



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

JUL 30 2015

Thomas A. Nies
Executive Director
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Dear Tom:

Based on its vote at the June New England Fishery Management Council, the Council requested that we take emergency action to immediately suspend the groundfish sector at-sea monitoring (ASM) program. In order to approve an emergency rule, the Secretary of Commerce must have an administrative record justifying emergency regulatory action and its compliance with the national standards. As outlined in the letter, our guidelines for the use of emergency rules specify three criteria that must be met to support emergency action. We have determined that the Council's request does not meet these criteria for emergency rulemaking for the reasons detailed below. Further, suspending the sector ASM program could seriously jeopardize the management of the groundfish fishery by undermining our ability to sufficiently monitor sector allocations.

1. The situation results from recent, unforeseen events or recently discovered circumstances.
The Council's request explains that the industry-funded ASM requirement was established with the expectation that increased groundfish catch limits would enable industry to afford the monitoring costs, but that unforeseen declines in groundfish catch limits mean that imposing the cost of the ASM program on industry will threaten the viability of the fishery. However, the Council has had adequate opportunity to respond to declines in catch limits, and the financial burden of the ASM requirement on industry, as evidenced by the frameworks developed leading up to the 2013, 2014, and 2015 groundfish fishing years.

In light of the worsening condition of groundfish stocks, the Council has considered the economic burden of ASM many times since 2010. Indeed, in 2011 the Council's rationale in Framework Adjustment 48 for a delay of the industry funding requirement for ASM was that imposing these costs would reduce profitability and result in the sector system being an economic failure. Therefore, the record documents that the current constraints on the operation of the groundfish fishery due to poor stock conditions, as well as the financial burden of the ASM program, are existing concerns the Council has considered several times since the implementation of the sector system. However, to date, the Council has not developed an approvable solution to the issue of industry funding for ASM. Therefore, we conclude that the situation underlying the Council's emergency request does not result from recent, unforeseen event, or recently discovered circumstances.



2. *The situation presents serious conservation or management problems in the fishery.*

While we acknowledge that triggering the requirement for sectors to pay for ASM is a significant financial burden, this was a foreseeable problem that does not justify an emergency action, as explained above. Moreover, the conservation concern expressed in the Council's letter is not consistent with current observations. The letter asserts that transitioning the ASM program to industry funding mid-year creates an incentive for sector members to condense their fishing activity while ASM is government-funded, leading to safety issues. Industry was notified in February 2015 that the transition would occur mid-year; however, there has not been an observable increase in fishing effort (trips or catch) during this fishing year, when compared to the same period last year.

We understand that paying for ASM is going to create economic difficulty for individual fishermen. If fishing effort declines after the transition to industry funding for ASM, it is possible that there could be lower catch of some stocks traditionally targeted in winter, which could further reduce groundfish revenues. We hope the sector system, which is designed to allow the fishing industry greater control over economic decisions, can help individuals minimize the economic difficulty. The system empowers each sector and individual member to determine when and how to target groundfish stocks, and the extent to which they participate in other fisheries as allowed by those fisheries' respective fishery management plans. The system also provides sectors with an opportunity to allocate costs or use operational flexibility to provide further cost efficiencies.

3. *The immediate benefits of emergency action outweigh the value of advance public notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.*

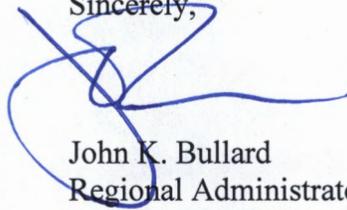
This criterion is not relevant because emergency rulemaking is not justified, as explained above. Even if the circumstances justified an emergency action, suspending ASM would not be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the groundfish plan requirement to reliably monitor catch limits. Catch accountability for the groundfish fishery is not optional. Rather, it was included in Amendment 16 to help meet the MSA requirements for monitoring annual catch limits and ensuring accountability. If the sector ASM program was suspended, it would be necessary to implement a replacement to fill that void and ensure catch accountability.

The process of implementing emergency regulations limits the public participation in rulemaking that Congress intended under the MSA and the Administrative Procedure Act. The Councils and Secretary must, whenever possible, afford the full scope of public participation in rulemaking. The sector ASM program has not been without controversy, and there should be an inclusive public process when considering modifications to the current ASM program.

In a separate June 30, 2015, letter, you transmitted three additional motions passed by the Council at its June meeting regarding the ASM program. The letter noted that the Council feels addressing ASM issues requires a multifaceted approach, as demonstrated by the motions, and requests that we use our administrative authority in-season to adjust ASM requirements with the goal of alleviating the financial burden to industry. We are reviewing these motions and will respond in more detail in a future letter.

Industry funding for ASM will be economically challenging for groundfish vessels, particularly in light of the low catch limits. We will continue to work with sectors to reduce costs, where possible, and help them to explore approaches to fairly distribute expenses. We will also continue to work with the Council to evaluate the current ASM program, and explore possible modifications to this program. If you have further questions about our determination, please contact Michael Pentony, Assistant Regional Administrator for Sustainable Fisheries at (978)-281-9283.

Sincerely,



John K. Bullard
Regional Administrator

cc: Terry Stockwell, Chair, New England Fishery Management Council
Frank Blount, Chair, Groundfish Oversight Committee
Bill Karp, Director, Northeast Fisheries Science Center