

NORTHEAST SEAFOOD COALITION

May 15, 2006

TO: Patricia A. Kurkul
Regional Administrator, Northeast Region
National Marine Fisheries Service
Gloucester, MA 01930

RE: Comments on the Interim Final Rule for Groundfish Emergency Action
[Docket No. 060209031-6092-02, April 13, 2006]

As a general matter, the Northeast Seafood Coalition (NSC) would like to highlight our disagreement with a stated premise that this Final action will likely be replaced during Fishing Year 2006 with measures submitted by the Council under Framework 42 (FW 42). NSC does not believe FW42 as submitted by the Council is approvable by the Secretary in its entirety for a number of biological, socio-economic and procedural reasons that violate the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law. NSC urges the Secretary to partially disapprove FW42 and to promulgate, in cooperation with the New England Fishery Management Council and industry, alternative measures that are more effective in achieving the stated biological objectives and will minimize adverse economic impacts on fishermen and fishing communities. For the record, NSC believes this Final action also violates critical provisions of the MSA and other applicable law.

(1) Differential Category A DAS Counting

Federal Register Page: 71 FR 19377

Section: 648.82 *Effort-control program for NE multispecies limited access vessels;*
paragraph (n)(2) *Differential Category A DAS counting.*

Recommendation: Reduce the geographic application of the 1.4 to 1 differential DAS counting measure to eliminate any redundancy with the fishing mortality rate reductions achieved by stock specific trip limit reductions, consistent with Framework 42 analyses.

Explanation:

NSC strongly recommended the complete elimination of the 1.4 to 1 differential DAS counting management strategy in its comments on the Proposed action. The Proposed Rule would have imposed catastrophic, cumulative economic impacts on virtually the entire NE groundfish fishery. As a constructive alternative, NSC proposed in its comments a detailed suite of targeted stock-specific measures for the 7 stocks requiring fishing rate mortality reductions as per the results of GARM II.

NSC appreciates that this Final action eliminates the application of the 1.4 to 1 differential DAS counting rate to vessels fishing entirely inside the Eastern and/or Western US/Canada Management Areas during a trip, and replaces it with stock specific measures (reduced trip limits) for GB winter flounder, GB yellowtail flounder and white hake. This approach is consistent with the spirit of NSC's recommendations on the Proposed action and with the measures set forth in Framework 42.

However, the area to which the 1.4 to 1 differential DAS counting measure applies still far exceeds that which is necessary to achieve required fishing mortality rate reductions for the stocks of concern. The fishing mortality rate reductions achieved by the 1.4 to 1 DAS counting area in this Final action, and by the stock specific trip limit reductions, overlap geographically. Consequently, the geographic scope of the 1.4 to 1 differential DAS counting measure is excessive and biologically unjustified. The stock specific reductions in trip limits for GB winter flounder, GB yellowtail flounder and white hake set forth in this Final action justify a substantial reduction in the geographic application of the 1.4 differential DAS counting measure consistent with Framework 42.

Like the Proposed action, this Final action is unlikely to be effective in achieving the necessary fishing mortality rate reductions for the valuable cod stock in the Gulf of Maine. It may have the opposite effect of increasing such mortality for the following reasons.

- While the large cumulative impact of DAS reductions under this Final action will certainly force many Gulf of Maine (GOM) fishermen completely out of the business, fishermen that do attempt to remain economically viable in the groundfish fishery will be forced to focus their extremely limited DAS on those groundfish stocks with the highest value. The reality is that the stock with the highest value in the GOM is the GOM cod stock, which is one of the stocks of greatest biological concern. GOM cod currently comprises a relatively small percentage of the catch of the vast majority of fishermen fishing in the GOM. This current reality will change drastically under the 1.4 to 1 differential DAS counting measure as many fishermen change their basic fishing strategies to target cod. The net result of this Final action will be to increase targeted fishing effort and mortality of the GOM cod stock. This is completely inconsistent with the objectives of Amendment 13, this Final action and the MSA.
- Despite the great concern for the future status of the GOM cod stock, the differential DAS counting measures would actually impose the least restrictions on directed GOM cod fishing operations. A small minority of the day-boat druggers and day gillnet vessels currently account for over 50% of the GOM cod landings. This Final action will impact these sectors the least of all sectors in the fleet. Consequently, the differential DAS counting measure in this Final action will actually promote and encourage increased directed cod effort by additional vessels that had not previously directed exclusively on GOM cod as a means of financial survival.

As addressed more extensively in NSC's comments on the Proposed action, the broadly applied 1.4 to 1 differential DAS counting measures in this Final action go beyond that which

is necessary to achieve the necessary fishing mortality rate reductions and, therefore, will result in large, unnecessary underharvests (waste) of the optimum yield of many other important stocks at great economic loss to the region.

For example, the total reduction in catch required to achieve the mortality reduction requirements for the CC/GOM and Southern New England YT stocks combined is only approximately 500,000 lbs. This represents less than one-half of one percent of the total actual annual yield in landings of the entire groundfish fishery, yet this relatively minimal reduction is a driving force behind the current action's differential DAS counting measures. This excessive, broad-brush management response is completely out of balance with the conservation need. Because so much yield from other stocks will go unutilized as a result, the current action is entirely inconsistent with the MSA including both National Standard 1 and the fundamental Purpose to maximize the benefits to this nation by achieving the optimum yield from our fishery resources.

(2) Cape Cod/Gulf of Maine Yellowtail Flounder Trip Limits

Federal Register Page: 71 FR 19386

Section: 648.86(g)(4)(ii)(C) *Requirements.*

Recommendation: Conform the monthly schedule of high and low trip limits for Cape Cod/Gulf of Maine yellowtail flounder (CC/GOM YT) to that set forth in Amendment 13—ie. apply the low trip limit (250 lbs) to April, May, October and November, and the high trip limit (500 lbs per day) to the remaining 8 months of the fishing year. Specifically, this would have the effect of replacing the low trip limit (250 lbs) in June with the 500 lbs per day trip limit, and replacing the high trip limit (500 lbs per day) in April with the low trip limit of 250 lbs.

Explanation:

NSC objects to the management strategy and consequences of applying the low trip limit (250 lbs) for CC/GOM YT in June, specifically with respect to blocks 124 and 125. NSC is convinced this will lead to an unusually high level of CC/GOM YT discards and unacceptable waste of this valuable resource, and perpetuate the excessively broad management response included in this Final action. NSC believes the monthly schedule of high and low trip limits for CC/GOM YT set forth in Amendment 13 represents the most effective way to avoid such discard and waste problems and to maximize the balance of conservation and economic objectives for this resource.

As NSC has repeatedly explained to the Agency, literally hundreds of vessels will descend upon blocks 124 and 125 on the June 1 opening resulting in the highest levels of fishing effort of the year in this area. This is because as of June 1 the inshore Gulf of Maine fleet will have been unable to generate any income from the groundfish fishery for a period of two months as a consequence of the rolling closures of blocks 124, 125, 132 and 133. These vessels must

fish in blocks 124 and 125 on the June 1 opening in order to survive the substantial economic impacts of those closures. The record of fishing behavior demonstrated in previous years can easily verify this reality. These vessels will include those that normally fish in this area as well as many vessels from more distant ports in southern Maine, New Hampshire and Massachusetts.

As the Agency is fully aware, in June fishing effort is heavily concentrated in blocks 124 and 125, with 124 representing the highest concentration of any block. This scenario is guaranteed to result in large-scale CCYT discarding.

NSC acknowledges that low trip limits can be an effective management tool to discourage fishing effort in specified areas, but only if alternative fishing grounds are readily available and accessible. This can be especially true when the stock is a flatfish that can be successfully avoided geographically. In this case, however, many Gulf of Maine inshore vessels simply have no alternative fishing grounds to access due to the continued closure of blocks 132 and 133 on June 1.

The Agency has dismissed NSC's repeated concerns on this issue and offered no meaningful rationale or practical alternative. The Agency has acknowledged that a low trip limit strategy poses a real danger for causing increased regulatory discards. The Agency further states that this reality is the reason why the Agency generally opposes the use of trip limits as a management tool. Yet, the Agency implements this action as a final rule despite being advised by industry leaders of the expected negative consequences for discards. Simply expressing Agency concerns without sufficient consideration of alternatives is not a valid justification for taking this action.

The Agency has also indicated that this action is justified by the administrative benefits of harmonizing CCYT trip limits with trip limits for SNE YT. NSC suggests that any such benefits are far outweighed by the negative consequences including excessive discards and mortality.

NSC reiterates its request for the Agency to avoid the impending discard disaster by reconsidering the June CC/GOM YT trip limit and cooperating with the industry to implement a common sense alternative. NSC recommends that this action be modified to extend the application of the 500 lb per day limit in blocks 124 and 125 to the month of June and to reduce the trip limit in April to the low trip limit of 250 lbs consistent with the approach taken in Amendment 13.

(3) Georges Bank Winter Flounder Trip Limit

Federal Register Page: 71 FR 19387

Section: 648.86(j) *Multispecies possession restrictions – GB Winter Flounder.*

Recommendation : Revise the 5,000 lb trip limit for Georges Bank (GB) winter flounder to conform to the 10,000 trip limit and associated monitoring and management measures for GB yellowtail flounder.

Explanation:

There is a considerable amount of fishing effort that occurs simultaneously on the GB winter flounder and GB yellowtail flounder stocks. Applying different management strategies including different trip limits to these strongly commingled stocks will confuse fishermen, undermine compliance and increase discards.

The management of GB winter flounder should be consistent with if not driven by the monitoring procedures and triggered management responses in place for GB yellowtail flounder pursuant to the US/Canada management strategy. This would obviate the need for a lower (5,000 lb) trip limit for GB winter flounder and yet ensure the fishing mortality rate objectives for GB winter flounder will be attained just as effectively as they are for GB yellowtail flounder under the US/Canada program.

NSC strongly recommends this action be revised to reflect the inherent linkage of these two stocks in the fishery by applying consistent trip limits, monitoring and management response strategies for these two highly associated stocks. The analysis conducted by the Plan Development Team on the industry proposal appears to support this approach.