



December 22, 2009

Patricia A. Kurkul, Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

**RE: Comments on the NE Multispecies Amendment 16 FEIS (0648-AW72)**

Dear Ms. Kurkul:

Please accept this letter in response to the call for public comment on the Proposed Rule for Amendment 16 to the Northeast Multispecies Fishery Management Plan and Final Environmental Impact Statement (FEIS; Federal Register / Vol. 74, No. 204 / Friday, October 23, 2009 / Proposed Rules).

This FMP amendment is a critical platform for ending overfishing on New England groundfish stocks, and rebuilding stocks that are currently overfished. The amendment will enable the transition to output-based quota management through sectors and this will clearly be a historically important transition for the region.

**The sectors and sector provisions must be approved.**

Sectors, with their commitment to operating with a hard TAC (ACL), represent the best vehicle we have for complying with the Annual Catch Limit (ACL) and Accountability Measure (AM) provisions of the reauthorized Magnuson-Stevens Act (MSA). The use of input controls (e.g., days-at-sea, trip limits etc) for the New England groundfishery has not yielded good results. Many stocks are still overfished, subject to overfishing, or both. Both revenues and fishery participation have plummeted over the decade and a half since the current system was instituted.

Sectors represent an important new approach. Sectors are based on output controls through quota allocations to fishing cooperatives. Those fishing in sectors will have more freedom to prosecute fishing activities in a manner that is suited to their own businesses and communities, and the specifics of where and how they fish. This added freedom will promote safer and more efficient fishing, and will foster better stewardship practices. This has been seen in other regions, and with the first two pioneering sectors established in New England. Quota allocation and accountability will ensure that stocks are fished within scientifically determined catch limits. The immediate implementation of the new sectors detailed in the proposed rule is the best chance we have for ending overfishing and complying with the new provisions of the MSA.

**Concerns about catch monitoring**

We remain concerned about the plans for at-sea observer coverage in the proposed rule and during the implementation of Amendment 16. Catch monitoring will be essential to the success of sectors, and the fishery as a whole, as many pointed out during the development of this amendment. Quota-based management demands high-quality information on catch. Similarly, the stock assessments needed for establishing appropriate ACLs and monitoring the progress of rebuilding programs require good data on all catch, both kept and discarded. Even the best stock assessment models perform poorly if the data on catch is incomplete. Though the amendment includes improved observer coverage for the groundfishery, we urge

NMFS to continue to improve the data on all catch, including discards. Even with the planned increases in at-sea observer coverage, we continue to be concerned that the differences between the observed trips and the majority that do not carry observers can lead to underestimates of discards for the fishery as a whole.

With the planned observer coverage rates (i.e., about a third of trips), the composition of the discarded catch will need to be extrapolated from the observer data to the unobserved vessels. To the degree that vessels can modify behavior so as to reduce discarding in response to observers (i.e., an *observer effect*), the estimates of discarded catch, based on extrapolation to the whole fleet, will be low. We urge attention to this critical issue as the rule is finalized and during implementation.

Solutions to the monitoring and discarding issues may include applying appropriate corrections for estimates of the observer effect, supplementary data from electronic monitoring, and increases in the proportion of vessels with NMFS-certified observers. Observer-induced modifications in fishing may be detected through methods that make use of data on the composition of the retained catch. An approach based on retained catch should be considered as part of a strategy for improving information on discarding. Nevertheless, the single most reliable solution to this critical problem is to adopt a policy of 100% at-sea observer coverage across the fleet, for sectors and the common pool. At-sea monitoring is more valuable than anything that can be accomplished dock-side because it allows sampling of both discarded and retained catch. Expanding observer coverage also creates new jobs. NMFS must ensure the allocation of additional resources to at-sea monitoring even if this means reducing dock-side programs and increasing industry contribution to monitoring.

#### **Concerns about common pool accountability measures (Section 4.3.7.1)**

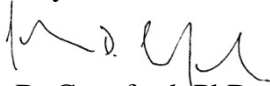
The proposed A16 rule would allow common pool commercial fishing to proceed in the absence of a hard TAC for the first two years (2010-2011). The response to exceeding a TAC (or ACL) would be an adjustment to effort controls (i.e., DAS) in the year following the excess. Thus, there is no true catch limit and the proposed provisions that are identified as accountability measures are demonstrably weak (i.e., effort controls that have not worked well in the past). This aspect of the proposed rule represents a potential threat to the success of sectors, increases the chances of continued overfishing, and will potentially compromise stock rebuilding programs for overfished stocks.

As detailed in our comment letter on the draft amendment (8 June 2009), we also believe that these proposed provisions for the common pool are not legal since they amount to allowing the common pool to operate without appropriate limits and accountability measures (AMs). Even though more stringent effort controls can be triggered, this does not constitute accountability as called for by the MSA. The plain language of the revised MSA dictates that FMPs establish both a “limit” and “accountability.” These terms have commonly understood legal meanings. The proposed management of the common pool is not consistent with these meanings and the MSA. The final rule should include a hard TAC for the common pool beginning in 2010 as it will for the sectors.

**Closing comments**

This amendment, and the new sectors, offers a promising new horizon for fishing in New England. The added freedoms conferred by sector management will be good for communities, promote a new level of resource stewardship, and finally allow us to end overfishing and move on to a new sustainable future. Nonetheless, the management challenges are particularly great in this multi-species fishery. With the implementation of this amendment, for both sectors and the common pool, NMFS must continue to ensure that strong accountability measures are developed in order to prevent ACLs from being exceeded. Development of robust quota data and management systems should be given high priority as these will be essential to the success in this new era of fisheries management in New England.

Sincerely,



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cc: Paul J. Howard, Executive Director  
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