMC approved their jointly developed Amendment 10, and submitted it for Secretarial review on July 20, 2011. The amendment identifies species that are in continued need of federal management and those that do not need management, establishes standardized mechanisms by which to set ACLs and AMs, and establishes those ACLs and AMs. NMFS announced the availability of the amendment on September 2, 2011, and published a proposed rule to implement the actions on September 23, 2011. A final rule was published on December 2, 2011, and it became effective on January 3, 2012.

Red Snapper Secondary Recreational Quota Increase: Based on updated recommendations by its Scientific and Statistical Committee (SSC), the GMFMC requested that NMFS publish an emergency rule raising the recreational red snapper quota by 345,000 lbs for the 2011 fishing year and providing the agency with the authority to reopen the recreational red snapper season later this year, if appropriate. This rule became effective September 12, 2011; however, preliminary projections indicate that even the increased quota was exceeded by the July 19 initial closure date.

Red Grouper Regulatory Amendment: Based on results of an updated stock assessment for red grouper, the GMFMC's SSC recommended total allowable catch (TAC) increases for the red grouper stock for each year from 2011 through 2015. The Council submitted a regulatory amendment making these TAC adjustments on August 31, 2011. NMFS published a proposed rule on September 21, 2011, with the comment period ending October 6, 2011. The rule became effective November 2, 2011; it adjusts red grouper catch levels through 2015, adjusts "other shallow-water group" allocations accordingly, and raises the recreational bag limit from 2 fish to 4 fish in the 4-fish aggregate bag limit.

Coastal Migratory Pelagics Amendment 18: At their respective August 2011 meetings, the GMFMC and SAFMC approved their jointly developed Amendment 18. The amendment identifies species that are in continued need of federal management and those that do not need management, establishes standardized mechanisms by which to set ACLs and AMs, and establishes those ACLs and AMs. The GMFMC and SAFMC submitted the amendment for Secretarial review on September 23, 2011. NMFS announced the availability of the amendment for public review and comment on September 29, 2011. The final rule published on December 29, 2011.

Generic ACLs Amendment: At its August 2011 meeting, the GMFMC approved its Generic Amendment. The amendment identifies species that are in continued need of federal management and those that do not need management, establishes standardized mechanisms by which to set ACLs and AMs, and establishes those ACLs and AMs. The GMFMC submitted the amendment for Secretarial review on September 9, 2011. NMFS announced the availability of the amendment for public review and comment on September 26, 2011. The proposed rule published on October 25, 2011. The final rule published on December 29, 2011.

Reef Fish Amendment 32: At its August 2011 meeting, the GMFMC approved Amendment 32. The amendment would slightly increase gag catch levels from those currently established through interim rule (see above), adjust ACLs, catch targets, and AMs for gag and red grouper, and establish a gag recreational fishing season. The GMFMC submitted the amendment for Secretarial review on September 12, 2011. NMFS announced the availability of the amendment for public comment on October 27, 2011, and published a proposed rule to implement the actions in the amendment on November 2, 2011. NMFS approved Amendment 32 on January 24, 2012. NMFS plans to publish the final rule in February 2012.

- **Other Council Actions**

Actively participated in the SEDAR process for South Atlantic and Gulf of Mexico spiny lobster; Greater Amberjack; and Vermillion Snapper and Gray Triggerfish.

Continued to support NMFS by participating in activities of the ICCAT Advisory Committee and the Highly Migratory Species (HMS) and Billfish Advisory Panels.

Council members and/or staff participated in the following meetings:

- Outreach and Education Meetings
- Communities and Catch Shares
- American Fisheries Society
- Gulf and South Atlantic Fisheries Foundation
- Sea Grant In-Service Training
- College of Marine Science Seminar
- Toxic Oils in Gulf Seminar
- Coral Reef Fisheries Workshop
- Cortez Commercial Seafood Festival

- Gulf of Mexico Living Marine Resources
- Gainesville Fishing Club Meeting
- SAFMC
- Artificial Reef Meeting
- Gulf Spill Recreational Fishing Meeting
- ICCAT Advisory Committee
- Tampa Tribune Outdoor Expo
- Southeast Fisheries Science Center (SEFSC)
- NOAA Fish Smart Barotrauma Workshop
- Underwater Research Symposium
- Marine Recreational Initiative Program Outreach
- Marine and Estuarine Goal Setting for South Florida
- HMS Advisory Panel
- International Symposium on Circle Hooks
- Council Coordination Meetings
- Beyond Horizons
- Southeast Data, Assessment, and Review Steering Committee
- Gulf of Mexico Marine Protected Areas
- National Coastal Marine Spatial Planning Meeting
- Interdisciplinary Planning Teams – Red Snapper, Spiny Lobster, Mackerel, Annual Catch Limits and Reef Fish
- Council Member Orientation
- Great American Seafood Cookoff
- Southeast Outdoor Press Association

Council priorities for 2012 include:

- Finalize development of a Regulatory Amendment for Red Snapper Alternate Seasons/TAC;
- Finalize development of Amendment 19 to the CMP FMP to address Bag Limit Sales, Trip Limits, Transit, and Latent Gill Net Permits for Mackerel;
- Finalize development of Amendment 11 to the Spiny Lobster FMP to address ESA requirements;
- Finalize development of Amendment 34 to the Reef Fish FMP to address crew size limits and income requirements;
- Finalize development of Amendment 35 to the Reef Fish FMP for Greater Amberjack to adjust the rebuilding plan;
- Finalize development of Amendment 36 to the Reef Fish FMP to Restrict Red Snapper IFQ transfer;
- Finalize development of Amendment 37 to the Reef Fish FMP – Red Snapper IFQ 5-Year Review;
- Continue discussing allocation issues;
- Consider actions to implement sector separation in the reef fish fishery;
- Consider actions to address dealer permits and electronic reporting; and

- Participate in SEDAR benchmark assessments for Cobia and Spanish Mackerel, standard assessment for red snapper, and finalize the update assessment for Vermilion Snapper and Gray Triggerfish.

**5. Caribbean Fishery Management Council (CFMC)**

**BACKGROUND SUMMARY:**

One CFMC member’s term expired in 2011. As a result of the 2011 appointment, the composition of fishing sector representatives remains the same at two commercial, one recreational, and one “other.” The current geographical balance regarding the distribution of at-large seats on the CFMC remains unchanged. The appointee is as follows:

**New Member/Fishing Sector**  
Nelson R. Crespo/commercial

**Outgoing Member/Fishing Sector**  
Eugenio Piñero-Soler/commercial  
(ineligible, by law, for a fourth consecutive term)

The following table lists the Secretarial appointees currently on the CFMC:

2011 CARIBBEAN FISHERY MANAGEMENT COUNCIL (4 Members)				
Obligatory/ At-large	Appointed Members	State	Appt. Ends	Interest Sector
O	FARCHETTE, CARLOS F.	VI	2012	O
O	CRESPO, NELSON R.	PR	2014	C
A	HANKE, MARCOS R.	PR	2012	R
A	LEDEE, WINSTON J.	VI	2013	C

**EXPIRING TERM:**

The following members’ terms will expire on August 10, 2012:

1. Carlos F. Farchette – “other” – U.S. Virgin Islands’ (USV) obligatory seat
2. Marcos R. Hanke – recreational fishing sector – at-large seat (Puerto Rico (PR)); by law, Mr. Hanke, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.

**2012 REPORT RECOMMENDATIONS:**

The two members whose terms do not expire in 2012, are from the commercial fishing sector. The two upcoming vacancies include one outgoing member from the recreational fishing sector and one from the “other” sector. The Governors are encouraged to nominate nominees from the recreational fishing sector, as well as nominees from the “other” sector, including

people with knowledge and experience in the conservation and management of marine resources and their habitats, and ecosystem approaches to management.

## **DISCUSSION:**

The CFMC has prepared FMPs and amendments for the following fisheries or living marine resources in the Caribbean EEZ: spiny lobster, reef fish, coral and reef associated plants and invertebrates, and queen conch.

In 2011, the Council's management actions included:

- **Queen Conch**

Developed 2010 Caribbean ACL Amendment (Amendment 2 for the Queen Conch FMP), which established ACLs and AMs for queen conch, considered to be undergoing overfishing. The Council voted to submit Amendment 2 to the Secretary for review. If approved, the amendments would:

1. Specify management reference points and island-specific ACLs for each fishery management unit (FMU) undergoing overfishing;
2. Establish EEZ sub-boundaries for purposes of applying AMs;
3. Establish AMs to be invoked if ACLs are exceeded; and
4. Develop framework measures for each FMP to streamline future management changes.

Developed 2011 Caribbean ACL Amendment (Amendment 3 to the Queen Conch FMP). The Council unanimously approved the subject amendments for review and implementation by the Secretary. If approved, the amendments would:

1. Revise management measures for conch species within the Queen Conch FMP.

- Developed a regulatory amendment to the Queen Conch FMP, which established compatible regulations closure (seasonal and quota) with the U.S. Virgin Islands (USVI). The Council voted to submit the regulatory amendments to the Secretary for review. Measure became effective May 31, 2011.

- **Reef Fish**

Developed 2010 Caribbean ACL Amendment (Amendment 5 to the Reef Fish FMP), which established ACLs and AMs for reef fish considered to be undergoing overfishing. The Council voted to submit Amendment 2 to the Secretary for review. If approved, the amendments would:

1. Redefine the composition of select FMUs;
2. Specify management reference points and island-specific ACLs for each FMU undergoing overfishing (snappers, groupers and parrotfish);
3. Establish recreational bag limits;

4. Prohibit the harvest of midnight, blue, and rainbow parrotfish;
5. Establish EEZ sub-boundaries for purposes of applying AMs;
6. Establish AMs to be invoked if ACLs are exceeded; and
7. Develop framework measures for each FMP to streamline future management changes.

Developed 2011 Caribbean ACL Amendment (Amendment 6 to the Reef Fish FMP). The Council unanimously approved the subject amendments for review and implementation by the Secretary. If approved, the amendments would:

1. Specify management reference points and island-specific ACLs for each FMU undergoing overfishing;
2. Establish recreational bag limits;
3. Establish AMs to be invoked if ACLs are exceeded; and
4. Revise management measures for aquarium trade species within the Reef Fish FMP.

- **Spiny Lobster**

Developed 2011 Caribbean ACL Amendment (Amendment 5 to the Spiny Lobster FMP). The Council unanimously approved the subject amendments for review and implementation by the Secretary. If approved, the amendments would:

1. Revise management reference points and overfished and overfishing status determination criteria;
2. Implement ACLs and AMs to prevent overfishing;
3. Establish recreational bag limits;
4. Establish EEZ sub-boundaries for purposes of applying AMs; and
5. Establish framework procedures to streamline future management changes.

- **Corals and Reef Associated Plants and Invertebrates**

Developed 2011 Caribbean ACL Amendment (Amendment 3 to the Coral FMP). The Council unanimously approved the subject amendments for review and implementation. If approved, the amendments would:

1. Revise management measures for aquarium trade species within the Corals and Reef and Associated Plants and Invertebrates FMP; and
2. Modify framework procedures to streamline future management changes.

- **Other Council Actions**

The Council coordinated and participated in the following workshops and meetings:

- SEDAR 26 – Redtail Parrotfish, Queen Snapper, and Silk Snapper;
- Conducted Data Poor Workshops;
- Conducted Catch Share Workshops;
- Finalizing EFH 5-year revision document;
- Conducted Trap Reduction Meetings in the USVI;
- Participated in Social Media Workshops;

- Participation in Western Central Atlantic Fishery Commission;
- Participated in Marine Spatial Planning Workshops;
- Participated in numerous orientation and education activities;
- Prepared educational material in cooperation with Sea Grant;
- Developed recreational fishing regulations for the USVI; and
- Initiated first mesophotic reef fishery-independent survey for queen conch in the EEZ off the west coast of PR, coordinated with the NMFS SEFSC and NMFS Southeast Regional Office as well as with the Southeast Area Monitoring and Assessment Program-Caribbean Program and the PR Department of Natural and Environmental Resources. The numbers of queen conch at depth appear to be very high. Additional outcomes include the determination of population viability and the potential to reseed shallow water areas.

Council priorities for 2012 include:

- Develop new FMP for aquarium trade species;
- Amendment 4 to the Reef Fish FMP, which would require escape vents in fish traps;
- Regulatory amendment to the Reef Fish FMP, which would establish size limits and commercial trip limits for parrotfish;
- Regulatory amendment to the Reef Fish FMP, which would establish compatible regulations between the three closed areas off the west coast of PR (Bajo de Sico, Tourmaline Bank, and Abrir La Sierra Bank);
- Develop trap reduction program in federal waters;
- Prohibit the use of traps in the recreational sector, in order to be compatible with territorial/commonwealth waters;
- Develop federal permit system; and
- Regulatory Amendment to the Queen Conch FMP, which would establish compatible size and bag limits with territorial/commonwealth waters.



**6. Pacific Fishery Management Council (PFMC)**

**BACKGROUND SUMMARY:**

Two PFMC members’ terms expired in 2011. As a result of the 2011 appointments, the composition of fishing sector representatives is two commercial, three recreational, three “other,” and one tribal representative, who is counted as a member of the “other” sector, which represents a change from three commercial, four recreational, and two “other. The current geographical balance regarding the distribution of available at-large seats on the PFMC remains unchanged. The appointees are as follows:

**New Member/Fishing Sector**

Richard H. Lincoln/ “other”

Jeffrey N. Feldner/ “other”

**Outgoing Member/Fishing Sector**

Mark V. Cedergreen/recreational  
ineligible, by law, for a fourth consecutive  
term)

Rodney H. Moore/commercial

The following table lists the Secretarial appointees currently on the PFMC:

2011 PACIFIC FISHERY MANAGEMENT COUNCIL (9 Members)				
Obligatory/ At-large	Appointed Members	State	Appt. Ends	Interest Sector
O	LINCOLN, RICHARD H.	WA	2014	O
O	POLLARD, HERBERT A. II	ID	2013	R
O	CRABBE, DAVID M.	CA	2012	C
O	LOWMAN, DOROTHY M.	OR	2012	O
O	PFMC TRIBAL SEAT (*T): SONES, DAVID B.	WA	2012	T
A	MYER, DALE D.	WA	2012	C
A	FELDNER, JEFFREY N.	OR	2014	O
A	BRIZENDINE, WILLIAM L. II	CA	2012	R
A	WOLFORD, DANNY L.	CA	2013	R

**EXPIRING TERMS:**

The following members’ terms will expire on August 10, 2012:

1. David M. Crabbe – commercial fishing sector – California’s obligatory seat

2. Dorothy M. Lowman – “other” sector – Oregon’s obligatory seat
3. David B. Sones – “other” sector – Tribal representative
4. Dale D. Myer – commercial fishing sector – at-large seat (Washington)
5. William L. Brizendine II – recreational fishing sector – at-large seat (California)

## **2012 REPORT RECOMMENDATIONS:**

Of the four members whose terms do not expire in 2012, two are from the recreational sector utilizing rod-and-reel and hook-and-line gear, and two are from the “other” sector.

The five upcoming vacancies in 2012 include two outgoing members from the commercial sector, one from the recreational sector, and two from the “other” sector. The governors are encouraged to provide the Secretary with nominees from the commercial sector with expertise in all fisheries managed by the PFMC, as well as nominees from the recreational sector as a basis for maintaining a balance of both sector interests. Also, governors are encouraged to nominate nominees from the “other” sector, including people with knowledge and experience in the conservation and management of marine resources and their habitats, and ecosystem approaches to management.

## **DISCUSSION:**

The PFMC has prepared FMPs for: Pacific Coast groundfish, West Coast salmon, coastal pelagic species, and highly migratory species fisheries; and is currently in the process of developing a fishery ecosystem plan.

The PFMC also has responsibility for recommending allocations of Pacific halibut among treaty Indian and non-Indian commercial and recreational users in Area 2A under the Northern Pacific Halibut Act.

In 2011, the Council’s management actions included:

- **Ecosystem Plan**  
Continued progress on the development of a Fishery Ecosystem Plan, which is primarily advisory in nature, but could be expanded to include regulatory authority in the future. The Ecosystem Plan Development Team and Advisory Body are moving forward in establishing the form and details of the plan. The Council’s initial policy efforts for the FEP have focused on identifying and protecting unfished low trophic level species in the California Current Ecosystem.
- **Groundfish**

Agreed to utilize a Secretarial amendment process to expedite finalizing regulations for the 2012 Pacific Coast groundfish fisheries.

Developed a new front-loaded schedule and process for the biennial process of adopting harvest specifications, management measures, and rebuilding plan revisions for the 2013-2014 Pacific Coast groundfish fisheries to help achieve more timely implementation of the regulations.

Adopted final 2011 management specifications and measures for the Pacific whiting fishery.

Continued to make progress on the implementation of trailing amendments to the trawl catch shares program to enhance the beneficial operation of the program. Reports received in November indicate a mostly successful start for the first year of operation under catch shares.

Approved new stock assessments for 12 groundfish species and, based on the review of the Stock Assessment Review Panel and SSC, were able to determine that widow rockfish have been rebuilt and can be removed from the list of overfished species.

- **Salmon**

Adopted ocean salmon seasons for 2011 which, due to greatly improved abundance of Sacramento River fall Chinook, allowed for the first substantial ocean salmon fisheries off California and Oregon since 2007.

Received a report from the Pacific Salmon Essential Fish Habitat Review Panel recommending updating of the Council's EFH description for Pacific salmon and set a schedule for considering necessary amendments to the salmon FMP.

Adopted Amendment 16 to the salmon FMP which implements annual catch limits and accountability measures in response to the reauthorization of the Magnuson-Stevens Act.

- **Pacific Halibut**

Adopted final 2011 incidental halibut catch regulations in the commercial salmon fishery.

Adopted proposed changes to the catch share program for 2012.

- **Coastal Pelagic Species**

Recommended that NMFS issue an exempted fishing permit to continue another year of an industry-sponsored Pacific sardine research survey that has contributed important abundance information through aerial survey techniques.

Adopted final 2011-2012 management specifications and measures for the Pacific mackerel fishery, as well as 2012 specifications and measures for the sardine fishery.

- **Highly Migratory Species**

Considered several issues and management possibilities with regard to albacore tuna and West Coast swordfish fisheries.

Provided input for international tuna conservation measures to the General Advisory Committee to the U.S. Section of the Inter-American Tropical Tuna Commission and to the U.S. delegations of the Northern Committee and the Western and Central Pacific Fisheries Commission (WCPFC).

Council priorities for 2012 include:

- Complete a timely process for setting the 2013-2014 groundfish fisheries and initiate development of an improved management process for 2015 and beyond;
- Establish a groundfish stock assessment plan for 2013 and ways to improve assessments of data poor-species;
- Complete trailing amendments for the limited access catch shares program for the groundfish trawl fishery and associated intersector allocations;
- Proceed with the five-year review of groundfish EFH;
- Establish the 2012 Ocean salmon fisheries with opportunities for commercial, recreational, and treaty Indian fisheries while protecting ESA-listed and other depressed salmon stocks;
- Consider needed amendments to salmon EFH;
- Consider allowing retention of Pacific halibut bycatch in some fixed gear fisheries;
- Continue development of a Fishery Ecosystem Plan with the next progress review by the Council scheduled for June 2012;
- Establish 2013 Pacific Sardine and Mackerel fisheries;
- Consider further possibilities for implementing a West Coast swordfish fishery;
- Continue to gather information regarding characteristics of the domestic and international albacore fishing fleets for the purpose of assuring conservation and anticipating any need for domestic fishery limitation controls; and
- Maintain an active presence in highly migratory species regional fishery management organizations which impact Council management recommendations.

**7. North Pacific Fishery Management Council (NPFMC)**

**BACKGROUND SUMMARY:**

Two NPFMC obligatory members’ terms expired in 2011. As a result of the 2011 appointments and a fishing sector change for John Henderschedt from commercial to “other”, the composition of fishing sector representatives on the NPFMC is five commercial, one recreational, and one “other,” which represents a change from six commercial and one recreational. There are no available at-large seats on the NPFMC. The reappointees are as follows:

**New Member/Fishing Sector**  
 John J. Henderschedt/commercial  
 Eric A. Olson/commercial

**Outgoing Member/Fishing Sector**  
 Reappointment/ “other”  
 Reappointment

The following table lists the Secretarial appointees currently on the NPFMC:

2011 NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (7 Members)				
Obligatory	Appointed Members	State	Appt. Ends	Interest Sector
O	BENSON DAVID W.	WA	2012	C
O	HENDERSCHEDT, JOHN J.	WA	2014	O
O	HULL, HOWARD D.	AK	2012	C
O	FIELDS, DUNCAN S.	AK	2013	C
O	COTTEN, SAMUEL R.	AK	2013	C
O	OLSON, ERIC A.	AK	2014	C
O	DERSHAM, ROBERT E.	AK	2012	R

**EXPIRING TERMS:**

The following members’ terms will expire on August 10, 2012:

1. David W. Benson – commercial fishing sector – Washington’s obligatory seat; by law Mr. Benson, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.
2. Howard D. Hull – commercial fishing sector – Alaska’s obligatory seat
3. Robert E. Dersham – recreational fishing sector – Alaska’s obligatory seat

## **2012 REPORT RECOMMENDATIONS:**

Of the four members whose terms do not expire in 2012, three are from the commercial sector with experience in processing and harvesting, and one is from the “other” sector. The three upcoming vacancies include two outgoing members from the commercial sector, and one from the recreational sector. Although commercial fisheries are particularly important in this region, the governors are encouraged to continue to nominate persons from the recreational fishing sector and from the “other” sector. “Other” sector nominees should include persons with backgrounds in academics, fisheries management, environmental science, economics, or social science, and who have knowledge and experience in the conservation and management of marine resources and their habitats, and ecosystem approaches to management. Recently, Alaska native tribal entities also have voiced strong support for greater representation on the NPFMC.

## **DISCUSSION:**

The NPFMC has six FMPs for: Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), Salmon Fisheries in the EEZ off the Coast of Alaska, Bering Sea/Aleutian Islands King and Tanner Crab, the Scallop Fishery off Alaska, and Fishery Resources of the Arctic Management Area.

In 2011, the Council’s management actions included:

- **Fishery Management Plans**

The NPFMC recently adopted additional amendments to the groundfish, crab, and scallop FMPs, which have not yet been approved and implemented. Of special note are the FMP amendments adopted by the Council in 2011 to establish ACLs for the salmon fisheries to comply with Congressional directives under the Magnuson-Stevens Act. Routine management of the fisheries under the salmon, scallop, and BSAI crab FMPs is deferred to the State of Alaska, while the NPFMC retains oversight of major allocation, overfishing definition, and habitat management issues. In addition, under the Northern Pacific Halibut Act of 1982, the NPFMC has authority over allocation issues affecting the Pacific halibut fishery in and off Alaska, while the International Pacific Halibut Commission (IPHC) retains responsibility for conservation management of this fishery.

- **Rebuilding Plans**

Of all fisheries managed under FMPs, only the Pribilof Island blue king crab is currently under a rebuilding plan, and a rebuilding plan is being prepared for Bering Sea Tanner crab. After NMFS determined that each of these stocks was overfished, the NPFMC promptly began the process of developing rebuilding plans for these species, as required by the Magnuson-Stevens Act. A rebuilding plan was approved for Pribilof Island blue king crab in 2004 (FMP Amendment 17). A Bering Sea Tanner crab rebuilding plan is currently under development.

- **Salmon Bycatch Efforts**

In 2011, NMFS implemented Chinook salmon bycatch limits in the Bering Sea Pollock fishery adopted by the Council in 2010, and the Council adopted Chinook salmon bycatch limits in the Gulf of Alaska Pollock fishery. NMFS is developing proposed regulations to implement the Council's recommendations. If approved, those regulations would be effective starting the later half of 2012.

Council priorities for 2012 include:

- Assessing the final biological opinion developed by NMFS in 2011 on the impacts of the groundfish fisheries on endangered Steller sea lions and associated mitigation measures to determine whether adequate protections to these animals could be provided through measures that are less costly to fisheries and coastal communities. This process could result in the analysis of proposed changes to Steller sea lion protection measures and further consultation under section 7 of the ESA on any changes to groundfish fisheries management;
- Restructuring of the Observer Program to monitor the groundfish and Pacific halibut fisheries, including the consideration of electronic monitoring to address concerns or practicality of deploying observers on small vessels. The restructured program would include a fee based system that would allow for more flexibility to deploy observers needed to collect quality catch information in the groundfish and Pacific halibut fisheries;
- Assessing options to reduce bycatch of Pacific halibut, crab, salmon, and other species caught incidentally in the groundfish fisheries;
- Refining the various catch share programs developed by the NPFMC and implemented by NMFS; and
- Addressing ongoing domestic allocation issues associated with the Pacific halibut resource in recognition that the overall coast wide harvest strategy for this resource is established by the IPHC.

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**8. Western Pacific Fishery Management Council (WPFMC)**

**BACKGROUND SUMMARY:**

Three WPFMC members’ terms expired in 2011. As a result of the 2011 appointments, the composition of fishing sector representatives on the WPFMC remains unchanged, at two commercial, three recreational, and three “other.” The current geographical balance regarding the distribution of at-large seats on the WPFMC remains unchanged, with three from Hawaii, one from American Samoa and none from Guam and the CNMI. The appointees and reappointee are as follows:

**New Member/Fishing Sector**

Richard B. Seman/ “other”  
  
Frederick M. Rice/recreational  
David G. Itano/ “other”

**Outgoing Member/Fishing Sector**

Benigno M. Sablan/ “other” (ineligible, by law, for a fourth consecutive term)  
Frederick E. Duerr/recreational  
Reappointment

The following table lists the Secretarial appointees currently on the WPFMC:

2011 WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL (8 Members)				
Obligatory/ At-large	Appointed Members	State	Appt. Ends	Interest Sector
O	DUENAS, MANUEL P. II	GU	2012	C
O	HALECK, STEPHEN	AS	2012	R
O	SEMAN, RICHARD B.	CNMI	2014	O
O	MARTIN, SEAN C.	HI	2012	C
A	LEIALOHA, JULIE A.K.	HI	2013	O
A	RICE, FREDERICK M.	HI	2014	R
A	ITANO, DAVID G.	HI	2014	O
A	SWORD, WILLIAM A.	AS	2013	R

**EXPIRING TERMS:**

The following members’ terms will expire on August 10, 2012:

1. Manuel P. Duenas II – commercial fishing sector – Guam’s obligatory seat; by law, Mr. Duenas, who is completing his third consecutive term, is ineligible for renomination to a fourth consecutive term.

2. Stephen Haleck – recreational fishing sector – American Samoa’s obligatory seat; by law, Mr. Haleck, who is completing his third consecutive term, is ineligible for renomination to a fourth consecutive term.
3. Sean C. Martin – commercial fishing sector – Hawaii’s obligatory seat; by law, Mr. Martin, who is completing a third consecutive term, is ineligible for renomination to a fourth consecutive term.

## **2012 REPORT RECOMMENDATIONS:**

Of the five appointed members whose terms do not expire in 2012, two are from the recreational fishing sector with hook-and-line and rod-and-reel experience, and three are from the “other” sector. The three upcoming vacancies include two from the commercial fishing sector and one from the recreational fishing sector. To achieve sector balance on the WPFMC, the governors are encouraged to nominate representatives from the commercial fishing sector.

## **DISCUSSION:**

Domestic fisheries in U.S. EEZ waters and operating in the adjacent high seas of the western Pacific (Pacific Islands) are managed under five FEPs: Pacific Pelagic FEP, Hawaii Archipelago FEP, American Samoa Archipelago FEP, Mariana Archipelago FEP and the Pacific Remote Island Areas FEP. The WPFMC 2011 accomplishments included, but were not limited to, the following management activities:

- Reduced the advance notification period for inseason closures of the main Hawaiian Islands Deep-7 bottomfish fishery from 14 to 7 days to enhance administration of the fishery.
- Established procedures for specifying ACLs and AMs for Pacific Island fisheries to help NMFS end and prevent overfishing, rebuild overfished stocks, and achieve optimum yields. This action included an international exception for pelagic management unit species, a one-year life span exception for pelagic squid and a tiered specification process for specifying acceptable biological catch (ABC) based on data quality and stock assessments.
- Established a longline prohibited area around the islands of the Northern Mariana Islands to reduce the potential for nearshore localized fish depletion from longline fishing, and to limit catch competition and gear conflicts between longline and trolling vessels.
- Approved three-year marine conservation plans for Guam, the Northern Mariana Islands, and the Pacific Remote Island Areas (PRIA) that detail projects for using funds collected

under Pacific Insular Area fishery agreements and from fines and penalties from illegal foreign- fishing.

- Established gear configuration requirements for pelagic longline fishing in the South Pacific and for longliners based in American Samoa to ensure that longline hooks fish deeper than 100 m to reduce interactions with green sea turtles.
- Established ACLs for all insular stocks of management unit species, including bottomfish, reef fish, precious corals and crustaceans. Specification of ACLs for reef fish stocks was especially challenging, given that there are several hundred reef fish harvested in the Western Pacific Region and no stock assessments.

Council priorities for 2012 include:

- In November 2011, closure of the Hawaii-based longline fishery for bigeye tuna due to national quota restrictions recommended by the WCPFC was avoided due to passage of Section 113 of the Consolidated and Further Continuing Appropriations Act, 2012 by the U.S. Congress. This measure sunsets in December 2012. WPFMC will work with NMFS to develop measures that would maintain catches below the quota limit to prevent a fishery closure in 2013.
- The WPFMC will continue to work with NMFS to develop a regulatory amendment to better optimize the use of swordfish resources by eliminating unnecessary regulatory discarding of swordfish incidentally caught in the Hawaii deep-set tuna fishery.
- WPFMC will continue to work with NMFS to modify certain boundaries of the southern large fishing vessel prohibited area around Tutuila Island, Manua Islands, and Rose Atoll in American Samoa to align with the boundaries of the Rose Atoll Marine National Monument.
- WPFMC also intends to amend four of its FEPs to refine the process specifying ACLs and AMs for federally managed fish stocks in the Pacific region. Initial ACL specifications and AMs established in 2011, particularly for coral reef finfish and miscellaneous insular species, need to be improved for fishing year 2013. The amendments will enable WPFMC to better specify ACLs and AMs for data poor stocks. Further, the WPFMC will review those species it intends to designate as Ecosystem Component Stocks, for which no ACLs need to be specified.
- The WPFMC will continue to work with NMFS to modify Habitat Areas of Particular Concern (HAPC) designations for Hawaii management unit species. In addition, the WPFMC will take initial action on updating EFH and HAPC modifications to all other management unit species in American Samoa, Mariana Islands and PRIA FEPs.

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## **F. APPENDIX – STATISTICAL FISHERIES DATA**

In addition to assessing the apportionment of membership on each RFMC, this report provides the following statistical information about the status of fisheries managed under each RFMC, and also identifies the number of RFMC members participating in those fisheries. The most recent data were compiled to show the volume of fisheries production and the related effort in each fishery managed under an FMP.<sup>7/</sup>

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<sup>7/</sup>The Secretary also has management authority over Highly Migratory Species in the EEZ off the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf of Mexico coasts. An additional table has been included with the following Appendix, which lists FMPs and other statistical data for Atlantic and Gulf HMS.

## Appendix

This appendix provides statistical data required by Section 302(b)(2)(B)(i) of the Magnuson-Stevens Act. Unless otherwise indicated, the data are for the 2010–2011 fisheries listed by FMP. Reported landings are for catches throughout the entire range of a fishery managed under the FMP. Beginning from the leftmost column, the listed data are:

1. FMPs developed by each RFMC;
2. Type of fishery managed under each plan, i.e., commercial or recreational, or mixed (see below);
3. Species/species groups making up each fishery;
4. Weight of each species or species group in a fishery landed in 2008 (or as otherwise indicated) showing both the landings for commercial and recreational fishermen, if recreational information is available;
5. Number of fishermen participating in the listed fisheries, if available; otherwise, the number of U.S. vessels either permitted or estimated to be operating in the fishery;
6. Gear and processing methods used in each fishery;
7. Range and seasonality of the fishery; and
8. Number of current RFMC members who are commercial or recreational sector participants in each fishery; or their representatives.<sup>8/</sup>

### LEGEND FOR TYPE FISHERIES

C - Commercial fishery: Eighty percent or more of the reported landings are by commercial fishermen.

c - Mainly commercial fishery: More than 60 percent (-) but less than 80 percent (-) of the reported landings are by commercial fishermen.

x - Mixed fishery: Sixty percent or less of the reported landings are by each group of commercial and of recreational fishermen.

r - Mainly recreational fishery: More than 60 percent (-) but less than 80 percent (-) of the reported landings are by recreational fishermen.

R - Recreational fishery: Eighty percent or more of the reported landings are by recreational fishermen.

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<sup>8/</sup>Vertical sums in the attached appendices may not match the sums entered for interest sectors in Table 1 on page 6. If one or more Council members actively participated in more than one fishery, the vertical sum will exceed the number entered in the interest sector column. Also, if a Council member participated in a currently closed fishery, he or she is still listed as a representative of the fishery in the table because of the expertise they bring to the Council regarding the operation of the fishery.

A-1 NEW ENGLAND FISHERY MANAGEMENT COUNCIL (NEFMC)

A-i NEW ENGLAND FISHERY MANAGEMENT COUNCIL (NEFMC)	Type	Species/Species Group	Landings (metric tons) 2010	Vessels (permits) 2010	Gear	Fishing Areas/ Seasons	Processing	Participants/ Representatives in 2011	
								Comm.	Rec.
Northeast Multi-Species	C	Commercial Atlantic cod Haddock Pollock Hakes Ocean perch (redfish) Yellowtail flounder American plaice Winter flounder Witch flounder Windward flounder* Atlantic halibut Ocean pout	6,876 8,617 4,552 10,036 1,646 1,319 1,413 1,585 1,759 54 19 0	2,981	trawl, dredge, longline, hook & gillnet, hook & line	FMP area/year round	gutted	8	3
Atlantic Sea Scallops	R	Recreational Cod Pollock Winter flounder	3,330 1,704 79	803	hook & line	FMP area/year round	gutted, filleted		
Atlantic Salmon	R	Atlantic salmon	0	None	None	None	none	0	0
Deep-sea Red Crab	C	Atlantic sea scallops	25,877	909	dredge & trawl	FMP area/year round	hand shucking and freezing	3	0
Atlantic Herring	C	Deep-sea red crab	1,417	1,638	Traps, trawl	FMP area/year round	whole, partially processed at sea	1	0
Monkfish	C	Atlantic herring	65,283	2,405	Mid-water trawl; purse seines; weirs; other trawl	FMP area/year round	fresh/canned shoreside/fresh bait	3	0
	C	Monkfish	3,951	2,735	gillnets, trawls, dredges	FMP area/year round	fresh	7	0

NEFMC MEMBERSHIP

Commercial 2011	Recreational 2011	Other 2011
8	3	1

Commercial fisheries landings statistics were provided by the Northeast Region and are based on information in the Region's data base as of October 2011. Recreational fisheries information was obtained from the Office of Science and Technology at <http://www.st.nmfs.gov/stl/recreational/queries/index.html> and are based on the results of the 2010 Marine Recreational Fisheries Statistics Survey.

A-ii MID-ATLANTIC FISHERY MANAGEMENT COUNCIL (MAFMC)

A-ii MID-ATLANTIC FISHERY MANAGEMENT COUNCIL (MAFMC)	Type	Species/Species Group	Landings (metric tons) 2010	Vessels (permits) 2010	Gear	Fishing Areas/ Seasons	Participants/ Representatives in 2011	
							Comm.	Rec.
Atlantic Mackerel, Squid & Butterfish	C	Commercial Atlantic mackerel	9,877	2,602	otter trawl, trap, gillnet	FMP area/year round	2	1
	C	Squid, Loligo Squid, Ilex Butterfish	6,715 15,825 576	(Combine) 2,297	trawl; traps	FMP area/year round		
	R	Recreational Atlantic mackerel	778	859		FMP area/year round		
Atlantic Surf Clam & Ocean Quahogs	C	Atlantic surfclams Ocean quahogs	19,977 16,362	784 825	Dredge	FMP area/year round (ITQ mgmt.)	1	
Summer Flounder (Fluke)	x	Commercial Recreational	6,003 2,245	936 940	hook & line, otter trawl, trap, gillnet	FMP area/year round	3	3
Scup	x	Commercial Recreational	4,720 2,516	789 836				
Black Sea Bass	x	Commercial Recreational	785 1,678	830 902				
Tilefish	C	Golden Tilefish	846	2,400	longline, hook & line	FMP area/year round	1	
Atlantic Bluefish	x	Commercial	3,162	3,019	hook & line; otter trawl; gillnet	FMP area/year round	1	3
	x	Recreational	7,520	971				
Spiny Dogfish	C	Commercial	5,598	2,942	gillnet; trawl	FMP area/year round	5	1

MAFMC MEMBERSHIP

Commercial 2011	Recreational 2011	Other 2011
5	3	5

1 pending appointment

Commercial fisheries landings statistics were provided by the Northeast Region and are based on information in the Region's data base as of October 2011. Recreational fisheries information was obtained from the Office of Science and Technology at <http://www.st.nmfs.gov/stl/recreational/queries/index.html> and are based on the results of the 2010 Marine Recreational Fisheries Statistics Survey.



A-iii SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL (SAFMC)

A-iii SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL (SAFMC)	Type	Species/Species Group	Landings (metric tons) 2010	Vessels (permits: <sup>1</sup> Federal or Florida (FL))	Gear	Fishing Areas/ Seasons	Processing	Participants/ Representatives in 2011	
								Comm.	Rec.
Golden Crab	C	Golden Crab	288	14	traps	FMP area/ year-round	Fresh		
Snapper/Grouper Fishery of the South Atlantic	X	Commercial Groupers Wreckfish Snappers Other species  Recreational Groupers 614 Snappers Other Species	556 Confidential 1,108 2,103  204 614 2,800	777  1,815 (for-hire)	rod and reel, bandit gear, longline, handline  handline, rod and reel, bandit gear, spear, powerhead	FMP area/ prohibition on harvest and possession of Nassau grouper and Goliath grouper year-round <sup>2</sup>  FMP area	Fresh  at sea, gutted	3	4
Penaeid Shrimp Fishery of the South Atlantic Region	C	Commercial All Recreational White	10,706 n/a <sup>3</sup>	659 (penaeid) 284 (rock) n/a <sup>3</sup>	trawls n/a <sup>3</sup>	FMP area/ year-round	shore-side processing		
Coral, Coral Reefs, and Live/Hard Bottom Habitat of the South Atlantic Region	C	Commercial-Octocoral <sup>3</sup> (2010 landings)  Recreational	8,021 (0 Fed, 8,021 State) colonies  n/a <sup>4</sup>	49 n/a <sup>4</sup>	hand harvest	south FL/ year-round	Fresh		
Gulf of Mexico Spiny Lobster [Jointly managed with GMFMC]									
Coastal Migratory pelagics [Jointly managed with GMFMC]									
								1	8
								4	

1 Number of vessels with active permits for 2010.  
 2 Commercial and recreational sector for shallow water groupers closed during January-April. Commercial fishery for red porgy closed during January-April. Commercial fishery for greater amberjack closed during April. Fishing prohibited year-round in Oculina HAPC.  
 3 Not applicable (NO recreational fishery in the EEZ).  
 4 Octocoral landings and number of persons harvesting octocoral provided by State of Florida. Federal permits are not required for octocoral harvest.

SAFMC MEMBERSHIP

Commercial 2011	Recreational 2011	Other 2011
3	4	1

Sources: Commercial landings information was obtained from the Annual Catch Limit (ACL) datasets produced by the Southeast Fisheries Science Center (SEFSC), Miami, FL, and from the Florida Fish and Wildlife Conservation Commission's Marine Fisheries Information System. Recreational landing estimates were obtained from the SEFSC ACL datasets and include MRFSS and headboat landings data. NMFS Southeast Region, St. Petersburg, FL, provided the Federal permit information for 2010.

A-iv GULF OF MEXICO FISHERY MANAGEMENT COUNCIL (GMFMC)

A-iv GULF OF MEXICO FISHERY MANAGEMENT COUNCIL (GMFMC)	Type	Fishery/Species, Species Group	Landings (metric tons) 2010	Vessels (permits: <sup>1</sup> Federal or Florida (FL))	Gear	Fishing Areas/ Seasons	Processing	Participants/ Representatives in 2011	
								Comm.	Rec.
Stone Crab Fishery of the Gulf of Mexico	C	Commercial-Stone Crab Recreational	1,183 (claw weight) n/a <sup>3</sup>	FL: n/a <sup>2</sup> n/a <sup>3</sup>	trap, pot trap, pot, hand harvest	FL West Coast/ Oct-Apr	at-sea, declaw; shore-side processing	1	
Red Drum Fishery of the Gulf of Mexico	R	Commercial - Red Drum Recreational	21 6,520 <sup>5</sup>	n/a <sup>6</sup> n/a <sup>6</sup>	n/a <sup>6</sup> n/a <sup>6</sup>	EEZ Closed n/a <sup>6</sup> EEZ Closed n/a <sup>6</sup>	n/a <sup>6</sup> n/a <sup>6</sup>	1	2
Reef Fish Fishery of the Gulf of Mexico	X	Commercial Grouper Red Snapper Other snapper Other species <sup>7</sup> Recreational Grouper Red Snapper Other snappers Other species <sup>7</sup>	2,243 1,539 1,354 442 1,118 1,006 743 943	1,031 (reef fish) 425 (red snapper) <sup>8</sup> n/a <sup>3</sup> (1,432 for-hire vessel permits)	longline, headline, bandit gear, rod and reel, buoy gear, spear, powerhead spear, powerhead, bandit gear, headline, rod and reel, cast net	FMP area/ Year round <sup>9</sup> FMP area/ Year round <sup>4,9</sup>	at-sea, gutted; shore-side processing	3	4
Shrimp Fishery of the Gulf of Mexico	C	Commercial-All Recreational	50,034 n/a <sup>3</sup>	1,723 n/a <sup>3</sup>	trawl, butterfly net, skimmer, cast net trawl	FMP area/ Year round; annual TX closure; seasonal FL closure FMP area/ Year round	tail separation at-sea; shore-side processing	1	
Spiny Lobster Fishery of the Gulf of Mexico & South Atlantic [shared w/SAFMC]	C	Commercial <sup>10</sup> Recreational <sup>10</sup>	1,977 511 <sup>2</sup>	245 commercial 433 tailing FL: n/a <sup>2</sup> n/a <sup>3</sup>	trap, pot, dip net, bully net, hoop net, trawl, snare, hand harvest dip net, bully net, pot, trap, snare, hand harvest	Florida/ Aug-Apr FL / 2-day sport-season in July, Aug-Apr	tail separation at-sea; shore-side processing	1	
Coral & Coral Reefs of the Gulf of Mexico	C	Commercial Octocoral <sup>2</sup> Recreational	23,811 (6,170 Fed + 17,641 State) colonies n/a <sup>3</sup>	22 n/a <sup>3</sup>	hand harvest hand harvest	South FL/ Year round	fresh	4	3
Coastal Migratory Pelagic Resources of the Gulf of Mexico & South Atlantic [shared w/SAFMC]	X	Commercial King mackerel Spanish mackerel Recreational King mackerel Spanish mackerel	3,014 2,643 2,207 2,018	1,562 1,384 n/a <sup>3</sup> n/a <sup>3</sup> (1,464 Gulf for-hire vessels) n/a <sup>3</sup> (1,814 south Atlantic for-hire vessels)	gillnets, longline, bandit gear, headline, rod and reel, purse net bandit gear, headline, rod and reel, spear	Gulf & South Atlantic; Year round, commercial closures when quotas are reached	At-sea, gutted, Shore-side processing	3	4

A-iv GMFMC (continued) from preceding page:

- 1 Number of vessels with active permits for 2010.
- 2 Data from state of Florida.
- 3 Not Available (no federal permit or reporting requirements, except for-hire vessels).
- 4 Recreational fishery for red snapper in 2010 was closed from January 1 to June 1 and from August 15 through December 31.
- 5 State landings only.
- 6 Not applicable (fishery closed in federal waters).
- 7 Includes greater amberjack, lesser amberjack, almaco jack, banded rudderfish, gray triggerfish, tilefishes, and hogfish.
- 8 Individual Fishing Quotas Program shareholders at the end of 2010.
- 9 Bottom fishing prohibited year-round on Madison and Swanson sites and Steamboat Lumps; the Edges is closed to all fishing January through April. Recreational fishery for gag, red grouper, and black grouper is closed February 1 to March 31.
- 10 Data from 2009-2010 fishing season.

GMFMC MEMBERSHIP

Commercial 2011	Recreational 2011	Other 2011
4	4	3

Sources: Commercial landings information was obtained from the Annual Catch Limit (ACL) datasets produced by the Southeast Fisheries Science Center (SEFSC), Miami, FL, and from the Florida Fish and Wildlife Conservation Commission's Marine Fisheries Information System. Recreational landing estimates were obtained from the SEFSC ACL datasets and include MRFSS and headboat landings data. NMFS Southeast Region, St. Petersburg, FL, provided the Federal permit information for 2009.

A-V CARIBBEAN FISHERY MANAGEMENT COUNCIL (CFMC)

A-V CARIBBEAN FISHERY MANAGEMENT COUNCIL (CFMC)	Species/Species Group	Landings (metric tons) 2010	Vessel permits <sup>1</sup>	Gear	Fishing Areas/Seasons	Processing	Participants/Representatives in 2011	
							Comm.	Rec.
Spiny Lobster	Commercial	119 (PR) n/a <sup>5</sup> (USVI)	n/a	trap/pot, dip net gillnet, snare	year-round	fresh, landed whole	1	
	Recreational	n/a <sup>3</sup>	n/a	dip net, trap, pot	year-round			
Reef Fish (snappers, groupers, other reef species)	Commercial	755 (PR) n/a <sup>5</sup> (USVI)	n/a	longline, hook and line, trap, pot,	area closures <sup>4</sup> , seasonal closures for numerous snappers and groupers; prohibition on harvest and possession of Nassau and Goliath groupers	gutted at-sea, shore-side processing	2	1
	Recreational	81 <sup>2</sup> (PR) n/a <sup>3</sup> (USVI)	n/a	dip net, handline, rod and reel, slurp gun, spear				
Coral Reef Resources	Commercial	0	n/a	dip net, slurp gun, hand harvest	Year-round	live, fresh		
	Stony Corals	0	n/a					
	Gorgonians	0	n/a					
	Live Rock	0	n/a					
	Other Invertebrates	0	n/a					
	Algae	0	n/a					
	Seagrasses	0	n/a					
	Recreational	n/a <sup>3</sup>	n/a	dip net, slurp gun, hand harvest				
Queen Conch	Commercial	94 (PR) n/a <sup>5</sup> (USVI)	n/a	hand harvest (no hooka)	closed year round (no harvest) in EEZ except east of St. Croix (portion of Lang Bank) where it is closed seasonally each year July through September	live, landed whole in shell, shore-side processing		
	Recreational	n/a <sup>3</sup>	n/a	hand harvest (no hooka)				

CFMC MEMBERSHIP

Commercial 2011	Recreational 2011	Other 2011
2	1	1

<sup>1</sup> Not applicable (no permits required).

<sup>2</sup> Recreational landings only for Puerto Rico and are collected by the Marine Recreational Fisheries Statistics Survey.

<sup>3</sup> Not available. Recreational landings in USVI are not collected.

<sup>4</sup> Fishing with pots, traps, bottom longlines, gill nets, and trammel nets is prohibited year-round at Grammanik Bank and at various mutton snapper and red hind spawning aggregation sites. Fishing for any species is prohibited year-round within Hind Bank Marine Conservation District.

<sup>5</sup> Not available. Complete landings data for 2010 from USVI are not yet available.

Sources: Puerto Rican and USVI Commercial landings were obtained from the Southeast Fisheries Science Center (SEFSC), Miami. Puerto Rico commercial landings are from the Accumulated Landings System at the Southeast Fisheries Science Center (SEFSC), Miami, FL.

A-vi PACIFIC FISHERY MANAGEMENT COUNCIL (PFMC)	Type	Species/Species Group	2010 Landings (salmon in # of fish, others in metric tons)	2010 Permits (Vessels) & Angler Trips	Gear	Fishing Areas/ Seasons	Processing	Participants/ Representatives in 2011*	
								Comm.	Rec.
Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California <sup>2</sup>	X	Commercial Chinook salmon Coho salmon Pink salmon  Recreational Chinook salmon Coho salmon Pink salmon	134,942 14,654 0  56,535 54,747 0	CA Troll 1,218 OR Troll 1,019 WA Troll 158  183,031 Angler Trips	Troll; hook and line,	WA, OR & CA/ variable dates by area	headed & gutted, fillets; fresh & frozen	0	3
Pacific Coast Groundfish <sup>1</sup>	X	Pacific whiting Flatfish Rockfish Other groundfish  Recreational Groundfish	170,202 15,385 5,185 9,012  2,094	Limited Entry: 317 vessels registered to a LE permit Open Access: (765 vessels landed groundfish)  655,802 Boat Based Trips targeting groundfish	trawl; hook & line; pots; set nets	CA/year round OR/year round WA/year round	headed & gutted; fillets; surimi; fresh & frozen	3	3
Coastal Pelagic Species <sup>3</sup>	C	Pacific sardine Pacific mackerel Jack mackerel Market squid Northern Anchovy	66,817 2,104 314 129,909 1,284	Federal Limited Entry south of Point Arena 65 State Limited Entry north of Point Area-36	purse seine	CA - year round OR and WA - summer	human consumption bait meal and oil	1	
Highly Migratory Species <sup>4</sup>	X	Northern albacore Other tunas Swordfish Sharks	11,855 35 367 117	1,970	Surface hook-and line Coastal purse seine Harpoon Drift gillnet High Seas longline	CA/year round OR/year round WA/year round	Fresh, frozen, canned Human consumption		4

PFMC Membership

	Recreational 2011	Other** 2011
Commercial 2011		
<b>2</b>	<b>3</b>	<b>4</b>

\* Council Representative may represent more than One FMP.

\*\* "Other" includes tribal representative.

<sup>1</sup>/ Pacific Coast groundfish fishery data was extracted directly from the PacFIN data system (commercial), RecFIN, and Final EIS for 2007-08 Pacific Groundfish Fishery (Recreational).

<sup>2</sup>/ Review of 2008 Ocean Salmon Fisheries." (February 2009, Pacific Fishery Management Council).

<sup>3</sup>/ SWR estimates from PacFIN.

<sup>4</sup>/ SWR estimates from PacFIN.

A-vii NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC)

A-vii NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC)	Type	Species/Species Group	Tonnage (metric tons)*	Fishermen & Crew**	Gear	Fishing Areas and Seasons	Processing	Participants/Representatives in 2011****	
								Comm.	Rec.
Groundfish of the Gulf of Alaska (GOA)	C	Pollock Pacific cod Flatfish Rockfish Sablefish Atka mackerel Misc. species	81,310 61,024 40,801 22,905 11,148 1,615 6,673	1376 Federal Fishing permits 1106 LLP permits (some Interim)	trawl; pot; hook & line; jig	area/time closures adjusted in season  LLP permits have gear and area endorsements	hand & machine fillet; headed/gutted; frozen; minced; meal & oil	4	
Groundfish of the Bering Sea and Aleutian Islands (BSAI)	C	Pollock Pacific cod Flatfish Rockfish Sablefish Atka mackerel Misc. species	1,200,412 219,049 286,353 28,204 1,714 51,820 29,409	599 Federal fishing permits 507 LLP permits (some Interim)	trawl; pot; hook & line; jig	area/time closures adjusted in season  LLP permits have gear and area endorsements	hand & machine fillet; headed/gutted; frozen; minced; meal & oil	4	
Commercial King and Tanner Crab Fisheries in the BSAI	C	King Crab Red king crab Golden king crab St. Matt. Blue King Crab Tanner Crab C. Opilio (snow) C. bairdi	6,055 confidential confidential 22,119 closed	500 Quota Share holders for IFQ crab 347 LLP permits (some Interim)	Pot	Deferred to State; generally November and winter months;  LLP permits have fishery endorsements for minor crab species.	cooked; refrigerated; frozen	3	
Salmon fisheries in the EEZ off Alaska and adjacent state waters	C	Chinook salmon Coho salmon Pink salmon Sockeye salmon Chum salmon	1,183 4,199 161 5 1,596	964 permits fished	troll***	Deferred to State; generally West area is closed; southeast area time area limits.	fresh; gutted & gilled; glazed; frozen; canned; smoked	1	
Scallop Fishery off Alaska	C	Weathered scallops (no directed fisheries occur for other scallop species listed in the FMP)	221	9 LLP permits	Dredges	Deferred to State; Time and area openings are adjusted inseason	hand shucked and frozen or iced		

Secretarial appointed NPFMC membership in 2011: Commercial 5; Recreational 1; Other 1

\$ In addition to these five FMPs, the NPFMC also is responsible for developing regulations governing Pacific halibut fisheries in and off of Alaska under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). These regulations, which are in addition to and not in conflict with regulations adopted by the International Pacific Halibut Commission, primarily allocate halibut fishing privileges among U.S. fishermen. Although the NPFMC develops halibut management regulations according to principles of the Magnuson-Stevens Act, no halibut FMP exists because the Magnuson-Stevens Act does not apply to management of the Pacific halibut fisheries. In 2011, the commercial fishing season for halibut in and off Alaska runs from March 12 through November 18. The total commercial catch of halibut under the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) Programs through November 18, 2011 was 13,781 mt, net weight, about 98 percent of the available quota. At that date, about 344 mt of Pacific halibut remained. For Pacific halibut, 2588 persons held IFQ Quota Share as of December 2011.

\* 2010 salmon catch data are from the State of Alaska. These data represent only the southeast AK hand and power troll fisheries that are governed by the Salmon FMP and managed as one fishery, inside and outside State waters by the State of Alaska. The catch data for the BSAI crab fisheries are from the BSAI Crab Rationalization Program Report for Fishing Year 2010/2011 (July 1, 2010 through June 30, 2011), prepared by the Alaska Region, NMFS. Alaska scallop fishery catch data for the 2010/2011 season (July 1, 2009 to January 18, 2010) are from the State of Alaska. All other catch data are from the Alaska Region, NMFS, and reflect catch reports through December 24, 2011. NMFS catch data include retained and discarded catch amounts. Miscellaneous groundfish species includes squid, skates, sharks, octopus, and sculpin.

A-vii NPFMC (continued) from preceding page:

\*\*Data represent persons or vessels permitted to harvest fish, not the number of individuals actually involved in the operation of vessels, catching and processing fish. The number of permits actually used to harvest fish is fewer than that indicated by the data. Participation in all FMP fisheries is governed by some form of limited access system. License Limitation Programs (LLP), initially effective in 2000, apply to all fisheries except crab fisheries brought under a new IFQ system in 2005, salmon (which is governed by the State of Alaska limited entry system), demersal shelf rockfish in the Southeast Gulf of Alaska, IFQ sablefish, and IFQ and CDQ halibut fisheries. In 2005, a new IFQ program replaced the LLP license requirement for most BSAI king and Tanner crab fisheries. A total of 490 distinct persons were initially issued one or more types of harvesting quota share for eight crab fisheries (managed as nine fisheries starting July 1, 2007); in the 2010/2011 crab year most IFQ crab was assigned to cooperatives; 133 distinct hired Masters fished IFQ for 10 active permit holders (counting cooperatives, not members). Some LLP crab licenses were re-issued to authorize fishing not managed under the IFQ system. Of the approximate total 2,182 current LLP permits, most (1,835) authorized fishing for groundfish in the BSAI or GOA or both, and 347 still authorized fishing for BSAI crab species not under crab rationalization management; the remaining 9 were for scallop harvest. A number of permits were "interim" and will be revoked following final adjudication of claims.

Also, a total of 841 persons held QS to harvest sablefish as of December 2011, with fixed gear in the GOA and BSAI under the IFQ Program. The salmon permit data are from the State of Alaska and represent the number of individual permits fished in 2010.

**\*\*\*Troll gear is the gear authorized to be used in the EEZ under the salmon FMP, however, other gear types such as gill nets and purse seines are authorized in other areas of the State to harvest salmon.**

**\*\*\*\* Columns not completed. In many cases, overlapping interests exist and defining the specific degree of Council representation on a specific FMP cannot be conclusively determined.**

A-viii WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL (WPFMC)

A-viii WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL (WPFMC)	Type	Species/Species Group	Landings (metric tons) 2010 <sup>1</sup>	Vessels (permits) <sup>2</sup>	Gear	Fishing Areas/Seasons	Processing	Participants/Representatives in 2011	
								Comm.	Rec.
Hawaii Archipelago (including Midway Atoll)		Bottomfish and Seamount Groundfish	212 (C) 147 (R) <sup>3</sup>	475 (C) Est. 2,800 (R)	handline, rod and reel	FEP Area/year round, except: a. Main Hawaiian Islands (MHI) upon reaching annual IAC (closed) b. Northwestern Hawaiian Islands (NWHI) (closed) c. Hancock Seamounts (closed until pelagic armorhead is rebuilt)	fresh fish market	0	0
	C/R	Spiny and slipper lobster, Kona crab, deep-water shrimp Precious corals (all species combined)	28 Confidential	0 2	traps hand manned submersible, remote operated vessel, hand	FEP Area/year round, except: a. NWHI (closed) b. MHI: (closed 5/1 - 8/31) FEP Area/year round, except: a. Makapu and Auau Beds which have 2 year fishing periods that begin 7/1 and ends 6/30 2 years later b. NWHI (closed)	flash frozen and live market shaped/polished	0	0
		Currently harvested coral reef taxa, Potentially harvested coral reef taxa	666 (C) 1,827 (R) <sup>3</sup>	0	hook and line, hand, net, trap, slurbgun, spear	FEP Area/year round	fresh fish and aquarium markets		
Mariana Archipelago (CNMI & Guam)		Bottomfish	No data (CNMI) 3 (Guam)	12 (CNMI) 6 (Guam)	handline, rod and reel	FEP Area/year round	fresh fish market		
		Spiny and slipper lobster, and deep-water shrimp	No data (CNMI) >1 (Guam)	2 (CNMI) 2 (Guam)	traps hand	FEP Area/year round	flash frozen and live market		1
	C/R	Precious corals (all species combined)	0	0	manned submersible, remote operated vessel, hand	FEP Area/year round	shaped/polished	1	0
		Currently harvested coral reef taxa, Potentially harvested coral reef taxa	No data (CNMI) 61 (Guam)	0	hook and line, hand, net, trap, slurbgun, spear	FEP Area/year round	fresh fish and aquarium markets		
American Samoa		Bottomfish	5	No permits required	handline, rod and reel	FEP Area/year round	fresh fish market		
		Spiny and slipper lobster, and deep-water shrimp	2	2	traps hand	FEP Area/year round	flash frozen and live market		
	C/R	Precious corals (all species combined)	0	0	manned submersible, remote operated vessel, hand	FEP Area/year round	shaped/polished	0	2
		Currently harvested coral reef taxa, Potentially harvested coral reef taxa	17	0	hook and line, hand, net, trap, slurbgun, spear	FEP Area/year round	fresh fish and aquarium markets		
Pacific Remote Island Areas (Howland, Baker and Jarvis Islands, Kingman Reef, and Wake and Palmyra Atolls)		Bottomfish	n/a <sup>4</sup>	0	handline, rod and reel	FEP Area/year round	fresh fish market		
		Spiny and slipper lobster, and deep-water shrimp	n/a <sup>4</sup>	1	traps hand	FEP Area/year round	flash frozen and live market		
	C/R	Precious corals (all species combined)	n/a <sup>4</sup>	0	manned submersible, remote operated vessel, hand	FEP Area/year round	shaped/polished	0	0
		Currently harvested coral reef taxa, Potentially harvested coral reef taxa	n/a <sup>4</sup>	0	hook and line, hand, net, trap, slurbgun, spear	FEP Area/year round	fresh fish and aquarium markets		
		Commercial - Tunas - Swordfish - Other (inc. sharks) - Blue marlin - Mahimahi - Other billfish - Wahoo - Squid	12,626 1725 2832 495 835 330 483 3	193	traps hand troll handline longline spear	FEP Area/year round, except for area closures around the Hawaii, Mariana and American Samoa Archipelagos	flash frozen and live market shaped/polished fresh fish and aquarium markets fresh fish market whole frozen for cannery	1	1
Pelagic	C/R	Estimated Recreational (all species)	373 (R) <sup>3</sup>	n/a					



WPFMC MEMBERSHIP

Commercial 2011	Recreational 2011	Other 2011
2	3	3

<sup>1</sup> Landing information was obtained from NMFS Pacific Islands Fisheries Science Center, Western Pacific Fisheries Information Network databases at <http://www.pifsc.noaa.gov/wpacfin> and is primarily comprised of domestic commercial landings, but includes non-commercial (recreational and subsistence) landing.

<sup>2</sup> Vessel information was obtained from NMFS Pacific Islands Region Sustainable Fisheries Permits Program, except for Hawaii bottomfish and seamount groundfish which is based on State of Hawaii commercial marine license and bottomfish vessel registration programs.

<sup>3</sup> Where noted, recreational (R) fisheries landing information was obtained from NMFS Office of Science and Technology at <http://www.st.nmfs.noaa.gov/stl/recreational/queries/index.html>

<sup>4</sup> No catches have been reported for this resource in the Pacific Remote Island Areas.

SECRETARIAL MANAGEMENT ACTIONS  
A-ix HIGHLY MIGRATORY SPECIES

A-ix HIGHLY MIGRATORY SPECIES	TYPE	SPECIES/ SPECIES GROUP	LANDINGS 2009/2010 MT = METRIC TONS WW = WHOLE WEIGHT DW = DRESSED WEIGHT	2010 VESSELS (PERMITS)	GEAR <sup>7</sup>	FISHING AREAS/SEASONS <sup>8</sup>	PROCESSING	2011 REPRESENTATIVES <sup>9</sup>				
								COMMERCIAL	RECREATIONAL	ACADEMIA/ ENVIROS	FMCs	IAC
Atlantic Billfishes <sup>1</sup>	R	White Marlin; Sailfin; Longbill Spearfish (prohibited)	29 mt ww <sup>2</sup> (comm dead discards) 10.3 mt ww <sup>2</sup> (rec)	Charter permits <sup>5</sup> Recreational permit <sup>6</sup>	Rod & reel	Atlantic coast, Gulf of Mexico, Caribbean Sea, Calendar year	Sale prohibited	12	12	8	5	1
Atlantic Sharks <sup>1</sup>	X	Commercial/Recreational -Large coastal (11 spp) -Pelagics (5 spp) -Small coastal (4 spp) -Prohibited (19 spp)	Comm <sup>3</sup> 1,091 mt dw 686LCS 102 Pel 303 SCS Rec <sup>3,4</sup> 169.7 63 LCS 7.7 Pel 99 SCS	LIMITED ACCESS <sup>7</sup> Commercial permits - 217 directed - 262 incidental Charter permits <sup>5</sup> Recreational permit <sup>6</sup>	Longline; Gillnets; Rod & reel; Handline; Bandit Rod & reel; Handline	Atlantic coast, Gulf of Mexico, Caribbean Sea; Non-sandbar LCS regions: Atlantic and Gulf of Mexico; Calendar year Atlantic coast, Gulf of Mexico, Caribbean Sea, Calendar year	Fins exported; Carcasses/ cartilage to U.S. market Sale Prohibited	12	12	8	5	1
Atlantic Swordfish <sup>1</sup>	X	Commercial	2,778.9 mt ww <sup>2</sup> (includes discards)	LIMITED ACCESS Commercial permits - 178 directed - 145 incidental/ handgear	Longline; Buoy; Handline; Harpoon; Rod & reel; Bandit Oteritrawl (incidental)	North and South Atlantic, Caribbean Sea, and Gulf of Mexico; Calendar year; North Atlantic directed semi- annual seasons: 1/1-6/30; 7/1- 12/31 Calendar year (East Coast of US)	Fresh/frozen U.S. market Sale prohibited	12	12	8	5	1
Atlantic Tunas <sup>1</sup>	X	Commercial Bluefin Yellowfin Bigeye Albacore Skipjack Recreational Bluefin Yellowfin Bigeye Albacore Skipjack	3,098.3 mt ww <sup>2</sup> 813.9 1,538.6 557.1 178.8 9.9 1,531.9 mt ww <sup>2</sup> 111.4 1,109.5 116.3 149.9 44.8	Charter permits <sup>5</sup> Recreational permit <sup>6</sup> Commercial permits - 242 Longline - 3,764 General - 24 Harpoon - 6 Trap - 3 Purse Seine (VTO) Charter permits <sup>5</sup> Recreational permit <sup>6</sup>	Rod & reel; Handline Rod & reel; Purse seine; Bandit gear; Longline; Handline; Harpoon; Trap; Greenstick Rod & reel; Handline; (non- BFT)	Northwest Atlantic, Gulf of Mexico (No Directed Fishing for Bluefin Tuna), and Caribbean Sea; Calendar year	Bluefin: fresh foreign and U.S. market. Other tunas: fresh/canned foreign and U.S. market Sale prohibited	12	12	8	5	1

1. 2006 Final Consolidated Atlantic Highly Migratory Species Fishery Management Plan.

2. Source: 2011 U.S. National Report submitted to ICCAT. Includes rod and reel recreational landings from the Caribbean

3. Source: 2010 Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species.

4. Number of fish in thousands (not mt).

5. 4,194 Charter/headboat permits issued as of October, 2011. Required for all tuna, swordfish, shark, and billfish recreational fishing.

6. 23,138 recreational angling permits issued as of October, 2011. Required for all tuna, swordfish, shark, and billfish fishing. These permits are considered commercial for Atlantic tunas.

7. Certain gear types may have restrictions, including time/area closures and gear modifications.

8. Seasons may close when quota is reached.

9. HMS Advisory Panel includes representatives of commercial and recreational fishing groups, academic, and environmental organizations, and one each from the U.S. ICCAT Advisory Committee, Atlantic and Gulf states, and the New England, Mid-Atlantic, and Caribbean Fishery Management Councils. The numbers for tunas, swordfish, billfish, and sharks are not additive.

# **EXHIBIT 6**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**



**III Northeast Fishery Sector Inc.**

10 Witham Street  
Gloucester, Massachusetts 01930

Eligible Member Name: \_\_\_\_\_

**INSTRUCTIONS:** Review all options below and determine which package(s) you will purchase. To the right of each option, check "accept" to purchase or "decline" to pass. Also, fill in the amount of packages you would potentially purchase if more became available. You have fifteen (15) business days to complete this form and return it to your sector manager. Payment in full is due within ninety (90) days. Please make checks payable to "III Northeast Fishery Sector Inc" or "NEFS III".

**ACCEPT      DECLINE      # OF PACKAGES REQUESTED**

**GEORGES BANK PACKAGE: \$2,600.00**

1

Stock	Landed Weight (pounds)
GB East Cod	192
GB West Cod	3,940
GB Yellowtail Flounder	567
GB Winter Flounder	325

\_\_\_\_\_

NOTE: If you decline the Georges Bank Package, you'll be credited \$300.00

**POLLOCK/WHITE HAKE/DABS PACKAGE: \$3,200.00**

2

Stock	Landed Weight (pounds)
White Hake	4,862
Pollock	19,410
American Plaice (Dabs)	7,691

\_\_\_\_\_

NOTE: If you decline the Pollock/Hake/Dabs Package, you'll be credited \$100.00

If you decline Packages 1 and 2 completely, you'll be credited \$500.00.

Pollock, White Hake and Dabs can be leased separately in quantities up to the amount above. Dabs: \$0.15/lb, White Hake: \$0.45, Pollock: \$0.03/lb

Pollock: \_\_\_\_\_ x \$0.03

White Hake: \_\_\_\_\_ x \$0.45

Dabs: \_\_\_\_\_ x \$0.15

**GULF OF MAINE PACKAGE: \$6,000.00**

3

Stock	Landed Weight (pounds)
GOM Cod	8,370
GOM Haddock	1,117
Witch Flounder	2,890
GOM Winter Flounder	204
CC/GOM Yellowtail Flounder	1,206

\_\_\_\_\_

NOTE: If you decline the Gulf of Maine Package, you'll be credited \$1000.00

\_\_\_\_\_  
Signature of Eligible Member

\_\_\_\_\_  
Date

# **EXHIBIT 7**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**

**TESTIMONY OF VITO GIACALONE**  
**GLOUCESTER FISHERMAN**  
**&**  
**POLICY DIRECTOR, NORTHEAST SEAFOOD COALITION**  
**BEFORE THE**  
**SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD**  
**OF THE**  
**COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**  
**UNITED STATES SENATE**  
**REGARDING IMPLEMENTATION OF THE**  
**MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**  
**MARCH 8, 2011**  
**WASHINGTON, DC**

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Mr. Chairman, distinguished members of the Subcommittee, thank you for this opportunity to testify before your Subcommittee and contribute to your oversight of the implementation of the very important Magnuson-Stevens Reauthorization Act (MSRA).

As an active fisherman and the policy director for the Northeast Seafood Coalition, I have been deeply involved in the process to implement key provisions of the MSRA as they relate to the Northeast Multispecies fishery, better known as the New England groundfish fishery. Through Amendment 16 to the NE Multispecies Fishery Management Plan (FMP), this fishery has made a profound transition from an effort-based management system using Days at Sea (DAS) and vessel capacity as the allocation currency, to a catch-based output control system of voluntary fishery cooperatives called 'sectors' that now use the 'catch history' of a permit as the allocation currency.

The Northeast Seafood Coalition is the sponsor of 12 of the 17 sectors now operating under this Amendment including one serving as a private permit bank of which I serve as the Director. Over 300 active trawl, gillnet and hook gear vessels are members of the Northeast Seafood Coalition-sponsored sectors operating in ports from Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York.

While Northeast Seafood Coalition is now both deeply invested in and committed to making the existing sector system work, sector-based management was not the preferred choice of the Northeast Seafood Coalition, nor were a number of key aspects of the current sector system. Nevertheless, because it was clear the Council was firmly committed to adopting the sector approach notwithstanding our input to the contrary, we felt a strong obligation to our members to fully engage in the sector system in order to protect their best interests as best we could.

As I will explain, in a number of ways the Council's decisions to broadly expand the application of sector management fishery-wide, as well as the ensuing details of the sector system structure they developed, were both consequences of the key changes made to the Magnuson-Stevens Act (MSA) in the MSRA.

While most of my comments are critical, please understand that we fully recognize and greatly appreciate the efforts of this Committee and others in Congress to continually improve the MSA such as through the MSRA. It is natural for me to point out the problems and concerns with a hopeful eye towards another opportunity to make further improvements to this landmark statute.

Having said that, certainly not all the problems we see in groundfish management are due to the policies or legislative language in these statutes. On the contrary, it has been our observation that the Agency frequently makes excessively narrow or incorrect interpretations of your legislation, ignoring useful opportunities to apply flexibility where it exists throughout the MSA that might have avoided unnecessary problems. This can be very frustrating for all of us. We often wish the agency's attorneys would adopt a more common sense approach to interpreting Congressional intent. Perhaps that is a message this Committee can convey to the agency.

### **Arbitrary Implementation Deadlines**

The MSRA set forth two key implementation deadlines that had important consequences for New England groundfish management; the requirement to end overfishing immediately, and the requirement for Annual Catch Limits (ACLs) and Accountability Measures (AMs) to be in place for fishing year 2010 for stocks subject to overfishing.

Of course, those deadlines are well behind us now, but I think it is important to use our experience as a case in point of how arbitrary statutory deadlines of any kind that lack sufficient flexibility and/or proper agency interpretation can generate unintended or at least unanticipated consequences that are rarely positive. My testimony may also help explain the reasons for the strong and loud voices you continue to hear from New England regarding the sector system.

Amendment 16 began as a confluence of statutory and Council objectives to achieve in a fair and equitable manner an historic transition from effort-based management to catch-based management while simultaneously ending overfishing immediately, establishing annual catch limits, and imposing strict accountability measures to achieve those limits—all while causing a minimum of disruption to the fishery and communities. Adding to that, our fishery is a complex group of disparate multispecies fisheries involving several gear-types and 19 stocks all under one FMP.

It is no surprise that such an overly ambitious agenda simply could not be achieved according to the statutory deadlines without making critical sacrifices to the quality of the outcome.

It is impossible to know what might have been the result under different, more favorable circumstances, but in my personal view, the New England Council's and the Agency's rush to achieve these overwhelmingly complex objectives according to the MSRA-mandated schedule had- or substantially contributed to- the following adverse consequences:

- 1) Very early on, the Council hastily abandoned any serious analysis or consideration of potentially more favorable alternatives (eg. the points system) to the sector system. Instead, the design and operation of two existing sectors originally adopted years prior as a very limited 'pilot program' for the small, directed cod fishery on Cape Cod became the sole focus. Essentially by default, a sector system quickly became the defacto Accountability Measure using the existing Cape Cod 'non-LAPP' sectors as the template.
- 2) There was insufficient time for the Council and the fishing community to adequately analyze, understand or consider the implications of the various allocation criteria alternatives. This resulted in the expedient adoption of the most simplistic alternative (catch history). Because the Days at Sea system produced a series of ever increasing cuts in Days at Sea allocations, traditionally single-permit fishermen were forced to purchase additional permits for a completely different purpose (increasing their DAS) than what was used to assign value to those permits under the Amendment 16 sectors allocation system. Consequently, as the currency on which all non-speculative investment in the fishery had been based (DAS/Capacity) was abandoned, substantial investments in the DAS currency were stranded. This created instant winners and losers



that, for most fishermen, was a matter of pure chance and/or a product of regional and inshore/offshore disparities in fishery regulations affecting catch history.

- 3) Under pressure to meet the statutory deadlines, and for expediency in dispensing with a protracted debate, the Council adopted disparate allocation baseline periods for different groups within the overall groundfish fishery. After completing a difficult process to resolve the baseline period for the core commercial fisheries, the recreational fishery was given a separate, more favorable baseline as were the two previously established Cape Cod sectors. These differences had very significant implications for the resulting allocations to the three groups. The vast majority of commercial permit holders in our fishery have raised very serious concerns that the Council's action to treat each of these three groups differently was not fair and equitable. This action has raised many ongoing concerns over its consistency with a number of MSA provisions including National Standard 4. These concerns are currently under review in federal court.
- 4) The Council's adoption of the final sector design and complex operational details took place well in advance of the 2009 GARM III stock assessment and subsequent ACL determinations—before the biological objectives of the sector system were known. Lacking information on the status of many key stocks, the Council knew it had no idea what the actual consequences of the sector system would be on the functionality of sectors and the sector trading system, but was forced to prematurely set an Accountability Measure in stone in order to meet the MSRA deadline.
- 5) Perhaps the most damaging result of attempting to meet the timelines set forth in the MSRA is the absence of legitimate Amendment 16 alternatives to an ITQ-type system such as the current Sector allocations scheme operating today. Creative alternatives could not be proposed or developed adequately absent updated biological objectives being made available in time for the proper process to unfold. (the extra year granted through interim rule was used exclusively for the purpose of ironing out the complexities of the sector policy and administration and to allow the industry and NOAA to prepare the infrastructures necessary to handle the new system. The extra time was not used to create sensible alternatives.
- 6) At least partly for the purposes of expediency, a deliberate decision was made by the Council to develop the sector allocation and management system outside of the MSRA rules governing Limited Access Privilege Programs (LAPPs) now set forth in section 303A of the Magnuson-Stevens Act after receiving an initial legal opinion from the Agency

confirming that the existing Cape Cod sectors were not LAPPs as defined under the MSRA. Thus, none of the rules and protections envisioned by Congress for LAPP programs apply to the Amendment 16 sectors.

## **Sectors**

With that last point in mind, I want to be clear, however, that the Northeast Seafood Coalition has strongly concurred with the agency's final legal determination that the Sectors ultimately developed under Amendment 16 are not LAPPs. More importantly, the Northeast Seafood Coalition also strongly concurs with the Agency's published interpretation that sectors and vessels are NOT issued a permanent allocation.

This latter determination is absolutely crucial to the current and future investment environment with profound implications for the future structure of the fishery and communities. It also confirms very importantly that if and when the NE Council and/or agency take any future action to formally establish an IFQ or any other form of LAPP program for groundfish, such program and associated allocations must meet all section 303A and other applicable MSA requirements.

We are extremely concerned, however, that the agency's message is either not being heard, has not been made strong enough, or that the agency is wrongly backing off.

Consistent with the Agency's correct interpretation, it is not possible to simply morph the current Amendment 16 'non-LAPPs' and the associated non-permanent sector allocations into a section 303A-consistent LAPP allocation system through a Framework or other abbreviated process. A new, legitimate LAPP allocation system must be fully developed from the ground up with all elements on the table, including especially the allocation criteria and issues related to consolidation, through a deliberate, comprehensive Plan Amendment process to conform the new allocation system to Section 303A requirements.

Anything less than this would likely perpetuate both the inherent flaws we have experienced with the current system as well as the continued circumvention of what was, in our strong opinion, plain Congressional intent for allocation systems such as the Amendment 16 sectors to be designed according to the MSRA rules and protections for LAPPs including a referendum for an Individual Transferrable Quota (ITQ). This would be a very helpful message for Senators interested in improving current New England groundfish management to deliver to the Agency and Council.

With that in mind, let me further clarify that the current sector system is effectively an ITQ system wearing a 'non-LAPP sector' costume. Amendment 16 to the Northeast Multi-Species fishery management plan established an initial allocation for each and every limited access permit. Individually, each permit received a Potential Sector Contribution (PSC) which is represented by percent quota shares based upon historical performance for each stock allocated through the amendment. The PSC values are what each fisherman brings to the sector.

Naturally, once a fisherman receives that information from the agency, he/she fully expects to take out what they brought into a sector. The proof that this is the reality is that all 17 sectors have sector/member contracts and operations plans that incorporate a "what you brought in is what you can take out" redistribution method within the sector. Sector members are allowed to trade their individual allocations freely between members of their own sector. In addition, Amendment 16 provides for inter-sector trading; a system which has effectively operated as an ITQ given that members of different sectors regularly make private business agreements to trade fish and then instruct their respective Sector Managers to facilitate the transactions through the inter-sector trading mechanisms.

That said, I must point out that the sector scheme has built a form of protection to the smaller operators in the form of Right of First Refusal for permit sales and quota leasing. Each sector has a hired professional Sector Manager that assists the sector members in the burdensome reporting requirements as well as acting as a communication and trading facilitator. The low ACLs coupled with the straight catch history method of allocation produced a very narrow distribution of quota and without a referendum. I believe that the requirement that vessels be members of a sector, and the manner in which the industry formed the sectors, has created a layer of protection to fishing communities that many do not yet understand. But, the fact remains that the current Amendment 16 sector scheme is effectively operating as an ITQ system.

Finally, while I have attributed a lot of the problems we've experienced with the Amendment 16 sector development process to the statutory deadlines, I feel I owe you my honest assessment that many of these problems relate to the reality that Council members have the extraordinary power to create winners and losers in the initial allocation process of any catch share/ LAPP program. Notwithstanding statutory rules governing recusal and conflict of interest, I believe Council members presented with a choice of plausible allocation alternatives will naturally gravitate to what is best for their own business interests. On a personal level, I am infinitely grateful to those individuals who have invested countless days, months and even years of their lives serving in the all too often thankless roles as Council members. As an

organization, the NSC supports the Council process and strenuously endorses substantial industry representation on the council. The statements I am making here are not intended to discredit anyone or to insinuate that any improprieties or unethical behavior took place. I am merely offering my sincere and honest observation having lived this up-close and personally. Given similar circumstances, I believe there are few human beings that are capable of self-inflicting wounds when the alternative is to achieve instant wealth through a favorable initial allocation scheme. The stakes are simply too high which makes it almost unfair to Council members to have to make ultimate allocation decisions when the results are as financially profound as they can be in the initial allocation of a valuable resource like New England groundfish.

The perception in New England, shared by a great many, is that the allocation choices made by the New England Council were a product of an exclusive and very closely coordinated working relationship among Council members from the groundfish fishery, the recreational fishery, the pro-catch share environmental community, and perhaps the agency itself. This created a few big winners among those Council members and their sectors, and many, many losers of those fishermen not privileged to be inside that inner circle. This is, unequivocally, the perception.

Surely it must have been the fear and concern of precisely this type of result that caused members of the New England delegation to provide for a referendum requiring two thirds approval before an IFQ allocation scheme could be implemented. Similarly the MSRA LAPP provisions and associated requirements must be placed front and center if an action involves allocation to any group or persons that represents a quantifiable portion of any stock or stocks within a fishery. In New England, we effectively received an IFQ / ITQ-type allocation scheme and a LAPP-type management regime without either a referendum or full consideration as a LAPP under the MSRA.

Had NOAA determined Amendment 16 sector allocations to be an IFQ subject to a referendum the Council would have avoided the level of culpability now perceived to be attributable to them.

Having identified some of the pitfalls we experienced in trying to accomplish too much with groundfish management within the MSRA deadlines for ending overfishing and establishing ACLs and AMs, there are certainly a number of positive aspects of a properly designed and implemented sector management scheme that we can also learn from.

By definition, the input-control DAS management system deliberately imposed inefficiencies on the fisheries in order to control catch (fishing mortality). The transition to sectors relieved

fishermen of a number of those inefficiencies including seasonal/rolling closures and trip/possession limits and the associated regulatory discards (waste), among several others.

Certainly, the transition from input-control effort management to output-control sectors also made it possible to avoid the consequences of deep Days at Sea cuts that were inevitable absent a fully supported effort to radically modify the effort control system. Had we attempted to use the Days at Sea system that was in place as the tool to meet the new mandates of the MSRA, the results would have been catastrophic.

To that point of the absence of real efforts to improve the DAS system, over the years the Northeast Seafood Coalition proposed numerous modifications to the Days at Sea system that were intended to advance the tool to meet the anticipated MSRA requirements. Although some were ultimately implemented, like the “B-Days” concept, they were never adequately administered or utilized by the Council or the agency. Other useful modifications were rejected such as the “Cod Cap”, the “Yellowtail Trigger” and further development of the “B-regular day” concept.

It was apparent, however, that these provisions were not taken seriously because they ran counter to the ultimate desire of key Council leaders and perhaps the agency to execute an ITQ allocation of the resource. In my strong opinion, had there been an adequately advanced Days at Sea alternative that could meet MSRA mandates without collapsing the industry, it would have been impossible to have implemented the sector ‘catch share’ program we have now because the industry simply would not have allowed it. The combination of MSRA mandates, a lack of timely biological objectives in the stock assessment, and the resistance to advancing the Days at Sea tool left the industry with a “Hobson’s Choice” that led to sectors.

In any case, theoretically, if individual initial allocations are fair, equitable and sufficient, and if adequate quota is available to support a healthy, functioning sector trading system, a sector system can provide useful tools to improve the efficiency of fishing businesses and economic stability overall. As we all know, on paper, a sector ‘catch-share’ system enables fishermen to choose to fish at times and in places that can maximize catch-per-unit-effort, the market value of the catch, and even vessel safety. A functioning sector allocation trading system itself should provide for the greater utilization of the optimum yield of strong stocks consistent with national Standard 1. In theory, a sector ‘catch share’ system should provide important benefits.

When asked whether the sector system is *actually* working in practice, my response is simply--it truly depends on which fisherman you ask. As I indicated, the Council’s deliberate decision to

abandon the DAS-based currency on which all non-speculative investments in the fishery were previously based, it created instant winners and losers, mostly by pure chance.

If a fisherman happened to have purchased a permit because of its value in allocated DAS-- and that permit also just happened to have a lot of catch-history associated with it—then they became lucky winners. If a fisherman bought a permit for DAS purposes that just happened to have very little catch-history associated with it, then they became unlucky losers. A lot of permit holders in the fishery—it seems the majority—had substantial investment stranded in DAS currency and are now faced with a sector allocation and trading system that is not functioning in a way that enables them to recover. Consequently, many permit holders are locked into dire circumstances at no fault of their own. Naturally, that is why you have heard and will probably continue to hear a lot of outrage about sectors coming from the region.

### **Rebuilding timelines**

The MSRA also revised the deadline for the Councils to prepare and implement measures to rebuild overfished stocks. This deadline was not in itself a problem, at least for New England groundfish management. What continues to present a problem is the 10-year or any arbitrary time frame for rebuilding resulting from MSA section 304(e)(4)(A)(ii).

While many people have expressed many different ideas about the need for “rebuilding flexibility”, as explained below, our consistent view has been the need to simply eliminate any arbitrary time requirement for rebuilding and replace it with a rebuilding strategy founded on natural population dynamics. We don’t need flexibility built into arbitrary rebuilding time-frames; we need to get rid of them!

The fundamental MSA objective to simultaneously achieve the biomass that produces the MSY for all stocks in a multispecies ecosystem and fishery is a very expensive one (not to mention biologically unachievable). The least-common-denominator management effect resulting from this objective ensures that in a multi-species fishery, very substantial amounts of the optimum yield of those stocks that happen to be at their high points will be wasted in order for the fishery to comply with the requirements to rebuild all stocks that happen to be at a low point. When I say wasted, I mean that substantial portions of the optimum yield will be left in the water uncaught and lost to natural mortality. This is the inherent conundrum presented by National Standard 1 for a multispecies fishery in a complex ecosystem.

What often greatly exacerbates this loss of sustainable yield are the arbitrary rebuilding timeframes generated from MSA section 304(e)(4)(A)(ii) which generally require shorter time frames and lower fishing mortality rates than the true population dynamics of a stock would

otherwise require. In other words, even more sustainable yield of the stronger stocks will be lost in the effort to rebuild more quickly. In our multispecies groundfish fishery, approximately 60 percent of the total optimum yield remains harvested each year.

To be successful, a rebuilding strategy based on an arbitrary timeframe either requires knowing the unknowable, or pure luck. The 'unknowables' are future recruitment, natural mortality and, consequently, what the correct rebuilding target should actually be 10 years or more into the future. These parameters of fish stock population dynamics are ultimately driven by the dynamics of the ecosystem and environment--things that are completely beyond our control. And, these ecosystem dynamics are even further complicated by the interrelationships between stocks in a multi-species ecosystem and fishery.

We may get very lucky and by accident choose the right numbers, but far more likely the population effects on a fish population caused by the relatively small portion of mortality we do have control over (fishing) will be far outweighed by the effects caused by those ecosystem and environmental parameters we have no control over and cannot predict.

Instead, as more than one distinguished NMFS Chief Scientist has testified, the arbitrary timeframes for rebuilding set forth in MSA section 304(e)(4)(A)(ii) should be replaced with a strategy linked directly to the true population dynamics of a stock. In other words, a strategy of setting a target fishing mortality rate at the level that will over time, on average rebuild the stock to the biomass that will produce maximum sustainable yield. This fishing mortality rate is known as  $F_{msy}$ , and managers may appropriately adjust the target with a buffer to reflect scientific uncertainty.

The time it will take to rebuild any stock fished at  $F_{msy}$  (or as adjusted) will be exactly that which reflects the actual future recruitment and natural mortality exhibited by the stock—parameters that will be dictated by the uncontrollable and unpredictable dynamics of the ecosystem. By definition, this strategy will prevent overfishing and achieve rebuilding which are the true and legitimate biological objectives of the MSA. The policy decision to rebuild more quickly than this strategy was purely a political one, and I should point out that even NOAA Administrator Lubchenco has suggested this question should be reviewed by the National Academy of Sciences (NAS), and that at some point she was in discussions with NAS for this purpose. We would encourage you to follow-up with Dr. Lubchenco on her plans.

Again, the current arbitrary rebuilding timeframes have compounded the difficulties in multispecies management, particularly with the 19 stocks subject to our groundfish plan. They

force ACLs to be extremely low for some stocks, choking the sector trading system needed to achieve the Amendment 16 objective of increasing the utilization of Optimum Yield.

## **ACLs**

The MSRA requirement to set ACLs for all stocks was never a problem per se'. The need to set annual catch limits was fundamental to the decision to transition the New England groundfish fishery from effort-based to catch-based management anyway.

As explained above, the arbitrary deadline for ACL implementation was problematic for NE groundfish due to the complexity of the broad objectives of Amendment 16 and the lack of updated biological objectives from the new stock assessment before the sector system was set in stone and the implications understood.

As also explained above, those ACLs that were set at artificially low levels for stocks subject to the arbitrary 10-year rebuilding timeframe, exacerbated the least-common-denominator (choke stock) effect on the fishery resulting in even greater losses of Optimum Yield.

Further, what came to light for some of us only after the MSRA was enacted and more fully understood was the profound role the Scientific and Statistical Committees (SSCs) were afforded. While purely advisory pre-MSRA, the SSC's recommended catch levels now dictate the upper limit of the ACLs developed by the Councils according to MSA section 302(h)(6).

The SSC's responsibility to generate catch limits involves following the National Standard 1 guidelines, a process which can generate a range of results, some more conservative than others, but all consistent with the requirements of the Act. This is an extraordinary authority, responsibility and level of discretion for a group that includes non-federal scientists and, therefore, is something that should be accompanied by a process of checks and balances.

As we have seen with NE groundfish, there is indeed a great deal at stake in the ACL-setting process—including whether the sector allocation trading system can function. A functional sector allocation trading system is fundamental to the premise that sectors, as coops, can achieve a higher utilization of the Optimum Yield than under the previous system and, thereby, achieve greater economic benefits for sector members. This is among the most important purposes of the sector system. Unfortunately, the ACLs generated for the NE groundfish fishery were set so low for some stocks that when coupled with the narrow distribution of the initial allocation, a vast majority of the vessels that were relatively viable in 2009 suddenly found themselves too far below the break point to actively engage the new system.



NSC has repeatedly noted that MSA section 302(h)(6) does not apply to the Secretary and that this provides the Secretary with critical 'checks and balances' authority to intervene if the ACLs need to be adjusted in order to meet other equally important National Standards, objectives and mandates of the Act. With this authority, the Secretary can also serve as a 'peer review' of the SSCs application and interpretation of the National Standard 1 guidelines and of the scientific data itself. We feel this is a critical and potentially very useful Secretarial authority that Congress ought to encourage. It appears, however, that this is one of those areas of the statute where the agency's attorneys have adopted a very conservative, unhelpful interpretation.

Finally, I would note that NOAA recently announced the anticipated increases in ACLs for some groundfish stocks. To be clear, these increases were not a result of the Secretary responding to the multiple requests from members of the New England Congressional Delegation to use his authority to adjust the groundfish ACLs described above. Instead, these increases were a natural product of the Framework 44 ACL-setting process generated from Amendment 16. I should also point out that these ACL increases are not a testament to the success of sectors and 'catch-share' management as some might suggest. In fact, the data on which these ACL increases are based pre-date the implementation of our sectors.

### **Senator Brown's Bill**

S. 238, the Fishery Impact Statement Honesty Act introduced by Senator Scott Brown and cosponsored by Senators Snowe and Collins brings focus to another very important issue that became apparent during the Amendment 16 development process.

Because a basic purpose of Amendment 16 was to make the enormous and complex transition from the DAS effort-based management system to the sector 'catch share' system, there was a great deal of uncertainty about what the social and economic impacts would be on individual fishermen, ports and communities throughout the region. In any case, everyone knew the impacts would be huge.

However, because so much of what was being developed in Amendment 16 was unprecedented, the required Fishery Impact Statements and associated socio-economic analyses were both difficult to produce and of limited utility or influence in the Amendment 16 decision-making process. In fact, in an effort to facilitate better industry-wide understanding of these impacts in the face of a limited Council economic analysis of the allocation options, the Northeast Seafood Coalition itself commissioned a professional analysis of these options. Unfortunately, none of these analyses had their intended impact and under current law, once the Amendment is implemented, such analyses basically sit on a shelf to gather dust. Further,

there is no formal process to go back and assess what the post-implementation impacts actually were—much less do anything about them.

Nevertheless, Congress made clear in both National Standard 8 and the required impact statements that understanding and minimizing the economic impacts of federal fishery regulations on fishermen and fishing communities must be among the very top priorities of the Councils and NMFS.

Notwithstanding this clear mandate, this has proved to be a weak link in the fishery management process. Although prepared by Council and agency staffs, fishery impact statements appear to have little if any operative effect in the actual fishery management process and have been reduced to a pro forma paperwork exercise.

When originally championed by Senator Olympia Snowe in the 1990's as part of the Sustainable Fisheries Act (SFA), National Standard 8 was intended to provide the crucial, missing balance to those elements of the SFA that were focused strictly on fish stock conservation. In practice, we saw little evidence that National Standard 8 mandate to minimize adverse economic impacts on fishing communities was reflected in the Amendment 16 process.

If enacted we think this legislation would have at least three very important positive impacts on future fishery management. First, it would improve the quality of Fishery Impact Statements given the authors are both independent and would know their work will be reviewed annually after implementation. Second, it would lead to the Council's taking National Standard 8 and these economic analyses far more seriously in their initial decision-making and implementation. And third, the mandate for the Secretary of Congress to actually mitigate unacceptable economic impacts identified in post-implementation reviews would be a giant leap forward in restoring more balance between conservation and economic impacts to the fishery management process. These would be very big improvements that should be given the Committee's full and serious attention.

### **US/Canada**

As a final note, I want to express my very profound appreciation to Senators Snowe and Kerry and other members of the Committee and Congress, and especially the Committee staff, for getting the job done on clarifying how the MSA rebuilding provisions will apply to stocks covered by the US-Canada Transboundary Resources Sharing Understanding.

We worked with you on this issue for more than 5 years beginning, in fact, with the development of the MSRA. Thus, I must recognize your exceptional persistence which has

already paid off with a critical adjustment to the Georges Bank Yellowtail Flounder catch limits agreed-to by the US and Canada last month.

As is appropriate and intended by Congress for stocks managed by international agreement, the US catch limits for our US-Canada transboundary fisheries will now reflect the true status and population dynamics of the stocks rather than the fishing mortality rate needed to rebuild a stock according to an arbitrary time frame. The 'apples and oranges' approach to fishery management between the US and Canada threatened to collapse the critically needed joint cooperative management of these valuable transboundary stocks, and so I see a very bright future for continued cooperation.

I should also note that while the recent increases in Georges Bank yellowtail flounder catch limits enabled by this legislation are not yet large enough to support a directed fishery, they will make a very substantial difference in alleviating the 'choke stock' effect on fishing for other valuable groundfish stocks and on the valuable New England scallop fishery. As this stock continues to rebuild according to its natural population dynamics, we fully expect to see the return of the directed yellowtail fishery on Georges Banks. Thank you again for your hard work in making this happen.

# **EXHIBIT 8**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**



*The Commonwealth of Massachusetts*  
*Executive Office of Energy and Environmental Affairs*  
*100 Cambridge Street, Suite 900*  
*Boston, MA 02114*

Deval L. Patrick  
GOVERNOR

Timothy P. Murray  
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Ian A. Bowles  
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<http://www.mass.gov/envir>

September 14, 2009

Vito Giacalone  
President, Gloucester Fishing Community Preservation Fund, Inc.  
4 Edgewood Road  
Gloucester, MA 01930

Edward Barrett  
President, South Shore Fishing Community Preservation Fund, Inc.  
67 Marginal Street  
Marshfield, MA 02050

Michael Walsh  
President, Boston Sustainable Fishing Community Preservation Fund, Inc.  
204 Cedar Street  
Stoughton, MA 01930

Re: Gloucester Fishing Community Preservation Fund; South Shore Fishing Community Preservation Fund; and Boston Sustainable Fishing Community Preservation Fund

Dear Mr. Giacalone, Mr. Barrett and Mr. Walsh:

I write in response to the recent submission to this office of the Articles of Organization for the South Shore Fishing Community Preservation Fund, Inc. ("the South Shore Fund") and the Boston Sustainable Fishing Community Preservation Fund, Inc. ("the Boston Fund"). These two newly-created non-profit corporations are each an outgrowth of the previously-established non-profit Gloucester Fishing Community Preservation Fund, Inc. ("the Gloucester Fund"), which was itself created in response to the allocation of mitigation funds from the proponents of each of two deep-water liquefied natural gas (LNG) ports that are in the process of being constructed in Massachusetts Bay. Pursuant to the review of these two LNG port projects under the Massachusetts Environmental Policy Act (MEPA), project-related mitigation funds were directed to the establishment of the Gloucester Fund as a means of offsetting potential impacts to

individual fishermen, vessels and local port infrastructure that might result from the construction of the LNG ports.

In accordance with the terms of the Certificate of the Secretary of Environmental Affairs on the Final Environmental Impact Report for the Northeast Gateway Energy Bridge Deepwater Port/Northeast Gateway Pipeline Lateral project dated December 1, 2006 (the "MEPA Certificate"), the Articles of Organization for the Gloucester Fund were previously submitted to this office for review. The purposes of the Gloucester Fund include: preserving and promoting awareness of Gloucester's fisheries, heritage, and the fabric of the Gloucester community; protecting and enhancing the Port of Gloucester and the Port's infrastructure; and, in order to aid disadvantaged fishermen, serving as a central repository and exchange for the distribution of limited access, multi-species fishing privileges and permits for fishing vessels based in Gloucester.

Since the incorporation of the Gloucester Fund, a determination has been made and an agreement reached among interested parties that a portion of the funds received by the Gloucester Fund should be directly allocated to two new organizations that would utilize the subject funds for purposes similar to that of the Gloucester Fund, but focused on the aid of affected fishermen, vessels and ports in each of their geographic target locations. As you are aware, the MEPA Certificate directed establishment of the Gloucester Fund, but did not specifically address the creation of ancillary non-profit organizations such as the South Shore Fund and the Boston Fund. However, the MEPA Certificate expressly contemplated that the Gloucester Fund would "address the interests of similarly affected groundfishermen who homeport south of the Northshore". (MEPA Certificate, page 5). In addition, the Certificate conditioned the provision of mitigation funds to the Gloucester Fund on the establishment of a program that is "geographically equitable within the affected industry". (MEPA Certificate, pages 5-6). Thus, while the creation of these two distinct funds was not expressly directed by the Certificate, their creation is consistent with the mitigation principles articulated in the Certificate.

Therefore, in accordance with the terms of the Certificate, and subject to the conditions and limitations outlined herein, on behalf of the Secretary of Energy and Environmental Affairs I find that the Articles of Organization submitted for the South Shore Fund and the Boston Fund are generally consistent with the purposes outlined in the Certificate concerning the provision of mitigation funds to the Gloucester Fund. Accordingly, this office has no objection to the planned transfer of funds from the Gloucester Fund to the South Shore Fund and the Boston Fund.

Please note that this letter should not be construed as approval or acceptance of the specific terms of incorporation of these organizations or of the composition of their officers or directors, or any other specific aspect of the operations of these Funds by the Commonwealth, which is beyond the purview of the Secretary of Energy and Environmental Affairs and of this office. The responsibility for regulation and oversight of non-profit corporations and public charities in the Commonwealth falls solely to the Secretary of the Commonwealth's Corporation's Division and the Non-Profit Organizations/Public Charities Division of the Attorney General's Office.

Messrs. Giacalone, Barrett and Walsh

9/14/09

I hope this letter addresses any outstanding issues concerning the involvement of this office, and I wish each of the Funds the best of luck in their future charitable endeavors.

Sincerely,



Alicia McDevitt  
Assistant Secretary

Cc: David Cash, Assistant Secretary

# **EXHIBIT 9**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**



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

Subject: RE: Contact Info.

From: Paul Muniz <pmuniz@burnslev.com>

Date: Thu, October 04, 2012 1:43 pm

To: "bl@boblongpi.com" <bl@boblongpi.com>

Cc: Scott Harshbarger <sharshbarger@proskauer.com>, "Langlais, Alison M." <alanglais@proskauer.com>

Bob, I was told earlier today that David Levielle recently sent an email on Vito's behalf to members of Sector 2, (which includes those individuals you listed below) the gist of which was 1) to notify them of your investigation, 2) that Vito or the fund paid for the investigation, and 3) that if they get a call from you, Scott H. or his staff, that they should not speak to you without first talking to Vito. I don't want editorialize, but as you know, the two fishermen meeting with you today originally wanted to meet together with you, but you didn't think that was a good idea because one person's statement might influence the other. Thus, they are meeting separately. Here, if indeed this email was sent, it appears to me that the target seems to be doing all he can to influence the outcome of this "independent" review.

# **EXHIBIT 10**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**

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From: David Leveille [mailto:nefs02@gmail.com]  
Sent: Wednesday, September 19, 2012 10:10 AM  
To: David Leveille  
Subject: On behalf of GLOUCESTER FISHING COMMUNITY PRESERVATION FUND

All NEFS II members,  
I am forwarding this email announcement along on behalf of the GLOUCESTER FISHING COMMUNITY PRESERVATION FUND.

---

From: Vito Giacalone [mailto:summer-breeze@mindspring.com]  
Sent: Tuesday, September 18, 2012 4:24 PM  
To: nefsiiii; David Leveille  
Subject: Permit Bank News

Hello All,

I wanted to notify you about the independent review being undertaken on behalf of the Gloucester Fishing Community Preservation Fund board by former Attorney General Scott Harshbarger. The board has asked former AG Harshbarger to conduct a rigorous review of the Fund's governance, policies and operations.

I've attached the press release the Board sent to the media today. Hopefully it will address any questions you may have but please feel free to contact me directly if you have any additional questions.

Some of you may be contacted by former AG Harshbarger or his team and we encourage you to join us in working with him to complete his thorough review on our behalf.

We look forward to meeting with you after the review is complete to discuss the results and to continuing to work with you on the important issues our fishing community faces every day.

Regards,  
Vito

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From: David Leveille [mailto:nefs02@gmail.com]  
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To: David Leveille  
Subject: On behalf of GLOUCESTER FISHING COMMUNITY PRESERVATION FUND

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Subject: Permit Bank News

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Some of you may be contacted by former AG Harshbarger or his team and we encourage you to join us in working with him to complete his thorough review on our behalf.

We look forward to meeting with you after the review is complete to discuss the results and to continuing to work with you on the important issues our fishing community faces every day.

Regards,

Vito

# **EXHIBIT 11**

**Independent Governance Assessment of the  
Gloucester Fishing Community Preservation Fund**

## Stephen

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**From:** Vito Giacalone [summer-breeze@mindspring.com]  
**Sent:** Saturday, January 09, 2010 8:31 AM  
**To:** fishlaw@aol.com  
**Cc:** jackie\_odell@yahoo.com  
**Subject:** Dan Bubb

Hey Steve,

Although I spent nearly an hour explaining this to Dan the other day, my experience with him is that he generally either hears what he wants to and blocks out what he doesn't OR he just plain uses the conversation to support whatever he want to say to help his cause later.

I normally could care less what people say since that would take far too much out of me these days. More than I can afford.

But in this instance there are potentially serious legal and organizational issues that need to be treated seriously on behalf of two sectors, NSC, Vito and Dan.

To be absolutely clear. I made it abundantly clear, repeatedly, that myself nor NSC take the position that we can intervene, impinge, control or otherwise influence the individual NEFS sectors governance as it relates to accepting or rejecting membership. Especially with regards to the critical distinction between an ACTIVE member (an MRI permit that will be associated with a vessel that will actively harvest sector ACE) and an INACTIVE member (an MRI that will contribute to the sectors ACE, lease their Harvest Share and NOT operate the vessel using that MRI)

In Daniels case, I advised him to seek Inactive status for the MRI and add it to his sector of which he is already an ACTIVE member with regards to the Belinda B. Once the MRI is in the sector, it is only a private negotiation between Dan and the BOD of the glou. gillnet sector (NEFS III) to change the status to ACTIVE OR he could simply swap out the Belinda B for the Mellisa Sue if the baselines worked and he wouldn't have to ask anyone except NMFS permit office. This negotiation has no deadline which is why I advised him to leave that alone for now and acknowledge, up front, that he is seeking only INACTIVE status for Mellisa Sue PERMIT MRI.

Notwithstanding the issue of the new permit being enrolled in the Sustainable Harvest Sector, I called and spoke with Richard and explained that unless his sector has taken the position that none of their current members can add INACTIVE permits to their sector, Daniel adding an MRI permit should be a no brainer. He agreed.....and reiterated that this does not mean Dan is adding an ACTIVE vessel because their Sector has been closed to adding Active vessels / members for quite some time.

I can attest to this being true.

I believe I've done all that I could or should do on behalf of our member Daniel while respecting the individuality and control of our NEFS sector III.

Also, nothing that is said by Josh or Libby (although Libby always gets it right), is to be relied upon by fishermen as NSC official positions or advice. Unless something is in writing or is purported to be coming directly from Jackie or myself, it should be considered preliminary and unofficial, if at all.

That said, Daniel picked up a blank Adherence Agreement from the NSC office. Libby was smart enough to call me to make sure that was ok. Beyond what I've said in this email.....nothing else means anything.

Unfortunately, it is likely that issues like this one will be looked upon as a piece of cake compared to what will come once we start operating with regards to our difficult positions of cross representations both legally and organizationally.

Let's keep an open line of communication and good documentation to cover everybody's asses.

Let me know if there's anything I can do.

Thanks Steve.