



January 15, 2014

John K. Bullard
Regional Administrator, National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 10930

Re: Comments on Closed Area Interim Final Rule [Docket No. 130319263 – 3823 – 02]

Dear John,

The following are comments on the Interim Final Rule to allow northeast multispecies sector vessels access to the year-round closed areas.

For additional reference, please recall the Northeast Seafood Coalition (NSC) comments submitted to the Proposed Rule on July 25, 2013 as well as the NSC and Northeast Sector Service Network (NESSN) comments submitted on March 29, 2013. NSC continues to stand firmly behind these previous comments submitted to the Agency.

In summary, NSC strongly disagrees with the Agency's decision to deny sector vessels access to the mortality portions of the year-round closed areas in Closed Area I and Closed Area II. We request that the Agency reconsider their decision prior to issuing the Final Rule.

Furthermore, it needs to be noted that NSC finds it extremely difficult to provide meaningful input to the Agency in this Interim Final Action because of the rationale and language used by the Agency to deny access to Closed Area I and II. The basis for the denial appears to be based on subjective fears and speculation with little or no real scientific or analytical evidence to support the decision. In general, the rationale provided in the Interim Final Rule reveals a lack of confidence in the output controlled system and a clear prejudice / indictment of fishermen ability to fish selectively or even within the law. *What makes this even more troubling is that all of this subjectivity exerted by the Agency runs counter to the New England Fishery Management Council's requests and clearly stated intent.*

One example of speculative rationale is where the Agency expresses their concern for Georges Bank cod (GB cod) and Georges Bank yellowtail flounder (GB yt) stating that they are at very low levels. This is not, in itself, justification to deny access in an output controlled system. What could have been considered is that as of January 8th, the sector utility of the ACLs for GB east cod, GB west cod and GB yt are at 18%, 55% and 25% respectively. These utility rates are due, in part, to the ACLs being so low that directed fishing on GB east cod and GB yt is no longer feasible and these stocks are being held for the purpose of leveraging access to high ACL stocks such as GB haddock, redfish, winter flounder and pollock. Since access to these portions of the closed areas would have provided additional "opportunity" to harvest stocks such as GB haddock, it would stand to reason that providing access to these areas may have presented an

optimum use of the remaining allocations of GB east cod, GB west cod and GB yt. In doing so would also have required using the selective trawl gears that are designed to minimize catch of cod and flounder species.

The Agency may have overlooked the fact that as of January 8th, american plaice and witch flounder are at 71% and 67% respectively. The Agency's decision to deny the opportunity to request access through sector operations plans leaves the industry with only the areas that have produced less than 8% utility of GB haddock. Fishermen have been continuously testifying that the ACL's for american plaice and witch flounder are a serious constraint because the catch rates are inconsistent with the ACL reduction. By denying this request fishermen are left with low haddock to cod/yt ratios and no requirement or even incentive to use selective gear. NSC believes this is a serious oversight and unfortunate result of the Interim Final Rule. By allowing access, the Agency could have provided an incentive for fishermen to use the selective gear while presenting a real "opportunity" to increase efficiency on GB haddock, pollock and redfish.

In general, NSC hopes that the Agency will take some of these points into serious consideration when issuing the Final Rule or in near term efforts to revisit this important issue for 2014.

NSC supports the Agency's mention to reassess whether groundfish sector vessels might be able to access these closed areas if they are assigned a random observer or at-sea-monitor.

With so many fishing businesses in distress, NSC members are fishing at historically low levels. The number of trips being taken compared to previous years surely must be leaving room within the FY 2013 ASM / NEFOP resources. NSC encourages the Agency to consider using any residual resources to expedite access to these areas. This will provide what NSC believes is a limited period of higher observation to provide an objective basis to guide longer term policies.

Sincerely,



Jacqueline Odell
Executive Director

Cc: Elizabeth "Libby" Etrie, Northeast Sector Service Network



July 25, 2013

John K. Bullard
Regional Administrator, National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Re: Comments on the Proposed Rule to allow northeast multispecies sector vessels access to year-round closed areas [Docket No. 130319263-3577-01, RIN 0648-BD09]

Dear John,

The Northeast Seafood Coalition (NSC) provides policy representation for each of the individual fishermen and entities enrolled in the Northeast Fishery Sectors (NEF Sectors). Collectively, these fishing businesses and many essential shore side businesses encompass our membership.

NSC along with the Northeast Sector Service Network (NESSN) whose membership consists of the Northeast Fishery Sector entities, submitted comments to the Proposed Rule for the 2013 Sector Operations Plans and Contracts. Many of the statements below reflect the comments submitted on March 29, 2013.

In summary, NSC largely disagrees with the Agency's recommendation to place conditions by which exemptions will or will not be allowed for access to the mortality portions of the existing year round closures in 2013. Many of the conditions recommended by the Agency in this proposed rule were not put forth by the New England Fishery Management Council (Council) and were strongly advised otherwise by industry groups that truly understand the fragility of the fishing industry and need to develop real options to mitigate the reductions in the 2013 Annual Catch Limits (ACLs).

Furthermore, NSC is confused by the reluctance of the Agency to embrace the fact that the fishery is now controlled and managed under a hard total allowable catch. While operating under a hard total allowable catch since 2010, there has often been reluctance to change measures that were implemented under the old effort controlled management regime. NSC continues to witness the process looking back rather than forward under the new catch-share system, a program which was endorsed by the Agency. NSC, NESSN, NEF Sectors and other industry groups have commented repeatedly over this reality. Sectors are constrained by the ACE allocated to them.

Remember these allowable catches are based upon the science which has been deemed best available by the Agency. If the Agency had faith in its science then why would it recommend placing constraints upon Sectors who wish to utilize the sector exemptions to effectively harvest the ACE allocated to them?

Proposed Areas for Exemptions:

NSC supports the area defined in the proposed rule as “Closed Area I, Closed Area II and Nantucket Lightship Exemption Areas” because it is consistent with the recommendations of the Council by restricting any exemptions for 2013 to “mortality only” portions of existing year round closures.

The NSC has consistently supported reopening areas that had been previously closed as mortality - effort controls. Although this proposed action attempts to do just that, the conditions proposed effectively negate most if not all of the potential for economic benefit that may have been realized if not for these conditions. As noted, neither the Council nor the industry has ever proposed or supported these conditions. In fact, to the contrary, the most onerous of the conditions, 100% industry funded ASM, has been explicitly rejected by the Council and the industry both in public meetings of the New England Fishery Management Council and in detailed written public comments to proposed regulatory actions. Many analyses such as break even analyses done by the Massachusetts Division of Marine Fisheries Service and the PDT have shown the fragility of the fleet and thus inability to cover such additional costs.

Condition Proposed to Require 100% Industry Funded At Sea Monitoring for Exemption Areas:

Reiterating NSC, NESSN and NEF Sector comments during the deadline for the 2013 Sector Operations Plans and Contracts as well as every other opportunity to provide comment throughout this process, NSC strongly opposes the Agency’s condition to place 100% industry funded at sea monitoring (ASM) requirement in order to access the groundfish mortality closures.

As noted above, this one condition alone completely reverses what was potentially a mitigating measure for the current fishery disaster and turns it into a net negative for fishing businesses that are currently struggling to meet expenses. As concluded in numerous economic analysis, industry funded monitoring has already been deemed financially infeasible in this fishery at this time. For the Agency to require 100% industry funded monitoring, the Agency must be 100% certain that there will be sufficient presence of haddock, pollock and other target species in those areas and available at sufficient catch per unit of effort to justify the enormous added expense. NSC questions the existence of data to support such an assumption. The proposed rule assigns a “known” and quantifiable fixed cost to struggling fishing businesses on purely speculative economic benefits assumptions. This is a trade-off that industry must reject at face value and NSC emphatically rejects the Agency’s 100% industry funded ASM requirement in this proposed rule.

NSC points to the Agency’s lack of credible scientific justification for drawing such a stark distinction between areas / substrates that exist in the areas currently open and the areas

closed since 1994. The mortality closure areas have never been identified as habitat closed areas either in the past or proposed as alternatives in the Omnibus Amendment. They are commonly known and understood to be mortality closures - only. Fishermen know, definitively, that these areas, once fished by groundfish fishermen for centuries up until 1994, are not unique in any way from the open areas that are contiguous to the CA1, CA2 and NLSCA Exemption Areas defined in this proposed rule.

NSC notes and the proposed rule acknowledges that these exemption areas have been accessed by scallop dredging as part of rotational access programs, lobster trawls and mid-water trawling throughout the "closure" period. In fact, the only fishery closed from these areas has been the commercial groundfish fishery.

Condition Proposed for Time / Seasonality Restrictions for Exemption Areas:

The regulations already preclude access to Closed Area I and Closed Area II for the period February 16th through April 30th. (50 CFR § 648.87 Sector allocation (i) *Regulations that may not be exempted for sector participants.* ; Closed Area I and Closed Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30)

NSC does not support the Agency's proposal to restrict exemption requests to December 31st. NSC questions why the Agency unilaterally chose to override the February 15th through April 30th historical spawning closures on Georges Bank. Without conclusive scientific analysis or citing, they chose not to use the Feb 15th date and instead proposed December 31st "to avoid impacts to spawning stocks of Georges Bank cod".

NSC strongly advises the Agency to adopt the seasonal restrictions specified by the Council for Closed Area I, until February 15th.

Impacts to the Offshore Lobster Industry and Sector Trawl Vessel Rotational Agreement in Closed Area II Exemption Area:

NSC strongly advises the Agency to revise the seasonal restrictions modified under this proposed rule. NSC strongly supports the seasonal restriction as supported by the Council and the industry agreement which was carefully vetted and agreed upon by the fishing industry. The Sector trawl fishery should have access from November 1st through February 15th.

The NSC worked closely with representatives of the offshore lobster industry and other fishing organizations to draft a mutually beneficial agreement in order to maximize fishing opportunities for both industries in Closed Area II and minimize gear conflicts. The agreement was based upon the lobster industry receiving access from June 15th through October 31st and Sector trawl receiving access from November 1st through June 15th with Sector trawl interests understanding that the February 16th through April 30th CA I and CA II regulations would still be applicable.

NSC does not support the Agency's proposal to modify the timing associated with this agreement. Essentially, the Agency's proposal only gives the trawl fleet three months out of the entire fishing year to fish in the central portion of Closed Area II. This is not acceptable.

NSC strongly recommends the Agency adopt the timing as supported by the agreement which was carefully vetted and agreed upon by the fishing industry.

Nantucket Lightship Closed Area Exemption:

NSC supports the proposal to require pingers on gillnet gear when fishing in the Nantucket Lightship Closed Area – Western Exemption Area between December 1 and May 31st.

Cashes Ledge & portion of the Western Gulf of Maine Closure:

It is important the Agency realizes the mortality closures in the Gulf of Maine are hindering access to many stocks such as pollock. Even though the day-boat fleet fishing in the Gulf of Maine may receive indirect benefits from access provided to offshore areas, *there are still no direct measures mitigating the reductions in the 2013 ACLs for the inshore day-boat fleet*. If the Agency had worked collaboratively with the Sectors prior to this proposed rule there would have been a greater opportunity to resolve some of the issues now raised in this rule.

To conclude, NSC would like to remind the Agency that measures such as these, providing access to groundfish mortality closures, are a real - tangible opportunity to mitigate the ACL reductions in 2013. Most of the conditions recommended by NMFS in this proposed rule, such as gear and observer coverage, miss this critical opportunity to provide meaningful mitigation for Sectors and their members. The fleet is desperately seeking opportunities to maximize their allocations and increase their economic efficiency. Since essential fish habitat portions of the closed areas would remain closed, it would appear a balance between the needs of rebuilding fish stocks and supporting a fishing fleet could be achieved through this action.

NSC appreciates the opportunity to provide our comments on this important proposed rule.

Sincerely,



Jacqueline Odell
Executive Director

Cc: Elizabeth "Libby" Etrie, Northeast Sector Service Network



March 29, 2013

Mr. John Bullard
Regional Administrator,
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Re: Comments on 2013 Sector Operations Plans and Contracts
NOAA-NMFS-2013-0007 [RIN 0648-XC240]

The Northeast Seafood Coalition (NSC) provides policy representation for each of the individual fishermen and entities enrolled in the Northeast Fishery Sectors (NEFS). Collectively, these fishing businesses and many essential shore side businesses comprise our membership.

Our fishing members, as members of the NEFS sectors, have commented through their sector entity affiliations either independently or through the comments of the Northeast Sector Service Network (NESSN), whose membership is comprised of the NEF sector entities. With respect to the detailed comments on those components of the proposed rule that relate to sector operations plans NSC supports each of the individual and collective comments that were compiled collaboratively through their sector and network affiliations.

As an organization we made substantial commitments and contributions to the development of sector policies during Amendment 16. NSC remains committed to improving the management of this fishery and to ensuring its sustainability by striking the appropriate balance between resource conservation and business stability and profitability. Without both, there would be no "Fishery".

NSC is very concerned that the Agency has proposed or is considering imposing what will be major setbacks to sector fishermen at a time when advances are most needed. Specifically, the proposed rule lists "exemptions previously approved for which we have concern" and "expansion of the Agency's process for withdrawing a sector exemption in-season".

Revoking an exemption that has been previously approved either now or in-season, without prior communication and consultation, especially one which Sector's and their respective members have designed harvesting strategies and business plans around for the fishing year, will only serve to further weaken the shrinking numbers of active vessels in the fishery.

NSC strongly encourages the Agency to reflect on what has taken place since Amendment 16. During this time the industry and Council have attempted to evolve the management system by largely replacing effort controls with output controls in order to achieve optimum yield. The industry has assumed tremendous reporting and accountability burdens that have caused substantial financial and human costs. The reward was to be an MSRA-compliant fishery, business stability, and relief from oppressive and inefficient effort controls. In this respect, the proposed rule would appear to move this process backwards.

As a diligent and sincere participant in the council process, NSC has serious concerns with the Agency policy trend embodied throughout this proposed rule. Most disturbing to NSC is the appearance of Agency justifications and concerns not amply vetted through the council, if at all. The results are not only that the industry and likely the NEFMC are shocked by this, but that since little or no discussion, data or analysis were provided in a forum conducive to deliberation and problem solving, the process of generating creative solutions among industry and managers never occurred.

- **The requirement to provide 100% industry funded ASM for some exemptions and the expressed intent to require the same for any access to mortality closures in subsequent rule making.**

ACCESS to CLOSED AREAS: NSC cannot begin to understand what supporting information the Agency would have to justify such a decision since the areas identified by the council for potential sector exemption requests are all outside the current habitat areas and are not being considered for future habitat omnibus Amendment protection. The areas identified are explicitly described as artifact mortality closures only. What statistical analysis have been discussed or provided that indicated the accepted coverage rate of 22% would not produce the desired CV for these areas?

The council has repeatedly reinforced their position that industry cannot afford to pay for At Sea Monitoring, especially under the circumstances of 2013 ACLs and the fishery disaster. NSC understands that the agency will be dealing with the closed area exemptions in the near term through a subsequent action, but it cannot be under the pre-condition of 100% industry funded ASM coverage which is why we must strenuously oppose this concept for this proposed rule in response to the Agency's request for comment.

REDFISH EXEMPTION: The agency recently approved this exemption without the industry funded requirement. The rationale that coverage rates on "standard sector trips" may suffer is an understandable concern, but this should have been raised during the council process where analysis could have been requested to test to see if there was ample room in the ASM / NEFOP system to accommodate some or all of the anticipated trips using this exemption and if a deficiency was predicted, the industry may have had an opportunity to figure out a solution. Requiring that industry pay 100% of this coverage essentially negates much if not all of the benefits hoped for with this exemption. The whole idea of creating incentives to shift effort onto healthier stocks is predicated on economics. The Agency's proposed requirement runs counter to that.



- **Concerns about Georges Bank Winter Flounder spawning in May.**

Once again, NSC is concerned by the appearance of largely un-vetted concerns that are unilaterally put forth by the Agency in a proposed rule where interaction with stakeholders becomes limited to these public comments.

May is an important period for haddock catches on Georges Bank. NSC strongly opposes the Agency's intent to not accept the council recommendations regarding the periods for access to the US / CA Eastern area/SAPs. There is no more effective way to disperse effort than to provide offshore opportunities. The month of May on Georges Bank is one such opportunity.

Limits on number of gillnets on Day Gillnet Vessels. NSC also objects to the Agency's consideration of denying this exemption. Framework 50 ACLs will have a tremendous impact on the inshore fleet and will likely result in dramatic reductions in effort. For those fishermen who will attempt to survive this period of low catch rates, they cannot afford to lose the ability to fish status quo gear as has been approved in past years. Harbor porpoise takes have been below PBR since sector management has been in place and with the low ACLs, overall effort will likely plummet. It is entirely unnecessary to deny this exemption.

Requirement to use selective gear: NSC continues to stress the need to empower sector fishermen to utilize their allocated ACE with the maximum flexibility. Layering input controls back onto this system should not be used if the sole purpose is to ensure staying within sector ACE. The whole idea has been to replace input controls by the output control system. We are now going into our fourth year of operating without a single ACL overage.

Lastly, NSC is concerned with the Agency's intent to broaden their in-season discretion to limit, revoke or otherwise alter provisions approved within a sector's operation plan. References to subjective determinations such as "may jeopardize rebuilding efforts" are especially troublesome and should be stricken entirely until this issue can be revisited at the council to ensure this policy is fully vetted.

Once again, for the record, NSC supports the exemption and operations plan specific comments as set forth in the NESSN comments submitted for this proposed rule and wish to incorporate by reference those positions that are not directly commented here.

NSC appreciates the opportunity to comment on this proposed rule.

Sincerely,

Jackie Odell

Jackie Odell,
Executive Director