



April 9, 2013

John K. Bullard
Regional Administrator
NOAA Fisheries
55 Great Republic Drive
Gloucester, MA 01930

Re: Comments on the Proposed Rule for Framework Adjustment 48 to the Northeast
Multispecies Fishery Management Plan [Docket No. 120814336-3249-01 RIN 06848-BC27]

Dear John,

The Northeast Seafood Coalition (NSC) is a non-profit organization representing over 250 commercial fishing entities, which hold over 500 limited access groundfish permits, on political and policy matters affecting their interests in the federal groundfish fishery. Collectively, NSC members represent the full diversity of the groundfish fishery. NSC members fish on small, medium, and large vessels from ports across the northeast and they employ all groundfish gear types. NSC fishing members are enrolled in the Northeast Fishery Sectors.

Today, NSC submits the following in response to the request for comments to the regulatory measures for the groundfish fishery proposed under Framework Adjustment 48.

**1) Status Determination Criteria for GOM Cod, GB Cod, SNE/MA Yellowtail
Flounder and White Hake**

• ***Estimates of Fmsy***

NSC reiterates the specific concerns it expressed in its January 17, 2013, memo to the Council regarding the use and specific choice of Fmsy proxies for groundfish stocks below. As a more general observation, however, the current management process employed by the Council and Agency does not provide managers with sufficient information, understanding or opportunity to consider alternative scenarios for directly estimating Fmsy or choosing among proxy alternatives. In many respects, these choices are a matter of policy based on management objectives and acceptable risk and can have profound implications for specific stock management. Such choices should be made by managers, not stock assessment scientists, through a far more transparent and deliberative process that ultimately provides guidance to such scientists.

The current process for selecting Fmsy proxies is essentially the reverse. As noted below, current policy is based on advice generated more than a decade ago that was itself based on literature published a decade earlier than that. Absent any deliberate process by managers to reconsider this policy, it has simply been carried-forward in each stock assessment and consequent management action – including Framework 48. During this time there have been improvements to both the understanding of such population dynamics as stock-recruitment relationships that may provide for direct estimates of Fmsy, as well as improvements to the relevant analytical and modeling approaches for selecting the appropriate Fmsy proxy.

Thus, notwithstanding statements to the contrary in Framework 48, it is likely that the current use of the Fmsy proxy of F40%msp as the basis for managing nearly every groundfish stock does not meet the statutory standard for using the best scientific information available. NSC's January 17, 2013 memo to the Council can be found at the conclusion of these comments. NSC urges the Agency under this present rule-making to seriously consider the two recommendations presented at the end of the memo. These recommendations request a more thorough review by the Science and Statistical Committee (SSC) and policy decision by the Council.

As stated in the NSC Memo to the Council on January 17, 2013:

With these questions in mind, NSC respectfully recommends that the Council submit the following requests to the SSC to be addressed as soon as possible:

- 1) Where possible, provide direct estimates of Fmsy for all groundfish stocks.
- 2) Where not possible to provide direct estimates of Fmsy, reevaluate the current Fx%msp proxy taking into consideration of what percentage of MSP is most likely to achieve the specific management goals for each applicable stock. This should include an evaluation of the consequences of this choice on the rebuilding target for each stock, and a comparison to available data.

2) SNE/MA Windowpane Flounder Sub-ACLs

NSC supports the proposed action to allocate a sub-ACL of SNE/MA windowpane flounder to the scallop fishery and rename the other sub-component the “other fisheries sub-ACL”.

3) Scallop Fishery Sub-ACL for GB Yellowtail Flounder Based on Estimated Catch

Consistent with NSC's input to the Council during their vote on November 14, 2012, NSC supports this proposed action for two reasons.

1. The TMGC accepted an extremely low TAC for 2013, one that the NSC has great concerns with. At this level and at any level below a 1,000 mt US share, the directed groundfish fishery is untenable. For this reason, NSC conceded that to destroy both the scallop and groundfish fishery, on paper, in advance of the start of the fishing years, should be avoided if possible. Discussions between groundfish and scallop fishery representatives resolved that the amount of catch estimated for bycatch would represent 40% of the US share of 215 mt in fishing year 2013.
2. NSC cannot overemphasize the need to have each substantial component of a fishery held fully accountable to their catch. Status quo policy does not do this adequately. NSC strongly supports allocating sub-ACLs as a percentage of the total ACL in a manner that reflects the historical use and need for the stock by each stakeholder, with the directed fishery afforded the highest priority. Unfortunately, to date, existing policy places the directed fishery, which has suffered the greatest economic loss for the shrinking GB YT ACL, as the lowest priority--essentially receiving the leftovers after all "other" and "more important" fisheries have been receiving between 90 and 100 percent of their need. This policy was overlooked when the US / CA shared TAC was at or about 2,000 mt and the US was receiving at least 75 percent of the TAC. But at such low levels the stock must be allocated according to historical shares.

To be clear, NSC's support for the 40% is limited to 2013 for the reasons mentioned above. The spirit of this temporary 2013 sub-ACL formula was to allow the scallop fishery time to adjust to a sub-ACL based on historical shares of 16%. NSC supports 16% in 2014 and beyond and will be strenuously opposed to any disingenuous effort that attempts to modify this critical decision. NSC support for this measure is entirely conditional upon the full three year policy being carried out as prescribed in this proposed rule. (40% 2013, 16% 2014, 16% 2015).

4) Small-Mesh Fisheries Sub-ACL for GB Yellowtail Flounder

NSC supports the proposed action to allocate a sub-ACL of 2 percent of the U.S. ABC for GB yellowtail to the small-mesh bottom trawl fisheries.

5) Recreational Fishery AM

NSC strongly supports a healthy and vibrant fishery comprised of both commercial and recreational stakeholders; however, NSC has grave concerns with the approach taken by the Council and Agency regarding recreational fishery accountability measures (AM). To us, there appears to be a stark inconsistency in the manner that MSRA is being implemented by the Agency in terms of the approaches applied to deal with enormous cuts in fishery wide ACLs for GOM cod and haddock.

On the one hand, commercial fishermen are not allowed access to the “groundfish closed areas” for the purpose of “protecting groundfish and to promote rebuilding”, while on the other hand, a component of the fishery that argued for and succeeded in receiving 34% and 38% allocation of GOM cod and haddock respectively, is allowed to fish those allocations almost entirely within the “groundfish closed areas”.

The commercial fishery is fishing under an output controlled system with weekly or daily reporting from the sectors. VTR's are submitted within 24hrs of offloading and all VTRs submitted to the Agency every week. Sector vessels have at sea monitors or NEFOP observers on 22% to 38% of all trips. Comparatively, private and “for hire” commercial / recreational fishermen have little or no monitoring, are not under a directly controlled output but are instead managed through effort controls, and their reporting is sparse VTR data coupled with zero quota accounting in-season which leaves the fishery wide opened to a possible overage that would not be detected for months or even years after it occurred.

This double standard of applying AMs is inexcusable and it is questionable whether it is legal under MSRA. The implications to the fish stocks subject to strict rebuilding plans and the economic consequences to commercial fishermen dependent upon these stocks are significant. The recreational component of the fishery has been granted a substantial component of the ACL, a sub-ACL which is harvested largely in closed areas, with limited monitoring and reactive AMs.

But the double standard of management policy continues. Rather than proposing responsible measures for effectively monitoring and controlling fishing in the recreational sector in response to ACL reductions as large as 77 percent, Framework 48 actually proposes to insert new authority for the RA to “loosen” recreational measures in-season if that sector is “projected” to be unable to achieve their sub-ACL. NSC struggles to understand what data would be used that could reliably support such an in-season management response. Would the Agency consider allowing commercial vessels access to the GOM mortality closures if the commercial sub-ACL was not being achieved? At least the Agency would know, at any point in time and with great precision, just how much has been harvested and how much is remaining,

in stark contrast to what the Agency will have to make the decision to loosen recreational measures for harvests inside the groundfish closed areas.

This approach is tantamount to the Agency being compelled to open the WGOM and eliminate the April rolling closure this year to allow the commercial sector to harvest their GOM cod and GOM haddock that is being under-harvested FY 2012. Instead, the commercial fishery operating under strict hard TAC requirements, real time reporting and monitoring remains constrained by effort controls during a period of low catchability. Recently, the Agency claimed the under harvest and low catchability was evidence of low abundance. This was the justification used by the Agency to endorse significant reductions in 2013 ACLs. Contrast that thinking with the proposed action for adjusting measures for the recreational sector and the double standard approach is quite clear to NSC.

6) Commercial Groundfish Fishery AMs

- ***Change to AM Timing for Non- Allocated Stocks***

In general, NSC does not support the proposed action because the data that will be used to make these decisions is known to be unreliable for use in the short term. The subjectivity of the evaluation of “should reliable information be available” is of particular concern since this determination could be made very late in the current fishing which would leave the fishery with little warning that an AM will be triggered at the start of the following year. This can have tremendous negative business effects on the fishery. Although NSC acknowledges the positive aspects of removing the AM if new information determines the AM should not have been implemented in the first place, it is little consolation as compared to the risk that having this policy in place will compel the Agency to react when it believes it has “reliable” information when we all know that level of accuracy in the data does not exist in real time for non-allocated stocks. At this point, it is difficult to identify anything that is reliable in groundfish science or management.

Further, NSC notes that the timing of the AM’s was not an issue addressed by the Court. Instead, as stated in the proposed rule preamble, the Agency recommends that AM’s should be imposed ‘as soon as possible’ after the overage occurs. The Agency does not explain why and what the biological or management downside is of implementing such AMs in the third year. Would it justify the adverse impacts on business planning and operations if the Agency mistakenly implemented an AM in the second year and had to reverse itself some months later? The potential chaos caused by this scenario argues strongly against putting the Agency in a position to make a subjective judgment as to when data is sufficiently reliable to implement these AMs in the second year. This is just looking for more problems. The groundfish fishery

desperately needs reliability and stability—and one small way to achieve that is by continuing to implement these AMs in the third year.

In the event the Agency decides to ignore comments to the contrary and implements this change to the AM timing for non-allocated stocks, NSC supports the Agency’s intent to use the start of the fishing year as the trigger point so that the entire fishing year is under one regime unless new information is revealed that could undo an AM if one has been triggered.

- ***Area-Based AMs for Atlantic Halibut, Atlantic Wolffish, and SNE/MA Winter Flounder***

In general, NSC does not support the proposed action because the data that will be used to make these decisions is known to be unreliable for use in the short term.

- ***Revised AM for SNE/MA Windowpane Flounder***

NSC supports SNE / MA Windowpane flounder sub-ACLs and the proposed AM applying to trawl vessels using codend greater than 5”.

7) Commercial Fishery Minimum Fish Sizes

Species	Current Rules	Proposed changes for FW 48
Cod	22	19
Haddock	18	16
Pollock	19	No change
Gray sole	14	13
Yellowtail flounder	13	12
Dabs	14	12
Redfish	9	7
Winter Flounder (BBs)	12	No change

NSC strongly supports the proposed action as presented above. One way to help mitigate the huge reductions in ACL is to ensure as little wasted ACL to discards as possible. This measure was carefully analyzed by the PDT with the intent to convert the greatest portion of known discards into landings. Furthermore, these sizes were carefully considered in relation to the maturity and biology of fish stocks. The Council’s final vote on the minimum fish sizes presented above is in some cases greater than the sizes originally presented by the PDT.

8) Sector Monitoring Programs

- ***Delay Industry At-Sea Monitoring Cost Responsibility***

NSC supports the Council's request to delay industry At-Sea Monitoring costs responsibility. Further, NSC notes that the current FY2013 Continuing Resolution enacted in March reallocates nearly \$120 million in revenues from the Saltonstall-Kennedy fund to cover the Agency's costs for several critical functions including "Survey and Monitoring Projects".

- ***At-Sea Monitoring Cost-Sharing***

NSC understands the Agency's concerns and we support including the NE multi-species FMP in the joint effort with FMAT to develop a workable and consistent cost-sharing mechanism for the Northeast Region.

- ***Eliminate Dockside Monitoring***

NSC supports elimination of the dockside monitoring program at this time. NSC has maintained that this program was not well designed or contemplated in a manner that made the data timely or useful. It caused numerous logistics and costs issues without commensurate benefits. NSC has always maintained that dockside monitoring should either be 100% or 0% if the program's intent is to ensure equitable enforcement of dealer activities throughout the region. NSC agrees that the trip start and end hails offer vastly improved windows of opportunity for enforcement intercepts and that the requirement should be kept available for the Agency to implement on an "as needed" basis. However, NSC must point out that our experience with handling the traffic coming via VMS and through the various government and third party servers proved completely unreliable for fishermen to receive confirmation of hails returned to the vessels in a timely manner. This problem, unless resolved, will create enforceability of hail requirements.

Consistent with NSC's long record of promoting efforts to reduce redundancy and packaging data inputs to serve multiple purposes, NSC supports the Agency's intent to clarify the regulatory text so that hails may be modified in the future to be streamlined with other reporting requirements that collect similar fishery data, such as Vessel Trip Reports (VTRs) and Vessel Monitoring System (VMS) catch reports.

- ***Sector Monitoring Goals and Performance Standard***

NSC supports the agencies proposed regulatory language to more explicitly state Sector Monitoring Goals and Performance Standards.

- ***Reduce At-Sea Monitoring for Monkfish Trips***

NSC supports this proposed action to implement a lower at-sea coverage rate for sector vessels fishing on a monkfish day at sea in the SNE Broad Stock Area with extra-large mesh gillnets.

9) GB Yellowtail Flounder Management Measures

NSC does not support the proposed action. Splitting this area into two strata will do little towards achieving the intended result. The only thing it will do is add complexity without benefit. NSC's comment during the Council deliberations was minimal to none because we struggled to understand how the benefits outweighed the costs or the likelihood of unintended results. NSC favored an approach to consider defining a more discreet area of historical GB YT catches for the purpose of allowing a greater area of GB to be accessed without assumed discard rates constraining access to the vast areas known to be sparse for YT presence. The propose action is far too broad in defining the two areas which we fear will result in no management benefits but will only add administrative burdens to the industry, Sectors and the Agency.

10) List of Allowable Sector Exemption Requests

NSC strongly supports the proposed action to broaden the list of allowable exemption requests. NSC agrees with the Agency's rationale for doing so, sectors are subject to a hard TAC that limits overall fishing mortality resulting from sector operations, making certain other mortality or effort controls redundant. Since hard TAC management was implemented by Amendment 16 in 2010, NSC has commented numerous times on the apparent disregard to remove regulatory artifacts associated with the old input control managed fishery.

11) Requirement To Stow Trawl Gear While Transiting

NSC strongly supports the proposed action to remove the gear towage requirement for trawl vessels while on a groundfish trip. NSC agrees VMS requirements are sufficient to monitor and enforce transiting requirements.

12) Correction to Eastern U.S./Canada Quota Monitoring

NSC supports the Agency's proposed removal of the FW42 language inadvertently left in the regulations at § 648.85(b)(8)(v)(C). NSC participated directly in all Amendment 16 development meetings as well as the numerous data and technical workshops held to develop reporting tools and methodologies. If not explicitly, certainly implicitly, this Framework 42 artifact was being

entirely replaced with sector level accountability to every distinctly managed stock or stock unit such as eastern and western cod and haddock in the US / CA areas. As the owner and developer of FishTrax reporting tool, NSC was intimately involved in constantly modifying the software parameters for the automated onboard FishTrax tool to ensure compliance with the regulatory methodology. Never was there an instance, either at a Council meeting or other meeting, where NSC was informed that eastern stocks were going to be required to be misreported under sector management. Had this ever been questioned or discussed by the Council during the development of Amendment 16, NSC and others would have commented extensively about the inconsistency this requirement poses for reporting and accountability of sector quota.

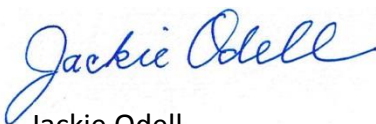
It is important to NSC that we continue to strive to create offshore opportunities to harvest GB haddock. Canadian haddock TAC utilization has been over 80% to as high as 98% while U.S. is barely harvesting 10%. It would be counterintuitive to artificially constrain U.S. fisherman by essentially requiring them to misreport catch which would result in premature shutdown of access to the very stock the U.S. is already disadvantaged relative to our Canadian counterparts.

Furthermore, since GB cod is one stock, and the eastern / western distinction is purely a management distinction for the benefit of the U.S. / CA resource sharing agreement, there is no real biological issue regarding cod mortality but instead, there is a potential management issue. If misreporting of cod catch occurs on trips that are fishing eastern and western areas. NSC would argue that there would need to be overwhelming and convincing evidence that misreporting is occurring at a level that warrants further dismantling of any chance that the U.S. can participate on par with the Canadians in the Transboundary Resource Sharing Understanding.

To conclude, NSC completely agrees with the Agency's interpretation of Amendment 16 intent as this was certainly our understanding as a substantial stakeholder and participant in the Council process.

NSC appreciates the opportunity to provide comments on these important regulatory measures for the groundfish fishery. We will be submitting comments for the Proposed Rule for Framework Adjustment 50 in the coming days.

Sincerely,



Jackie Odell
Executive Director

NORTHEAST SEAFOOD COALITION

DATE: January 17, 2013

TO: New England Fishery Management Council

CC: Scientific and Statistical Committee

RE: Estimation of Fmsy for Groundfish Stocks

Implementation of the Magnuson-Stevens Act requirements to end or prevent overfishing according to the National Standard 1 guidelines requires the determination of Fmsy or, if a direct estimate cannot be determined, a proxy thereof.

Efforts to estimate Fmsy in groundfish assessments have typically applied methodologies that rely in part on an adequate understanding of the stock – recruitment relationship for each stock. In practice, stock-recruitment relationships are difficult to determine for many fish stocks. Accordingly, a range of approaches have been developed to estimate Fmsy, including biomass-based production models, theoretical stock-recruitment models, more generalized stock-recruitment models, and empirical stock-recruitment models.

Nevertheless, instead of presenting the results from different methods to the Council, the 2002 *Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish* chose to simply establish a proxy for Fmsy for groundfish stocks. This choice has had a substantially limiting influence on all future groundfish stock assessments and the advice provided to the Council.

<http://www.nefsc.noaa.gov/publications/crd/crd0204/crd0204.pdf>

The default proxy chosen by the 2002 Working Group for Fmsy was the Shepherd model (a combination of stock-and-recruitment theory and yield-per-recruitment theory). The Shepherd model is based on a specification of the ‘maximum spawning potential’ (MSP). Although a range of MSP values are possible, the Working Group chose only 40% MSP.¹ So, in other words, although a large range of alternatives is possible, the Working Group presented the Council with only one method and only one of the many possible versions of the method.

¹ The fishing mortality rate associated with 40% of the MSP of the stock. MSP is defined as the ‘spawning stock biomass per recruit in the absence of any fishing’ —i.e., when F=0. Thus, the F40%msp proxy means the fishing mortality rate that would reduce spawning stock biomass per recruit to 40% of the unfished level (maximum).

It should be noted that MSP-based proxies for F_{msy} assume the stock is in equilibrium. These stocks are not in equilibrium and several more realistic alternatives exist for estimating F_{msy} using non-equilibrium methods. Indeed, the scientist who performed the simulations in 1992-3 on which the 2002 Working Group based its advice for using $F_{40\%msp}$ as a proxy has since raised his own questions about this methodology in the scientific literature. Although those simulations were for west coast fish stocks, managers of those fisheries have since adopted $F_{35\%msp}$ as their proxy for F_{msy} .

The GARM III Working Group was unable to define stock-recruitment relationships for most groundfish stocks. Instead of using production models or other available methods that do not require any understanding of the stock-recruitment relationship to directly estimate F_{msy} , the Working Group chose to apply the $F_{40\%msp}$ proxy for F_{msy} for all stocks (ignoring $F_{30\%}$, $F_{20\%}$, etc.), except redfish, for which $F_{50\%msp}$ was applied. The GARM III report specifically cites the 2002 Working Group report as justification for their choice.

http://www.nefsc.noaa.gov/saw/qarm/Garm%20III_BRPs_report_6june2008_finalCorrected.pdf

Further, the choice to adopt the $F_{40\%msp}$ proxy for F_{msy} by the GARM III Working Group has subsequently been cited as the “best scientific information available” in Amendment 16 and subsequent framework actions adopted by the Council including proposed Framework 48. It is clear that the Council was not fully advised of the implications of this approach or the potentially more desirable and scientifically sound alternatives available when making these decisions. As can be seen, the limited advice provided in the 2002 Working Group Report cited above has been perpetuated throughout the groundfish stock assessment and management process.

Two serious questions emerge for the Council’s consideration—

1) Was the specific choice of $F_{40\%msp}$ as the proxy for F_{msy} appropriate for most groundfish stocks and does it represent the best scientific information available?

- The choice of 40% of MSP as opposed to some other percentage of MSP in setting a proxy for F_{msy} (overfishing) is inherently arbitrary. It also often generates much greater rebuilding targets that may exceed B_{msy} , which may be very difficult if not impossible to achieve within arbitrary MSA rebuilding timeframes. Managers need to understand the important implications this choice has for the specific management goals for each stock.

2) Is any MSP-based proxy for estimating Fmsy appropriate for groundfish stocks and does that represent the best scientific information available? (ie. should we use direct estimates of Fmsy instead)?

- Overfishing is legally defined according to Fmsy, and technical guidance from NOAA is that Fmsy proxies should only be used when Fmsy is not estimable.
- Since 2002 considerable additional data has been obtained that may support an understanding of the stock-recruitment relationship for some groundfish stocks (including Georges Bank yellowtail flounder) that is adequate to support the direct estimation of Fmsy for specific stocks (but a production model approach does not require assumptions about the stock-recruitment relationship).
- Even when stock-recruitment relationships cannot be determined as is often the case for groundfish stocks, valid production models based on age-aggregated biomass dynamics can be used to provide direct estimates of Fmsy for these stocks.
- MSP-based proxies for Fmsy are not appropriate for groundfish stocks that are not at equilibrium, and alternative non-equilibrium methods are more appropriate.

With these questions in mind, NSC respectfully recommends that the Council submit the following requests to the SSC to be addressed as soon as possible:

- 1) Where possible, provide direct estimates of Fmsy for all groundfish stocks.**
- 2) Where not possible to provide direct estimates of Fmsy, reevaluate the current Fx%msp proxy taking into consideration what percentage of MSP is most likely to achieve the specific management goals for each applicable stock. This should include an evaluation of the consequences of this choice on the rebuilding target for each stock, and a comparison to available data.**