

MID-ATLANTIC COUNCIL

2013 Planned Council Meeting Topics

February 12-14, 2013 -- Hampton, VA

- Ecosystem and Ocean Planning Committee review of alternatives for Amendment 16
- Amendment 16 to Atlantic Mackerel, Squid, Butterfish (deep sea corals) Scoping Hearing
- Black Sea Bass Specifications for 2013 and 2014
- Special Management Zone recommendations for Delaware reefs
- Discuss approach to alternative development for Amendment 15 to Atlantic Mackerel, Squid, Butterfish FMP
- Marine Recreational Information Program Update

April 9-11, 2013 -- Raleigh, NC

- Tilefish Specifications for 2014
- Standardized Bycatch Reporting Methodology Omnibus Amendment draft EA approval
- Omnibus Recreational Amendment alternatives for public hearing document
- Squid Workshop update from January 15-17, 2013
- Forage Fish Workshop

June 11-13, 2013 -- Eatontown, NJ

- Butterfish Specifications for 2014 and other Atlantic Mackerel, Squid, Butterfish management measures
- *Illlex* Control Date approval
- Surfclam and Ocean Quahog Specifications for 2014, 2015, and 2016
- Surfclam and Ocean Quahog data collection protocol review
- Research Set-Aside award recommendations for 2014
- Omnibus Recreational Amendment submission approval
- Draft Strategic Plan document public hearing approval
- Standardized Bycatch Reporting Methodology alternatives approval

August 13-15, 2013 -- Wilmington, DE

- Swearing-in of new and reappointed Council members
- Election of Officers
- Research Set-Aside 2015 Research and Information Priorities List
- Final Draft Strategic Plan document approval
- Deep Sea Coral Amendment alternatives for public hearing

October 8-10, 2013 -- Philadelphia, PA

- Spiny Dogfish Specifications for 2014
- Summer Flounder, Scup, Black Sea Bass Commercial Specifications for 2014 (and beyond)
- Bluefish Specifications for 2014
- Amendment 15 to Mackerel, Squid, Butterfish FMP - River Herring/Shad as Stocks in a Fishery

December 10-12, 2013 --Annapolis, MD

- Summer Flounder, Scup, Black Sea Bass Recreational Specifications for 2014 (and beyond)
- Amendment 16 to Mackerel, Squid, Butterfish FMP (Deep Sea Corals) submission approval
- SSCs 5-year Research Priority Recommendations

MID-ATLANTIC COUNCIL

2013 Schedule of Events

July

- 2 Multi-Year ABC Specs - Webinar
- 11 Port Side Sampling Meeting, Gloucester, MA
- 23 Senate Hearing on Magnuson, Washington, DC
- 23 Understanding Climate Impacts on Fish Stocks, Providence, RI
- 23-26 Summer Flounder SAW/SARC, NEFSC, Woods Hole, MA

August

- 1 Scup Allocation Project Review, Baltimore, MD
- 5-8 Review of Fishery Independent & Dependent Data for Stock Assessments, Woods Hole, MA
- 6-8 Atlantic States Marine Fisheries Commission Meeting, Alexandria, VA
- 13-15 Mid-Atlantic Fishery Management Council Meeting, Wilmington, DE
- 26-30 Butterfish SAW - Data, Woods Hole, MA
- 28 Spiny Dogfish Advisory Panel Meeting - Webinar
- 29 Bluefish Advisory Panel Meeting - Webinar

September

- 4-5 Commercial Fisheries Research Foundation Workshop on Short Lived Species, RI
- 8-12 American Fisheries Society Annual Meeting, Little Rock, AR
- 10 Summer Flounder, Scup, Black Sea Bass Advisory Panel Meeting, Baltimore, MD
- 17-19 SSC Meeting - ABC recommendations for Summer Flounder, Scup, Black Sea Bass, Baltimore, MD
- 19-20 Summer Flounder, Scup, Black Sea Bass Monitoring Committee Meeting, Balt., MD

October

- 1-2 Commercial Fisheries Research Foundation Summit on Collaborative Research, Narragansett, RI
- 8-10 Mid-Atlantic Fishery Management Council Meeting, Philadelphia, PA
- 15-18 Butterfish SAW Modeling, Woods Hole, MA
- 27-31 Atlantic States Marine Fisheries Commission Meeting, Georgia

*Status of Open Amendment/Framework Actions
(as of August 1, 2013)*

<u>FMP</u>	<u>AMD\FW</u>	<u>Issues Addressed</u>
Mackerel / Squid Butterfish	Amendment 14	<i>Alosine</i> incidental catch
	Amendment 15	Consider adding river herrings (blueback and alewife) and shads (American and hickory) as Council-managed species.
	Amendment 16	Deep Sea Corals
	Framework 8	Trimester 2 butterfish cap closure Quota transfer between landings at end of year
Summer Flounder/ Scup/Black Sea Bass	Amendment 18	Scup Allocation
Dogfish	Amendment 3	Authorize RSA program Consider alternatives to seasonal quotas Limited Access Quota Rollover EFH Definitions
Surfclam/ Ocean Quahog	Amendment 17	Cost Recovery EFH updates Ocean Quahog overfishing definition
	Amendment 18	Excessive shares
Omnibus Recreational Accountability Measures		Recreational AMs: Includes Amendment 17 to Mackerel/Squid/Butterfish; Amendment 19 to Summer Flounder/Scup/Black Sea Bass; and Amendment 4 to Bluefish
Standardized Bycatch Reporting Methodology		Bycatch Monitoring: Includes Amendment 18 to Mackerel/Squid/Butterfish; Amendment 17 to Summer Flounder/Scup/Black Sea Bass; Amendment 4 to Dogfish; Amendment 15 to Surfclam/Ocean Quahog; Amendemnt 5 to Bluefish; and Amendment 3 to Tilefish

Mid-Atlantic Fishery Management Council
Status of FMPs, Amendments and Frameworks
(As of August 1, 2013)

FMP/Amendment	Date Approved by Council	Lapse	Date submitted to NMFS/NERO	Lapse	FR Notice of Plan Availability	Lapse	Proposed Rule Publication Date	Lapse	Plan Approval/Disapproval Letter	Lapse	Final Rule Publication Date
Mackerel, Squid, Butterfish Framework 8	12/12/12	212	07/12/13								
Mackerel, Squid, Butterfish Amendment 14	06/14/12	257	02/26/13								
Mackerel, Squid, Butterfish Amendment 15											
Mackerel, Squid, Butterfish Amendment 16 (Deep Sea Corals)											
Surfclam and Ocean Quahog Amendment 17											
Surfclam and Ocean Quahog Amendment 18											
Summer Flounder, Scup, Black Sea Bass Amendment 18											
Spiny Dogfish Amendment 3	10/17/12	289	08/02/13								
Omnibus Recreational AM Amendment*	06/12/13	29	07/23/13								

* Includes Amendment 17 to Mackerel, Squid, Butterfish FMP, Amendment 19 to Summer Flounder, Scup, Black Sea Bass FMP, and Amendment 4 to Bluefish FMP.

"Lapse" is the amount of time in days from Council approval to column-heading action.

Mid-Atlantic Fishery Management Council Specifications (As of August 1, 2013)

Fishery Management Plans	2012				2013				2014			
	Council Approved	Specs Package Submitted	NMFS Proposed Rule	NMFS Final Rule	Council Approved	Specs Package Submitted	NMFS Proposed Rule	NMFS Final Rule	Council Approved	Specs Package Submitted	NMFS Proposed Rule	NMFS Final Rule
Summer Flounder, Scup, Black Sea Bass · Commercial · Recreational	08/17/11 12/14/11	10/02/11 03/18/12	12/30/11 04/30/12	04/23/12 05/23/12	08/15/12 12/13/12	10/04/12 03/14/13	11/16/12 ^b 04/29/13 ^e	12/31/12 ^d 06/21/13				
Squid, Mackerel, Butterfish	06/15/11	08/09/11	10/26/11	03/21/12	06/12/12	07/31/12	11/19/12 ^c	01/16/13	06/12/13			
Dogfish	10/12/11	01/27/12	03/19/12	05/22/12	10/17/12	02/08/13	03/12/13	05/03/13 ^f				
Bluefish	08/17/11	12/02/11	02/15/12	04/27/12	08/15/12	12/02/12	02/20/13	05/07/13 ^g				
Surfclam, Ocean Quahog	12/27/10 ^a											

^a Final rule applies for surfclam and ocean quahog fishing years 2011, 2012, and 2013.

^b Proposed rule applies for summer flounder and scup fishing years 2103 and 2014 and black sea bass fishing year 2013.

^c Proposed rule applies for mackerel fishing years 2013-2015 and butterfish fishing year 2013 (longfin and Illex squids were set in 2012 for fishing years 2012-2014).

^d Final rule applies for summer flounder and scup fishing years 2013 and 2014 and black sea bass fishing year 2013.

^e Proposed rule applies to 2013 and 2014 black sea bass catch limits and 2013 recreational measures.

^f Final rule applies for spiny dogfish fishing years 2013-1015.

^g Final rule applies for bluefish fishing years 2013-2014.

AGENDA

Expert Panel Review of the Project Examining Allocations in the Scup Fishery

**DoubleTree Baltimore-BWI Airport
890 Elkridge Landing Rd., Linthicum Heights, MD 21090
410-859-8400.**

**1 August 2013
9:00 AM to 5:00 PM**

9:00- 9:30*	Introductions, Meeting Objectives, and Organization
9:30 - 10:30	Presentation on project to evaluate scup allocation Brad Gentner - Gentner Consulting Group
10:30 - 10:45	Break
10:45 - 12:00	Continue 9:30 Agenda Item - Q & A
12:00 - 1:00	Working Lunch Q & A / Discussion of TOR 1
1:00 - 3:45	Q & A/Discussion of TORs 1-7
3:45 - 4:00	Break
4:00 - 5:00	Wrap-up and Discussion of TORs 1-7
5:00	Adjourn

* The meeting will be treated as a working meeting. The agenda reflects approximate times. Questions from the review panel may be entertained at any time during presentations.

Expert Panel Review of the Project Examining Allocations in the Scup Fishery

Introduction and Rationale for Review

The Mid-Atlantic Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) implemented a scup stock rebuilding plan in 1999 (Amendment 12 to the Fishery Management Plan). In an effort to rebuild the scup fishery, the Council and NMFS implemented several regulations that included: a maximum total allowable catch (TAC) that is split between the commercial and recreational fishing sectors, closures when the commercial quota is reached, recreational fishing measures (i.e., minimum size limit, bag size limits, seasonal closures), commercial seasonal allocations (i.e., three fishing periods), and a rollover of scup quota between winter fishing periods.

The most recent stock status information indicated that the stock was not overfished and overfishing was not occurring in the most recent year (2009). After a decade of management under the rebuilding plan, scup was declared rebuilt in 2009. The most recent stock assessment indicates that the 2011 spawning stock size is about 207% of the biomass goal.

Due to the recovery trend, recreational and commercial harvesters have encouraged fishery managers to reassess current scup allocations. More specifically, recreational anglers would like to see an increase to the recreational sector, and some commercial fishermen would like to see a redistribution of the commercial quota among fishing periods. Currently, the scup TAC is split between the recreational (22%) and commercial (78%) sectors. Before the allowable harvest of scup was significantly increased in 2009, for the most part, the recreational sector frequently exceeded their harvest limit and more restrictive regulations were needed to bring recreational harvest within allowable levels. At the same time, the commercial sector experienced catch levels that were less than the commercial quota. Therefore, many stakeholders have argued that that transferring scup allocation from the commercial sector to the recreational sector would be justifiable.

The commercial quota for scup is divided among three fishing periods, with 45.11% allocated to the Winter I (January through April), 38.95% to the summer (May through October), and the remainder 15.94% to the Winter II (November through December). Any unused allocation from Winter I rolls over into Winter II. The seasonal commercial scup allocation was developed to distribute catch among different types of vessels and fishing gear types catching scup at different times of the year. Some commercial stakeholders have argued that redistributing scup allocation among periods (e.g., from the Winter period to the Summer period) could be beneficial as scup summer prices tend to be higher and often the bulk of the summer allocation is harvested.

The Council contracted Gentner Consulting Group (GCG) in order to examine the economic efficiency of the current allocation system. The scup allocation analysis conducted by GCG contains four modules 1) commercial valuation, 2) consumer valuation, 3) for-hire producer surplus, and 4) recreational angler surplus that have been used to simulate marginal willingness to pay for scup catch in the recreational and commercial fisheries. GCG developed the first 3

modules and the recreational angler surplus module (module #4) was developed by the NEFSC's Social Science Branch.

The overall analytical framework used by GCG is innovative and has no precedent in the peer review literature or elsewhere in terms of informing regulatory actions for fisheries with both commercial and recreational components. The expert panel will review three of the four modules contained in the scup allocation analysis and the utility of the overall modeling approach for informing the management process. The recreational angler surplus module (module #4) does not require a review because it is based on a bioeconomic model developed by the NEFSC's Social Branch to analyze the biological and economic effects of recreational measures for Gulf of Maine cod, and a formal peer review of this decision support tool was conducted in September 2012. The peer review found that the recreational modeling approach developed by the NEFSC is "technically sound and represents a substantive improvement over prior methods used to estimate impacts of management measures on recreational anglers." While the recreational model provides economic and biological outputs that may be used to inform management decisions, the review panel noted that the model is based on a number of assumptions that should be noted when presenting results. The review panel provided suggestions and comments that could potentially improve future modeling simulations and it is advisable that any recommended changes be incorporated into future recreational fishing scup simulations. [Note: Several of you requested the background information for this review be provided and Staff has met request.]

Terms of reference (listed below) have been developed to guide the review of the scup allocation analysis conducted by GCG. It is expected that the review panelists will address both the terms of reference and if and how the framework should be modified to help inform management decisions, i.e. evaluate alternative allocation schemes. The Council is considering an amendment to address scup allocations and they need a tool to help in their decision making process. Other important issues that the panel may choose to address not contained under the terms of reference will be incorporated in the final report under a special comment section.

The terms of reference (TORs) for the review are:

1. Were the theoretical and statistical model specifications for the commercial valuation module done in a manner consistent with professional standards?
 - a. Are the statistical methods themselves compliant with theory?
 - b. Are the statistical methods appropriate for the problem being addressed?
 - c. How appropriate were the data to the analysis? Are the data sufficient to estimate the model? What are the implications of the lack of cost data from the pot and trap fishery in the seasonal allocation analysis? Do missing data pose a risk of biasing the parameter estimates or the model results? Are appropriate reasons listed for not including specific data sets? Where proxy data are used and was it the most appropriate data to use?
 - d. Were alternative model specifications investigated and tested? Were assumptions underlying the statistical analysis of the models clearly stated?
2. Were the theoretical and statistical model specifications for the consumer valuation module done in a manner consistent with professional standards?

- a. Are the statistical methods themselves compliant with theory?
 - b. Are the statistical methods appropriate for the problem being addressed?
 - c. How appropriate were the data to the analysis? Are the data sufficient to estimate the model? Do missing data pose a risk of biasing the parameter estimates or the model results? Are appropriate reasons listed for not including specific data sets? Where proxy data are used and was it the most appropriate data to use?
 - d. Were alternative model specifications investigated and tested? Were assumptions underlying the statistical analysis of the models clearly stated?
3. Were the theoretical and statistical model specifications for the for-hire producer surplus module done in a manner consistent with professional standards?
- a. Are the statistical methods themselves compliant with theory?
 - b. Are the statistical methods appropriate for the problem being addressed?
 - c. How appropriate were the data to the analysis? Are the data sufficient to estimate the model? Do missing data pose a risk of biasing the parameter estimates or the model results? Are appropriate reasons listed for not including specific data sets? Where proxy data are used and was it the most appropriate data to use?
 - d. Were alternative model specifications investigated and tested? Were assumptions underlying the statistical analysis of the models clearly stated?
4. The analysis was based on a suite of established allocation changes (e.g., +6% commercial/-6% recreational, +3% commercial/-3% recreational, status quo, -3% commercial/+3% recreational, -6% commercial/+6% recreational and -9% commercial/+9% recreational) rather than an optimal allocation. Were the results of the analysis clearly interpreted? Could the model be used to map out a benefit curve given changes in allocation across commercial and recreational fisheries to reach an optimal solution? Can the model be used to consider allocation alternatives that were not specifically analyzed? Can the model be used to map out a benefit curve given changes in allocation across commercial and recreational fisheries and can the results be used for management purposes? Is it possible to make modifications to the current model that would allow for the measurement of benefits (both total and marginal) in situations where allocations are not binding?
5. Was the link between the commercial valuation, consumer valuation, and for-hire producer surplus modules done in a manner consistent with professional standards?
6. Was the link between the commercial and recreational models done in a manner consistent with professional standards?
7. The Recreational Angler Surplus module is based on a bioeconomic recreational fishing simulation model developed by the NEFSC's Social Branch to analyze the biological and economic effects of recreational measures for Gulf of Maine cod. However, a full bioeconomic model was not developed due to lack of time. What are the implications of this shortcoming?



MID-ATLANTIC
FISHERY MANAGEMENT COUNCIL

PRESS RELEASE

FOR IMMEDIATE RELEASE
July 29, 2013

PRESS Contact: Mary Clark
(302) 526-5261

East Coast Fishery Managers Sign Agreement to Coordinate Deep Sea Coral Conservation

The Chairmen of the South Atlantic, Mid-Atlantic, and New England Fishery Management Councils signed a landmark Memorandum of Understanding (MOU) this month to help coordinate the protection of deep sea corals off the east coast of the United States from Maine to eastern Florida.

The MOU will serve as a framework for cooperation during the development and implementation of management measures to protect deep sea corals. Rather than establish specific requirements for each council, the MOU identifies areas of consensus and strategies to promote more effective coordination of deep sea coral conservation efforts among the councils. [Click here to read the full MOU.](#)

Over the past three decades, marine researchers have discovered highly diverse deep sea coral communities on the continental shelf and slope off much of the east coast. These deep sea coral communities play an important role in the marine ecosystem and provide habitat for many species of fish and invertebrates.

Most deep sea corals are slow-growing and fragile, making them particularly vulnerable to damage from certain types of fishing gear such as bottom trawls. A wide variety of species have been discovered off the Atlantic coast, ranging from large, structure-forming types to small, solitary species. Some, such as *Oculina varicosa* found in the South Atlantic region, form tall pinnacles that can reach heights of more than 100 feet. One mound discovered in the South Atlantic was estimated to be between 1,000 to 1,500 years old.

Many recent deep sea coral discoveries have been the result of NOAA's Deep Sea Coral Research and Technology Program. Launched in 2009, the program has conducted in-depth deep water coral research on specific regions of the U.S., including the South Atlantic (2009-2011) and the Northeast (2013-2015). High-resolution bathymetry mapping combined with videos and samples from remotely operated vehicles (ROV) have revealed additional coral habitats in all regions while also giving the public a window into the ocean's depths through [live underwater video feeds](#). [Learn more about the program at http://oceanexplorer.noaa.gov/.](http://oceanexplorer.noaa.gov/)

Meanwhile, Council actions to protect deep sea corals have been ongoing for some years. The South Atlantic Council has managed both shallow water corals and deep sea corals as part of its Coral, Coral Reef and Live/Hardbottom Fishery Management Plan for more than two decades. In 2010, it created the largest deepwater coral protected area off the Atlantic coast with the designation of five areas as Deepwater Coral Habitat Areas of Particular Concern, providing protection from potential threats from fishing gear, energy exploration and development, and other human impacts.

The Mid-Atlantic Council is considering several types of protection, such as designation of "deep sea coral zones" where management measures would be applied in areas where corals are present. The New England Council is considering similar protections for areas in the Gulf of Maine, canyon areas off Georges Bank and Southern New England, and for the four New England seamounts in the U.S. Exclusive Economic Zone.

The three regional fishery management councils collectively are responsible for developing regulations for more than 114 species of fish and shellfish in federal waters (3-200 miles from shore) off the eastern seaboard and for protecting important fish habitats, including preventing fishing activities from damaging marine habitats.

Learn More About Each Council's Coral Conservation Activities and NOAA's Research

New England Council: www.nefmc.org/habitat/index

Mid-Atlantic Council: www.mafmc.org/actions/msb/am16

South Atlantic Council: www.safmc.net/ecosystem/HabitatManagement/DeepwaterCorals/tabid/229/Default.aspx

**Memorandum of Understanding
Regarding the Management of Deep Sea Corals**

Between

New England Fishery Management Council

Mid-Atlantic Fishery Management Council

South Atlantic Fishery Management Council

A. Purpose

The purposes of this Memorandum of Understanding (MOU) are: 1) to establish a framework for coordination and cooperation toward the protection of deep sea coral ecosystems; and 2) to clarify and explain each Council's role and geographic areas of authority and responsibility with regard to deep sea coral management.

B. Background

Deep sea corals are typically found at depths greater than 50 meters on the continental shelf and slopes, in offshore canyons, and near seamounts. Many of these species form complex three-dimensional structures that provide important habitat for many species of fish and invertebrates, enhancing local biodiversity. Because these corals are fragile and slow-growing, they are particularly vulnerable to disturbance from certain types of fishing gear. While the extent of deep sea coral habitat degradation has not been quantified in most areas, bottom tending fishing gear has been known to cause significant disturbance in many locations, and is considered to be the major threat to deep sea corals in areas where such fishing occurs.

Deep sea corals are present within the jurisdictional boundaries of the three Parties to this agreement: the New England Fishery Management Council (NEFMC), the Mid-Atlantic Fishery Management Council (MAFMC), and the South Atlantic Fishery Management Council (SAFMC) (collectively, the Councils). Each of these Councils has previously taken or is currently taking actions to mitigate the impacts of fishing gear to enhance deep sea coral protections. Because such management actions may affect fisheries operating in more than one Council jurisdiction, the Councils recognize the need for communication and broad-scale coordination regarding measures to protect deep sea coral ecosystems.

C. Authority and strategies for deep sea coral protections

The Magnuson-Stevens Fishery Conservation and Management Act (MSA)¹ is the main source of authority under which the Regional Fishery Management Councils may take action to protect deep sea corals from fishery impacts. The SAFMC currently has management and conservation measures in place for deep sea coral ecosystems; the NEFMC and the MAFMC will each continue development of management measures to protect corals within their regions while preserving current and future fishing opportunities. These management measures may differ among the Councils, and may include some combination of the following:

¹ The MSA is found at 16 U.S.C. § 1801, et seq.

- Designation of coral protection zones based on the discretionary authority described in Section 303(b)(2)(B) of the MSA. These zones could include but are not limited to:
 - Large precautionary areas based on a freeze-the-footprint approach²
 - Enhanced protections in areas known to or expected to contain high concentrations of corals
- Designation of deep sea corals as a component of Essential Fish Habitat or as Habitat Areas of Particular Concern
- Minimizing bycatch of deep sea coral species
- Special access programs to provide for continued fishing in or near coral areas for specific fisheries or gear types
- Exploratory fishing programs to allow for future development of new fisheries in a way that protects corals
- Management as habitat pursuant to a Federal Fishery Management Plan (e.g., SAFMC).

D. Council boundaries and geographic areas of responsibility

Each Council will be responsible for the mitigation of fishery impacts to deep sea corals within each Council's geographic area of authority, as defined in 50 C.F.R. §§ 600.105(a) and (b). The NEFMC-MAFMC boundary begins at the point of intersection of Connecticut, Rhode Island, and New York (41°18'16.249" N. lat. and 71°54'28.477" W. long.), and proceeds south 37°22'32.75" East to the point of intersection with the outward boundary of the EEZ as specified in the MSA. The SAFMC-MAFMC boundary begins at the seaward boundary of Virginia and North Carolina (36°33'01.0" N. lat.), and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the MSA. The MAFMC area of authority contains major canyons from Block Canyon to Norfolk Canyon, while the NEFMC will develop measures for Alvin Canyon and areas north within its area of authority.

The South Atlantic Council manages coral ecosystems pursuant to the Coral, Coral Reef and Live/Hardbottom Habitat of the South Atlantic Region Fishery Management Plan. Coral Habitat Areas of Particular Concern established under this plan are also designated Essential Fish Habitat - Habitat Areas of Particular Concern, further acknowledging the importance and complexity of benthic habitats encompassing the deepwater coral ecosystem.

E. Council coordination on deep sea corals issues

1. The Councils will seek continuity among coral-related management measures in all three Council regions, especially where there are fisheries that overlap between regions. This may include:
 - Consideration of similar management alternatives in fishery management plans for adjacent regions.
 - Consideration of fishery overlap and engagement of stakeholders outside of the management region in the development of management measures.
2. The Councils will also share data and information to improve current and future decision making:
 - Encourage data collection to support coral management.

² Approach would not restrict current fishing effort but would establish larger areas where management measures be applied to prevent expansion of effort into areas that are not currently fished.

- Share coral data, fishing effort data, and GIS resources related to development of management measures.
3. The Councils will contribute to coordinated management efforts in the following ways:
- The NEFMC and MAFMC will share technical information and data, including NEFMC Habitat Plan Development Team (PDT) work products related to Mid-Atlantic canyon and slope areas.
 - MAFMC staff and/or the MAFMC liaison to the NEFMC will attend NEFMC Habitat PDT and Oversight Committee meetings relevant to corals, and NEFMC staff and/or the NEFMC liaison to the MAFMC will attend relevant MAFMC meetings.
 - The SAFMC will advise the NEFMC and the MAFMC on coral and deepwater ecosystem issues based on past experiences and lessons learned.

F. No agency

Each Party signing this MOU is acting as an independent contractor. No Party to this MOU is intended to have any authority or control over any other Party, nor shall any Party have the power to bind any other Party. Each Party will be responsible for bearing the costs incurred in performing any activity contemplated within this MOU.

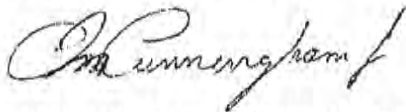
G. Funding

Cooperative activities under this MOU shall be subject to the availability of funds and personnel. This MOU shall not be used to obligate or commit funds.

H. Effective date and signature

The terms of this MOU are agreed to and are effective from the date of the last signature below. This MOU may be terminated at any time by any Party for any reason by written notice to the non-terminating Parties. By:

For and on behalf of NEFMC:



C.M. "Rip" Cunningham, Jr., Chairman

June 19, 2013

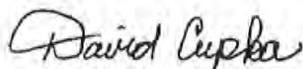
For and on behalf of MAFMC:



Richard B. Robins, Jr., Chairman

June 13, 2013

For and on behalf of SAFMC:



David Cupka, Chairman

July 15, 2013

Operating Agreement

Between the

Mid-Atlantic Fishery Management Council;

NOAA¹ Fisheries Service Northeast Regional Office;

NOAA Fisheries Service Northeast Fisheries Science Center; and

NOAA Fisheries Service Office of Law Enforcement, Northeast

July 22, 2013

¹ "NOAA" is the National Oceanic and Atmospheric Administration. "NOAA Fisheries Service" and the "National Marine Fisheries Service (NMFS)" are two names for the same agency. NMFS is the term used in this document.

Acronyms and Abbreviations

ASMFC	Atlantic States Marine Fisheries Commission
Council	Mid-Atlantic Fishery Management Council
FMAT	Fishery Management Action Team
FMP	Fishery Management Plan
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEFSC	NMFS's Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NERO	NMFS's Northeast Regional Office
NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
NOAA	National Oceanic and Atmospheric Administration
NRCC	Northeast Region Coordinating Council
OLE	NMFS's Office of Law Enforcement, Northeast
SSC	Scientific and Statistical Committee

Overview

This Operating Agreement (Agreement) confirms the mutual interests of, and describes the working relationship among the following entities:

- Mid-Atlantic Fishery Management Council (Council)
- NMFS's Northeast Regional Office (NERO)
- NMFS's Northeast Fisheries Science Center (NEFSC)
- NMFS's Office of Law Enforcement, Northeast (OLE)
- NOAA's Office of General Counsel (represents NMFS but is actually part of NOAA).

The primary objective of this Agreement is to facilitate the development and implementation of FMPs and associated actions under the MSA. Other important purposes include: Ensuring compliance with other applicable laws and regulations; simplifying regulations where possible; helping the affected public better understand how and why fishery management actions are developed; helping the affected public understand how to become involved in the process; and maintaining effective collaboration among staff from the Council, NERO, NEFSC, NOAA General Counsel, and OLE.

This Agreement primarily addresses advance planning of major fishery management actions (i.e., amendments and frameworks) through development and regular updating of Action Plans. Action Plans describe schedules, approaches, and staff responsibilities to ensure that management actions are developed effectively. Action plans should provide management partners and the affected public with clear and reliable information about the progress of an action and the timing of all opportunities for public comment and involvement during the development of that action.

Roles and Responsibilities

Council

The Council is responsible under the MSA for the preparation of FMPs, FMP amendments, and other related actions for species under its management authority. The Council develops, analyzes the likely impacts of, and recommends management measures to NMFS that are consistent with all applicable laws and regulations. The Council must document the management process and provide the justification and rationale for its recommendations. Council members must be informed of the potential impacts of the actions they are recommending. The Council process is the focus for public involvement during the development of fishery management actions. Additional specific Council responsibilities include:

- The Council works with NMFS (which implements, administers, and enforces regulations and programs), state agencies, and other entities (e.g., the ASMFC) to develop effective management measures.
- To obtain scientific and technical advice, the Council establishes Council Committees and other groups, such as the SSC, Monitoring Committees, Advisory Panels, and FMATs. These entities bring forward recommendations to the Council via a variety of mechanisms for consideration and eventual final Council approval and recommendation to NMFS.
- The Council clearly documents details on internal Council processes in its Standard Operating Practices and Procedures Document, which is available on the Council website.

The roles of several groups on which NMFS and the Council staff jointly participate are summarized below.

Council Monitoring Committees

A Monitoring Committee, established for most FMPs, reviews fishery performance on an ongoing basis and provides management recommendations to the Council. The exception is the Atlantic Surfclam and Ocean Quahog FMP, which does not utilize a Monitoring Committee. Monitoring Committee recommendations are considered and implemented via the annual specifications process. Monitoring Committees are typically chaired by the Council staff lead for an FMP, as appointed by the Council's Executive Director. The Monitoring Committees are populated as described in each FMP, and may include staff from the Council, NERO, NEFSC, Southeast Fisheries Science Center, and state biologists from the ASMFC technical committees.

FMAT

An FMAT is a team formed by the Council to develop alternatives and provide technical analysis in support of a specific, major Council action. FMATs help plan and execute the procedural and technical steps needed to complete an action, and collaborate to create the supporting documents for Council actions (e.g., white papers, environmental assessments, environmental impact statements, etc.). FMATs work closely with Council Committees to refine options and evaluate management proposals to ensure they are consistent with Council goals and any statutory or regulatory requirements.

Membership on FMATs can include scientists, managers, and other experts with knowledge and experience relevant to the Council action under development. Upon request for the formation of an FMAT, NERO and Council staff will collaboratively identify the required expertise. The Council Executive Director will then request that the NERO Regional Administrator and NEFSC Director appoint

appropriate individuals. Once appointed to an FMAT, active participation by all members is expected, as determined and agreed to in the Action Plan for that action. It is expected that FMAT members will consult with their supervisors before making final commitments.

FMATs are chaired by Council staff as designated by the Council Executive Director. FMAT chairs will draft any meeting objectives and agendas (based on the Council's "Purpose and Need for Action"), and will be responsible for coordinating analyses and presentation of results to the Council.

The Council's "Purpose and Need for Action", as described in the Action Plan, provide the basis for development and evaluation of management options by the FMAT. The FMAT chair, or Executive Director, will review the Action Plan and FMAT progress on an action with the Council or relevant Committee to ensure the FMAT understands the objectives of the Council. FMAT recommendations and reports will reflect the consensus of its members where possible.

Additional specific responsibilities of the FMATs include:

- The development of an Action Plan that is a realistic, mutually agreed upon path for development and completion of the action so that the Council, NERO, NEFSC, NOAA General Counsel, OLE, NMFS Headquarters, and the public know what to expect, and when it will be implemented.
- The development of the scope of issues that will be considered in the development of the action.
- The incorporation of recommendations of the Council and its committees or other groups, into management alternatives development, as appropriate.
- Guidance, and technical and analytical expertise, and/or review of proposed measures during the development and preparation of FMP actions (e.g., amendments, supporting NEPA analyses, etc.).

As chair of the FMAT, Council staff will: Coordinate logistics for FMAT meetings; schedule meetings as far in advance as practicable; coordinate assignments of specific tasks to individuals or subgroups of the FMAT (consistent with the Action Plan); distribute agendas and meeting objectives prior to FMAT meetings; and keep FMAT members informed of relevant Council actions. The FMAT chair will coordinate the creation and organization of the documentation and analysis necessary to support fishery management actions, including the MSA document (i.e., FMP, amendment, framework adjustment), the NEPA document (i.e., Categorical Exclusion, Environmental Assessment, Finding of No Significant Impact, or Environmental Impact Statement), information necessary for NERO to conduct Endangered Species Act (ESA) Section 7 consultations, and documentation demonstrating compliance with all other relevant applicable laws and Executive Orders.

NERO staff will be responsible for writing implementing rules and regulations, and conducting Paperwork Reduction Act or Information Quality Act analyses. However, Council staff will be responsible for facilitating the deeming of proposed implementing regulations for Council developed actions to ensure that regulations are consistent with Council intent.

NMFS

NMFS reviews the Councils' fishery management recommendations for consistency with all statutory and regulatory requirements and Executive Orders. NMFS approves, disapproves, or partially approves the Councils' recommendations. If a measure is disapproved, NMFS is responsible for providing the rationale and justification for the disapproval. If measures are approved, NMFS is responsible for implementing, administering, and enforcing the management programs. NMFS staff also participates in the development of Council actions through FMATs, Monitoring Committees, and other informal collaboration, as detailed below.

NMFS Headquarters is responsible for:

- Deciding whether to concur with the Regional Administrator's decision regarding approval/disapproval/partial approval of Council-recommended actions;
- Deciding whether to approve final rules implementing regulations;
- Determining that an appropriate NEPA document has been completed for the action; and
- Resolving with NOAA General Counsel any issues elevated to Headquarters, including issues related to determinations of legal sufficiency.

NERO

The NERO/NMFS process is the focus for public comment on NEPA documents, approval/disapproval decisions, and rulemaking. NERO will assist the Council in the development of fishery management actions, by:

- Providing staff representation on appropriate committees, FMATs, and working groups, to advise on technical, policy, administrative, and legal requirements and issues.
- Identifying a lead staff person in the Sustainable Fisheries Division to assist with coordinating other NERO/NMFS divisions as needed in support of FMATs, including the Habitat Conservation Division, Protected Resource Division, NEPA staff, Fisheries Data Services Division, Analysis and Program Support Division, OLE, and NOAA General Counsel.
- Identifying and responding to staff resource needs, requirements, and/or limitations associated with the development, review, approval, and/or implementation of an action.
- Coordinating any necessary interactions between the Council and NM Headquarters and the various offices within NMFS Headquarters (e.g., Office of Sustainable Fisheries, Office of Science and Technology, and the NOAA NEPA Coordinator).
- Coordinating the review of Council actions and documentation within NERO, NEFSC, OLE, and NOAA General Counsel.
- Providing advice, guidance, and information on fishery management policy issues and requirements, as requested, including considerations of administrative costs and complexity, potential approvability issues, enforceability concerns, timing of the development and implementation of the action under development, particularly with regard to the Secretarial review phase, and regulatory simplification (i.e., how to keep measures and regulations as simple and clear as possible).
- Writing proposed and final rules to implement approved measures, with the accompanying regulatory language, consistent with the Council's action and intent.
- Ensuring that all applicable laws and executive orders are addressed (e.g., Paperwork Reduction Act, Information Quality Act).

- Conducting Essential Fish Habitat (EFH) consultations.
- Conducting Consultations under the Endangered Species Act (ESA), if required.
- Responding to public comments received during rulemaking.
- Implementing and administering approved programs and program changes; working closely with OLE and NOAA General Counsel to enforce regulations and defend approved Council actions in litigation.
- Monitoring, projecting, and documenting fishing activity and catches, and taking appropriate in-season and/or post-season actions relative to annual catch limits and seasonal catch quotas.
- Developing and implementing emergency actions, interim actions, and Secretarial FMPs/amendments to respond to new information or management/statutory requirements.

NEFSC

The NEFSC will provide staff and assistance to the Council during the development of fishery management actions, including representation on FMATs and technical working groups as needed. The NEFSC also reviews Council-developed documents supporting fishery management actions and makes certifications regarding certain analytical and scientific requirements of applicable law, such as the Regulatory Flexibility Act, overfishing definitions, adequacy of economic analyses, and use of best available scientific information.

NEFSC staff on the Monitoring Committee also collaborates with the Council staff to provide the necessary materials and/or analyses for meetings of the Council's SSC. NEFSC staff attends and/or makes presentations to the SSC or Council, as appropriate and/or requested.

NOAA General Counsel

NOAA General Counsel advises the Council and NERO throughout the process of developing documentation and making and reviewing decisions, and provides legal advice to the NERO Regional Administrator confirming legal sufficiency of documentation and processes. NERO coordinates the interaction of NOAA General Counsel with the Council process and any technical groups such as FMATs. It is expected that a representative from NOAA General Counsel will be on FMATs so that legal issues are addressed early in the process of developing potential actions. If challenged legally, NOAA General Counsel is responsible for assisting the Department of Justice in defending approved management actions.

OLE

OLE staff will provide enforcement-related advice, as required, to the Council and its Committees and other entities such as FMATs. OLE staff may be assigned to FMATs. If an OLE staff person is not on an FMAT, it will be the responsibility of the lead NERO Sustainable Fisheries Division staff person to coordinate OLE input on Council actions. OLE will ensure that any potential enforcement-related issues that may be associated with an action are identified as early as possible and addressed to the extent practicable.

NRCC

The NRCC reviews proposed priority actions of the Mid-Atlantic and New England Fishery Management Councils and the ASMFC for the upcoming year, schedules stock assessments, and helps assess and balance the resources (especially staff resources) needed to complete the actions of both Councils. The NRCC will review Council Action Plans during priority setting.

The NRCC is composed of the Chairs and Executive Directors of the Mid-Atlantic and New England Fishery Management Councils, the NERO Regional Administrator, the NEFSC Science and Research Director, the SSC Chairs of the two Councils, and the Executive Director of the ASMFC. The NERO Regional Administrator and the NEFSC Science Director chair the meetings.

Action Plans

This Agreement describes the commitment of the signed parties to use and refine the use of Action Plans for FMP frameworks and amendments. Action Plans provide a realistic, mutually-agreed upon path for development and completion of major actions. Action plans are also communication tools to inform the public about the status of a fishery management actions and opportunities for public input.

Action plans should provide detailed information about the participants, roles, and projected timelines so that all parties, including the Council, NERO, NEFSC, NOAA General Counsel, OLE, and NMFS Headquarters, understand their individual and collective responsibilities.

Process:

- Action Plans will be prepared prior to MSA and NEPA document development for each action.
- The FMAT will collaboratively develop Action Plans, and the relevant Committee or Council will review action plans with the FMAT chair, or Executive Director, as appropriate during the process of developing the Council action.
- The Council's Executive Committee will address issues relating to staff resources or timelines.
- Changes in the Action Plan and the schedule of action development (both of which are likely as development of an action proceeds) will be communicated to the appropriate Committee or Council and will be made available via updated action plans.
- Current action plans will be available via the Council website.
- The Action Plan should be included in the Council's meeting binder at each Council meeting for which the action under development is on the agenda, and be presented to the appropriate Committee or Council by the FMAT chair, or Executive Director.
- Staff from the signatory entities will develop and utilize a common template for Action Plans to ensure consistency across plans, and the template may be updated periodically, if appropriate.

Action Plan Content - As appropriate for a particular action, Action Plans should:

- Identify the purpose and need for the action, and define any additional objective(s) to be met.
- Identify the types of measures and potential alternatives that might be considered (e.g., limited entry, quotas, gear restrictions, allocations, etc.).
- Provide a realistic timeline for complying with all applicable laws and for completing the action.
- Identify whether consultation under the ESA is required and whether authorization under the Marine Mammal Protection Act is required.
- Identify the staff resources and analyses that will be required, the core staff that will work on developing and implementing the action, and the general responsibilities during development.

- Identify the type of NEPA analysis expected to be undertaken (i.e., Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement), and why that level of analysis is expected to be appropriate.
- Identify other issues (e.g., enforcement, data availability, assessment schedules, reporting requirements, administrative aspects and costs, etc.) that will need to be considered.
- Identify regulatory simplification and/or clarification opportunities that should be considered.

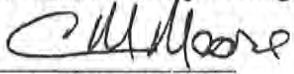
Life of Agreement

This Agreement will become effective when signed by all parties, and will remain in effect unless and until it is terminated by one or more parties, or it is superseded by another agreement. Any party may terminate this Agreement by providing 90 days written notice to the remaining parties. This Agreement may be expanded to include other aspects of the development and implementation of management actions and may be amended at any time upon written agreement among all parties. A review shall be performed every 5 years by the signatories to ensure that the Agreement is meeting its stated purpose.

Statement of Commitment

By signing below, I agree, on behalf of the organization I represent, to fulfill the roles and responsibilities outlined herein, and to support the efforts of the other parties.

Mid-Atlantic Fishery Management Council:



 Executive Director

7.22.2013
 Date

NOAA Fisheries Service Northeast Regional Office:



 Regional Administrator

7.24.2013
 Date

NOAA Fisheries Service Northeast Fisheries Science Center:



 Science and Research Director

7.25.2013
 Date

NOAA Fisheries Service Office of Law Enforcement, Northeast:



 Special Agent in Charge

7-22-2013
 Date



Northeast Region Bulletin

National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930

For Information Contact:
Sustainable Fisheries Division
(978) 281 – 9315

<http://www.nero.noaa.gov/>
Date Issued: 8/2/2013

Illex Squid Moratorium Permit Holders

Establishment of a Control Date in the Illex squid fishery

Effective Date: August 2, 2013

On August 2, 2013, we published a notice setting that date as the new control date for the *Illex* squid fishery. The control date was set by request of the Mid-Atlantic Fishery Management Council. By establishing the control date, we are notifying the public that the Council may consider an action to limit the number of participants in the fishery. The control date should discourage speculative entry and investment in the *Illex* squid fishery.

The control date, by itself, does not affect you at this time, but the Council could use it as a reference point as it considers how to further limit the number of participants in the *Illex* squid fishery. In developing a future action, the Council may choose to use qualification criteria that do not incorporate the new control date, or previous dates considered by the Council, including the May 20, 2003, control date and/or the January 8, 2010, reaffirmation date. The Council may also choose to take no further action to control entry or access to the *Illex* squid fishery.

On May 16, 2013, at the request of the Council, NMFS published a notice indicating that the Council intended to consider alternatives to further control capacity in the longfin squid/butterfish moratorium limited access fishery. The *Illex* control date is separate from the May 16, 2013, control date recently published for longfin squid.

Frequently Asked Questions

When will this control date be used?	The Council has not yet initiated an action to control excess capacity in the <i>Illex</i> squid fishery, but it may choose to do so in the future.
Will this affect my limited access permit?	This control date, by itself, does not affect your permit or fishing privileges. If the Council relies on it in a future action, it may or may not affect your permit. Any future effects will depend on the measures developed by the Council and your permit's landings history. We encourage you to participate in the development of such actions by the Council to better understand how such measures may affect you in the future.
How could it affect my limited access permit?	If the Council limits participants in the fishery, you may have to reapply for an <i>Illex</i> squid moratorium permit under new qualification criteria. The control date is intended to discourage speculative entry into the <i>Illex</i> squid fishery while the Councils develop future measures. You need take no action at this time.

For small entity compliance guides, this bulletin complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996. This notice is authorized by the Regional Administrator of the National Marine Fisheries Service, Northeast Region.

What do I need to do?	Find and keep all documents associated with your Federal <i>Illex</i> squid moratorium permit, including dealer slips/receipts and logbook pages from trips that you landed <i>Illex</i> squid from Federal waters. The Council may use any range of fishing years in a future action, so you should preserve all <i>Illex</i> squid-related documents that you have.
Will this impact my incidental squid or charter party permit?	Control dates generally only apply to limited access permits. The Council has not yet initiated an action to change the open access permits program, but it may choose to do so in the future. A future change to the open access permits program may be independent or may be combined with changes to the limited access <i>Illex</i> squid fishery.



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

August 1, 2013

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

Dear John:

Since our conversation about NERO's response to the submission of Amendment 5 to the Herring Plan, I have been thinking not only about NERO's response, but about the process that led up to this decision. It feels like I have received more calls about this partial disapproval decision than anything else during my tenure as Chair. I know that Council members and Council staff are very discouraged about the time and effort put into this amendment and the ultimate outcome. It is hard to see approximately 6 years of work essentially disapproved.

My intent is not to focus on the individual issues, but to look at the process that got us to where we are and hopefully try to make it function better. Taking a step back, the request by my predecessor was to have an outside examination of how the Council, NERO and NEFSC interact with the desired outcome to make those interactions more efficient and effective. The Touchstone/Pate report went beyond that, but at the heart of that request was the original intent. Yes, there have been some positive outcomes to the report, but things like the operating agreement do not get at, what seems to many, to still be an issue and that is a sense that the Council and NERO are aiming at two different targets.

During any Amendment process, the NERO participants have many opportunities to be constructive members of the PDT's and Committees. I do not believe it is productive to always simply point out what will not work, but to help craft measures that will move toward the desired result. NERO employees tend to be better versed in the technical and legal aspects of fishery management and should take a more active role in finding solutions to management problems. I sometimes feel that the agency is playing a twenty questions game with the Council, waiting for us to guess the approvable solution rather than working as an equal partner.

It is obvious to me that Council members, in general, are not nuts and bolts people. Their job is to craft the concepts of how measures should work with the support of Council staff. NERO participants are the ones who have to screw the nuts and bolts together. Somewhere in that process things are breaking down. It may be a question of "ownership" of the document at each stage of the process, but must we have failure to prove who was right or wrong? The industry has the perception that NMFS in general, and NERO in particular, wants to push the blame onto the Council. I have and continue to assume that both entities are trying to get to the same place. If I am not completely naive, then how is it that rational people cannot interact in rational ways?

When I ran a business, I managed by walking away, after I made sure that folks had the tools to succeed, knew what success looked like and knew that I expected them to succeed. I did not micro-manage. I did not care if they spent 20 hours a week at the job or 60 hours a week at the job. I wanted the job done and would support that effort however I could. When I left, the business carried 67% of the market share in a very competitive market. People generally want to get the job done, so there has to be a way to do it even in a very arcane government process.

If the goal is to keep the Council process stifled, this letter can be circular filed. If the goal is to energize the Council process and move management to a more functional level, then something needs to be done. I believe that we all want to "get'r done," but the old ways are dysfunctional. My sense is that NERO's top management needs to encourage and empower staff to create and suggest workable solutions.

I know that the Tiger Team is working on some aspects of this, but I also think that there needs to be a shared sense of accomplishment rather than a delineation of responsibility.

To steal a phrase from P.J. O'Rourke, where we are now is "like giving car keys and whiskey to teenagers." There's gonna be a crash.

Sincerely,

A handwritten signature in black ink, appearing to read "C.M. Cunningham". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

C.M. "Rip" Cunningham
Chairman

cc: Samuel D. Rauch, NOAA Deputy Administrator for Regulatory Programs
NEFMC Council members
Regional Fishery Council Chairs



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

JUL 19 2013

C.M. "Rip" Cunningham, Jr., Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear Rip:

On July 18, 2013, NOAA's National Marine Fisheries Service, on behalf of the Secretary of Commerce (Secretary), partially approved Amendment 5 to the Atlantic Herring Fishery Management Plan (Herring FMP).

A notice of availability (NOA) soliciting public comments on Amendment 5 was published on April 22, 2013, with a comment period ending June 21, 2013. A total of 115 comments were received and considered in making the decision to partially approve Amendment 5, as described below. One of the comment letters on the NOA provided copies of all the comments letters on the Amendment 5 draft environmental impact statement (EIS). The proposed rule to implement Amendment 5 was published on June 3, 2013, with a comment period ending July 18, 2013. To date, approximately 3,000 comments have been received during the public comment period for the proposed rule. A summary of the comments received, and NMFS's responses to those comments, will be published in the final rule.

Amendment 5 will improve the catch monitoring program for the herring fishery and address bycatch issues through responsible management. It contains many measures that will improve herring management and that can be administered by NMFS. We support improvements to fishery dependent data collections, be it through increasing reporting requirements or expanding the at-sea monitoring of the herring fishery. We also share the Council's concern for reducing bycatch.

However, a few measures in Amendment 5 lacked adequate rationale or development by the Council, and we had utility and legal concerns about the implementation of these measures. These measures are: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a requirement for 100-percent observer coverage on Category A and B vessels, coupled with a limited industry contribution of \$325 per day toward observer costs.

We expressed our concerns about the implementation of these measures throughout the development of this amendment and, most recently, articulated them in our comment letter (dated June 5, 2012) on the draft EIS. The proposed rule for Amendment 5 also described our concerns about these measures' consistency with the Magnuson-Stevens Fishery Conservation



and Management Act and other applicable law. After review of public comment on the NOA, I partially approved measures in Amendment 5 on behalf of the Secretary.

Amendment 5 contains the following measures that improve herring management and that I approved:

- Modifying the herring transfer at-sea and offload definitions to better document the transfer of fish;
- Expanding possession limit restrictions to all vessels working cooperatively, consistent with pair trawl requirements;
- Eliminating the vessel monitoring system (VMS) power-down provision for limited access herring vessels, consistent with VMS provisions for other fisheries;
- Establishing an “At-Sea Herring Dealer” permit to better document the at-sea transfer and sale of herring;
- Establishing an “Areas 2/3 Open Access Permit” to reduce the potential for the regulatory discarding of herring in the Atlantic mackerel fishery;
- Allowing vessels to enroll as herring carriers with either a VMS declaration or letter of authorization to increase operational flexibility;
- Expanding pre-trip and pre-landing notification requirements, as well as adding a VMS gear declaration, to help facilitate monitoring;
- Expanding vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Prohibiting slippage, with exceptions for safety concerns, mechanical failure, and spiny dogfish preventing catch from being pumped aboard the vessel, and requiring a released catch affidavit to be completed for each slippage event;
- Establishing the ability to consider a river herring catch cap in a future framework;
- Establishing River Herring Monitoring/Avoidance Areas;
- Evaluating the joint Sustainable Fisheries Coalition/University of Massachusetts School for Marine Science and Technology/Massachusetts Department of Marine Fisheries bycatch avoidance program investigation of providing real-time, cost-effective information on river herring distribution and fishery encounters in River Herring Monitoring/Avoidance Areas;
- Expanding at-sea sampling requirements for all midwater trawl vessels fishing in groundfish closed areas; and
- Revising list of measures to be implemented via a framework action and/or specifications process to include measures established in Amendment 5.

The following sections detail our concerns about the other measures proposed by the Council in Amendment 5 and provide rationale for my disapproval of these measures.

Increased Observer Coverage Requirements

Amendment 5 contains a measure that would require 100-percent observer coverage on Category A and B vessels. The 100-percent observer requirement is coupled with a target maximum industry contribution of \$325 per day. The at-sea costs associated with an observer in the herring fishery are higher than \$325 per day. The Department of Commerce (DOC) Office of General Counsel has advised that cost-sharing violates the Anti-Deficiency Act. Based on DOC’s advice, there is no current legal mechanism to allow cost-sharing of at-sea costs between

NMFS and the industry. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring 100-percent observer coverage would amount to an unfunded mandate. Because Amendment 5 does not identify a funding source to cover all of the increased costs of observer coverage, the measure is not sufficiently developed to approve at this time. Therefore, I disapproved the 100-percent observer coverage requirement.

The same measure that specifies 100-percent observer coverage coupled with a \$325 contribution by the industry also specifies that:

- The 100-percent coverage requirement would be re-evaluated by the Council 2 years after implementation;
- The 100-percent coverage requirement would be waived if no observers were available, but not waived for trips that enter the River Herring Monitoring/Avoidance Areas; and
- Existing observer service provider requirements would apply to the herring fishery and states would be authorized as observer service providers.

Because these additional measures appear inseparable from the 100-percent observer coverage requirement, I had to also disapprove these measures.

Amendment 5 allows for status quo observer coverage levels and funding for up to 1 year following the implementation of Amendment 5. A technical team, comprised of both Council and NMFS staff, is currently working on developing a legal mechanism to fund the at-sea costs associated with increased observer coverage. Even though I disapproved the 100-percent observer coverage requirement, the team will continue to work on finding a funding solution to pay for increased observer coverage in the herring fishery. If a funding solution can be developed, a measure requiring 100-percent observer coverage on Category A and B vessels could be implemented in a future action, perhaps within the 1-year interim period specified in Amendment 5, subject to NMFS's budget appropriations for its observer data collection responsibilities.

Measures to Minimize Slippage

Amendment 5 contains a measure that would require limited access vessels to bring all catch aboard the vessel and make it available for sampling by an observer. If catch is discarded before it has been made available to the observer, that catch is considered slippage.

Amendment 5 would allow catch to be slipped only if: (1) Bringing catch aboard compromises the safety of the vessel, (2) mechanical failure prevents the catch from being brought aboard, or (3) spiny dogfish prevents the catch from being pumped aboard. But if catch is slipped, the vessel operator would be required to complete a released catch affidavit detailing why catch was slipped and the estimated amount of slipped catch. Additionally, once there have been 10 slippage events in a herring management area by vessels using a particular gear type (including midwater trawl, bottom trawl, and purse seine) and carrying an observer, vessels that subsequently slip catch in that management area, using that particular gear type and carrying an observer, would be required to return to port.

We are concerned about the rationale for, and legality of, the slippage caps. The threshold for triggering a slippage cap (10 slippage events by area and gear type) does not have a strong supporting analysis in the EIS. Observer data indicate that the number of slippage events is variable across years. During 2008-2011, the number of slippage events per year ranged between 35 and 166. The annual average number of slippage events by gear type during 2008, 2009, and 2011 are as follows: 4 by bottom trawl; 36 by purse seine; and 34 by midwater trawl. Because the frequency of slippage was not consistently analyzed by gear type and management area, we believe it difficult to use the analysis in the EIS to support the selection of trigger for the slippage caps. Additionally, recent observer data (2008-2011) indicate that the estimated amount of slipped catch is relatively low (approximately 1.25 percent) compared to total catch.

Once a slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. This aspect of the measure has the characteristic of a sanction, inconsistently applied. Vessels may continue fishing following slippage events 1 through 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Additionally, this measure may result in a vessel operator having to choose between trip termination and bringing catch aboard despite a safety concern. For these reasons, we believe the slippage caps are inconsistent with the Administrative Procedure Act and National Standards 2 and 10, and had to be disapproved.

The requirements to bring all catch aboard and make it available for sampling by an observer and complete a released catch affidavit if catch is slipped appear separable from the slippage cap. Prohibiting slippage would improve the quality of observer catch data, especially data on bycatch species encountered in the herring fishery and the released catch affidavit would help provide insight into when and why slippage occurs. Therefore, I have approved the prohibition on slippage, except when safety, mechanical failure, or spiny dogfish catch would prevent the catch from being brought aboard the vessel, and the requirement that a released catch affidavit be completed for slipped catch.

Reporting Requirements for Dealers

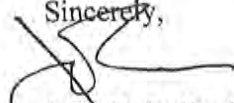
Amendment 5 contains a requirement that herring dealers must accurately weigh all fish and, if catch is not sorted by species, dealers would be required to document how they estimated relative species composition.

Dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because this measure does not specify the methods dealers must use to determine weight and allows volumetric estimates, it is not expected to change dealer behavior and, therefore, is not expected to improve the accuracy of catch weights reported by dealers. Additionally, a qualitative description of how relative species composition is estimated cannot be incorporated into catch monitoring because we must use the weights reported by the dealers, regardless of the methods used to determine weights. Without standards for estimating species composition, we would be unable to evaluate the sufficiency of the information submitted. If this measure was a requirement, and dealers did not document how they estimated relative species composition, it would become a compliance issue and may affect future permit issuance.

For these reasons, we believe this measure does not comply with National Standard 7's requirement to minimize costs and avoid unnecessary duplication, and the Paperwork Reduction Act's requirement for the utility of the measure to outweigh the additional reporting and administrative burden on the dealers. Therefore, I have disapproved the dealer reporting requirement.

I appreciate the hard work that you and your staff put into developing Amendment 5. This amendment improves management of the herring fishery and I look forward to working with you and your staff on other ongoing improvements to management of the herring fishery. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'John K. Bullard', written over a circular stamp or mark.

John K. Bullard
Regional Administrator



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

JUL 30 2013

Thomas A. Nies
Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950



Dear Tom:

Thank you for your June 6, 2013, letter regarding cost-sharing for monitoring in the herring, mackerel, and groundfish fisheries. I appreciate your concerns, and I agree that we must take the lead in defining the administrative and legal constraints. That is why we have formed an internal workgroup composed of staff from the Northeast Regional Office, Northeast Fisheries Science Center, and NOAA General Counsel Northeast to research the action items that came out of the first PDT/FMAT meeting. The PDT/FMAT should be able to review the results of this workgroup later this summer. We are taking a comprehensive approach to develop a path forward for all fisheries. However, identifying a legal mechanism to allocate costs for fisheries that do not have a cost-recovery program or other special authorization for fee collection is a complicated issue and there are no easy answers.

As Bill Karp and I relayed to you at the last Northeast Regional Coordinating Committee meeting, our situation is made more complicated by the current budget climate. If we are able to identify a legal mechanism by which to distribute costs, it is not clear whether NMFS would have the resources to implement and administer such a program. Furthermore, the mechanism may not entirely meet the Council's or industry's goals for monitoring and cost-sharing. Thus, I still believe that we must work collaboratively to evaluate the information my staff can compile and develop any cost-sharing program moving forward. Toward that end, we have also been working with the Gulf of Maine Research Institute to host a series of workshops with fishing industry representatives, Council members, and other interested parties in the late summer/early fall to discuss industry-funded monitoring programs and cost-sharing strategies in a more public forum. A major objective of these workshops will be to develop the details of industry-funded monitoring programs for FY 2014 and a standard set of guidelines for cost-sharing that can be applied across multiple fisheries. We will provide more information about the workshops as we finalize the details.



I would be happy to update the Council on our progress and provide more details at the September Council meeting. Should you have any questions in the meantime, please feel free to contact me or my staff.

Sincerely,

A handwritten signature in black ink, appearing to read 'JKB', with a long horizontal flourish extending to the right.

John K. Bullard
Regional Administrator

cc: Dr. William Karp, Northeast Fisheries Science Center
Dr. Christopher Moore, Mid-Atlantic Fishery Management Council



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3118
C.M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

June 6, 2013

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

RE: Development of Industry-Funded Monitoring/Cost-Sharing Programs

Dear John:

The issue of cost sharing for fishery monitoring programs in the Northeast Region is cross-cutting across several management plans, and extensive guidance from the Agency is needed to move forward. Industry-funded monitoring programs are required by Amendment 16 to the Northeast Multispecies (Groundfish) FMP, and will be required by Amendment 5 to the Herring Fishery Management Plan (FMP), and Amendment 14 to the Mid-Atlantic Fishery Management Council's Squid/Mackerel/Butterfish FMP. Unfortunately, progress in addressing issues related to cost-sharing mechanisms for observer programs has been slow.

As you are aware, Herring Amendment 5 includes a requirement for 100% observer coverage on Category A and B herring vessels, with an industry-funded component to become effective one year after the date of Amendment 5 implementation. The Mid-Atlantic Council's Amendment 14 includes similar requirements for limited access mackerel vessels. While both amendments are expected to become effective before the end of 2013, there has been little progress towards developing the details of the industry-funded monitoring programs. To date, the Herring/Mackerel Observer Funding Fishery Management Action Team (FMAT) has only met once (February 2013). There is not a similar effort for the observer funding requirements mandated by Amendment 16.

Increasing my concern is the recent disapproval of the cost sharing proposal in Framework 48 to the Multispecies (Groundfish) FMP. The Interim Final Rule (*Federal Register* May 3, 2013) cites the Anti-Deficiency Act and other appropriations laws as reasons for disapproving this measure. The Interim Final Rule suggests that NMFS believes the approach to cost-sharing proposed in Framework 48 could be viable if restructured and pursued in a future action but does not provide any guidance on what this means. The rationale also states that "*NMFS is already working with the New England and Mid-Atlantic Council's joint Herring-Mackerel FMAT to pursue cost-sharing options such as this one for those fisheries for FY 2014. The Council could consider including the NE Multispecies FMP in this joint effort to develop a workable and consistent cost-sharing mechanism for the Northeast region.*" The FW 48 partial approval letter did not make any mention of the regional approach mentioned in the Interim Final Rule, and the Herring/Mackerel FMAT has not proposed this idea, either. To date, the Council has not received any requests from NMFS regarding the development of a cost-sharing mechanism for multiple Northeast Region fisheries.

Another issue is the limited progress of the existing Herring/Mackerel FMAT. It would be helpful for NERO to update the Council at its September meeting regarding the next steps for the FMAT identified at the February 2013 FMAT meeting. It would also be helpful to understand how these cost-sharing efforts will be coordinated with the fishery dependent data review that was discussed at the May 2013 NRCC meeting.

Without a dedicated effort led by your office to address cost-sharing issues we will not make progress in time to meet the requirements of Amendment 5 and other actions. The Agency will be administering these programs and any cost-sharing agreements, so the development of legally and administratively viable alternatives must start with guidance from NMFS and NOAA General Counsel. It remains unclear whether or not additional Council action will be required to develop the details of the program that is proposed in Herring Amendment 5, or whether an omnibus approach across multiple FMPs would be preferable. If changes to the Magnuson-Stevens Act would be necessary to implement cost-sharing programs, these issues should be highlighted by NMFS during the reauthorization process.

I look forward to working with you and your staff to move forward on these industry-funded monitoring programs. Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



Thomas A. Nies
Executive Director

cc: Dr. Bill Karp, NEFSC
Dr. Chris Moore, Mid-Atlantic Fishery Management Council



New England Fishery Management Council

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C.M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

July 10, 2013

Dr. Christopher Moore
Executive Director
Mid-Atlantic Fishery Management Council
Suite 201, 800 N. State Street
Dover, DE 19901

Dear Chris:

I would like to advise you of recent changes to the Northeast Multispecies Fishery Management Plan that may have impacts on fishermen that participate in mid-Atlantic fisheries. These changes were adopted by Framework Adjustment 48 (FW 48) and were recently approved by the National Marine Fisheries Service. Both are related to the administration of Annual Catch Limits (ACLs).

First, some background may be helpful. Within the Northeast Multispecies FMP, the ACL for a stock is sub-divided into various components. For example, these components might include the recreational fishery or the scallop fishery. If a component is identified as a sub-ACL, then accountability measures (AMs) are required. All stocks include a catch-all category referred to as "other sub-components" that is intended to address small amounts of catch (as a percentage of removals) that may be taken in one or more fisheries. This amount typically is not subject to a specific AM. As a general principle the Council examines this category when these catches exceed five percent of the ACL and determines if additional management measures are required. The Council's response is not preordained: it can choose to simply increase the amount of catch in the other sub-components category, or it can select other management measures such as a gear requirement or a sub-ACL. There were two recent instances where this examination led to additional sub-ACLs that were adopted in FW 48.

The first instance was for SNE/MA windowpane flounder. Catches of this stock are primarily taken outside of the Northeast Multispecies fishery by scallop dredge vessels and large mesh otter trawls. FW 48 adopted a sub-ACL for this stock for the scallop fishery, and the Scallop FMP will adopt appropriate AMs in its next framework adjustment. FW 48 also changed the other sub-components allocation of this stock to a sub-ACL and adopted gear restricted areas that would be applicable to non-groundfish large-mesh otter trawls if this sub-ACL is exceeded. These requirements would apply regardless of fishery. They are detailed in 50 CFR 648.90(a)(5)(i)(D).

The second instance was for Georges Bank yellowtail flounder. A sub-ACL for small-mesh bottom trawl fisheries was adopted by FW 48 and implemented on May 1, 2013. The two primary fisheries that may be affected are the whiting fishery and the squid fishery. While the catches by these fisheries are not large, because of the reduced GB yellowtail flounder ACL they could become a substantial percentage of total removals. FW 48 did not adopt AMs for these two fisheries. I expect that AMs will be considered by the Council in a framework action that will be developed this year (FW 51). We welcome your input on the development of AMs through participation on our Groundfish Oversight Committee and will keep you advised of our progress. Dr. Jamie Cournane (jcournane@nefmc.org) of my staff will be coordinating the development of these AMs. We prefer that AMs be developed within the affected FMP so that the characteristics of each fishery can be taken into account, but we understand that may not be possible for the squid fishery this year.

You may notice that in these two examples a sub-ACL was created for a gear (large or small-mesh otter trawls) rather than an FMP (squid, whiting, fluke, etc.). While the Council considered creating a sub-ACL for specific fisheries, since some vessels participate in multiple fisheries on the same trip allocating the catch to specific fisheries may not be reliable. Information on the catches by these gears can be found in FW 48.

I apologize for the delay in notifying you of these changes and their development. Please let me know if you have any questions.

Sincerely,



Thomas A. Nies
Executive Director

cc: Mr. John Bullard, Regional Administrator, Northeast Region