

November 26, 2019

Dr. John Quinn, Council Chairman  
Mr. Tom Nies, Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Submitted via [comments@nefmc.org](mailto:comments@nefmc.org)

**RE: Framework Adjustment 59 to the Northeast Multispecies FMP**

Dear Dr. Quinn and Mr. Nies:

Conservation Law Foundation (CLF) submits this letter to the New England Fishery Management Council (Council) regarding Framework Adjustment 59 to the Northeast Multispecies Fishery Management Plan (Framework 59), specifically the specifications for Gulf of Maine cod (GOM cod) and Georges Bank cod (GB cod) in fishing years (FY) 2020-2022. CLF has a long history of advocating for sustainable fisheries in New England, and we are increasingly concerned about the failure to end overfishing immediately and rebuild these stocks as quickly as possible consistent with legal requirements of the Magnuson-Stevens Act (MSA). We urge the Council to propose specifications for GOM cod and GB cod that end overfishing and place these stocks on appropriate rebuilding trajectories.

Legal Mandate

As set forth in National Standard 1, the primary mandate of the MSA is to prevent overfishing: “Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”<sup>1</sup> To do so, the MSA requires annual catch limits and accountability measures that end overfishing “based upon the best scientific information available.”<sup>2</sup> Further, for overfished stocks such as GOM cod and GB cod, conservation and management measures must be implemented “to end overfishing *immediately* in the fishery and to rebuild affected stocks of fish.”<sup>3</sup> To date, the Council has repeatedly proposed specifications for Atlantic cod stocks that do not achieve these legal mandates.

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<sup>1</sup> 16 U.S.C. § 1851(a)(1).

<sup>2</sup> *Id.* §§ 1851(a)(2), 1853(a)(15).

<sup>3</sup> *Id.* § 1854(e)(3)(A) (emphasis added).

### Best Scientific Information Available

Both GOM and GB cod stocks are overfished with overfishing occurring,<sup>4</sup> despite being in rebuilding plans (two for GOM cod) since 2004. The best scientific information available, including the 2019 operational assessments, demonstrate that they **have been subject to overfishing for 100 percent of the time periods covered by the assessments (GOM cod: 1982-2018, GB cod: 1978-2011) and have been overfished for all but two years.**

GOM cod lingers at historic low population levels that are only 6 to 9 percent of its spawning stock biomass target.<sup>5</sup> In addition to a decline in stock size<sup>6</sup> and geographic range,<sup>7</sup> GOM cod also exhibits a severely truncated age structure,<sup>8</sup> which is indicative of a population experiencing high fishing pressure and lack of recruitment. Recruitment remains near record low, with little positive signs of incoming recruitment,<sup>9</sup> guaranteeing that the stock will not meet its 2024 rebuilding date. In fact, five years into the ten-year rebuilding plan, there is only a **0 to 1 percent chance that GOM cod will rebuild on schedule** even under a no-fishing scenario;<sup>10</sup> that is a 26-fold decrease in probability of rebuild in just the last two years.

GB cod fairs no better. Based on the last accepted estimate, the stock was only 7 percent of its spawning stock biomass and experiencing overfishing.<sup>11</sup> Recent survey indices, the primary basis for assessing the fishery without an accepted analytical model, confirm low abundance.<sup>12</sup> The stock also exhibits a severely truncated age structure.<sup>13</sup> Although precise projections cannot be made, there is no reason to expect that GB cod will meet its 2026 rebuilding date.

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<sup>4</sup> NEFSC, Operational Assessment of 14 Northeast Groundfish Stocks, Updated Through 2018 (pre-publication copy), October 3, 2019 at 26 and 38. Available at: <https://www.nefsc.noaa.gov/saw/2019-groundfish-docs/Prepublication-NE-Grndfish-10-3-2019.pdf> (“2019 Groundfish Operational Assessment”); Per NMFS policy, “where a known determination had previously been provided and a new assessment is rejected or the results are inconclusive, the [last] known status will continue to be the official stock status.” Letter from John K. Bullard to John F. Quinn, August 31, 2017, p. 2. Available at: [https://s3.amazonaws.com/nefmc.org/A8\\_170831\\_Bullard-to-Quinn\\_Groundfish-Inadequate-Rebuilding-Progress.pdf](https://s3.amazonaws.com/nefmc.org/A8_170831_Bullard-to-Quinn_Groundfish-Inadequate-Rebuilding-Progress.pdf).

<sup>5</sup> 2019 Groundfish Operational Assessment at 26.

<sup>6</sup> NEFSC 2019. Gulf of Maine Atlantic Cod. 2019 Assessment Update Report Draft Supplemental Tables at 24.

<sup>7</sup> NEFSC 2017. Gulf of Maine Atlantic Cod. 2017 Assessment Update Report Draft Supplemental Information.

<sup>8</sup> 2019 Groundfish Operational Assessment at 29.

<sup>9</sup> *Id.*

<sup>10</sup> Memorandum from Groundfish Plan Development Team to Scientific and Statistical Committee regarding Candidate Groundfish OFLs and ABCs for fishing years 2020 to 2022 (Oct. 10, 2019 & revised Oct. 15, 2019) at 7. Available at: [https://s3.amazonaws.com/nefmc.org/A.8-GF-PDT-memo-to-SSC-re-FY2020-FY2022-Groundfish-OFLs-ABCs\\_20191001-REVISED.pdf](https://s3.amazonaws.com/nefmc.org/A.8-GF-PDT-memo-to-SSC-re-FY2020-FY2022-Groundfish-OFLs-ABCs_20191001-REVISED.pdf).

<sup>11</sup> NEFSC 2013. 55th Northeast Regional Stock Assessment Workshop (55th SAW). Assessment Summary Report. NEFSC Reference Document 13-01.

<sup>12</sup> NEFSC 2019. Georges Bank Atlantic Cod Tables (Draft; Supplement to 2019 Operational Groundfish Assessments) at 10.

<sup>13</sup> 2019 Operational Groundfish Assessments at 40.

## FY 2020-2022 Specifications

To comply with the MSA, the Council must propose in Framework 59 FY 2020-2022 specifications for GOM cod and GB cod that end overfishing immediately and place these stocks on appropriate rebuilding trajectories.

For GOM cod, a stock that cannot rebuild on schedule even without fishing, the ABC control rule is unequivocal: “For stocks that cannot rebuild to  $B_{MSY}$  in the specified rebuilding period even in the absence of fishing, the ABC should be based on incidental bycatch, including a reduction in the bycatch rate (i.e., the proportion of the [cod] stock caught as bycatch).”<sup>14</sup> Given the current status of GOM cod, there is no rationale for the Council to deviate from the ABC control rule. ABCs set at  $75\%F_{MSY}$ , as suggested by the SSC for Framework 59, have repeatedly failed to end overfishing. Further, the SSC relied on anecdotal economic considerations – not relevant to the legal requirement to end overfishing immediately – to recommend an ABC that was even higher than the default control rule. In Framework 59, the Council must propose FY 2020-2022 ABCs, and subsequent ACLs, for GOM cod based on incidental catch, including a reduction in bycatch rate, to end overfishing immediately and support rebuilding of the GOM cod stock as required by the control rule and the MSA.

For GB cod, the Council should use the utmost caution when proposing specifications given the inability to quantifiably assess the stock. To that end, at a minimum, the Council should reject the Groundfish Committee’s recommended ABC, which was derived by an inconsistent utilization of the empirical approach compared to previous years. During the 2015 operational assessment for GB cod – when the analytical model was rejected – “the Operational Assessment Panel recommend[ed] that the *overfishing limit (OFL)* should be a proportion of the most recent 3-year average catch, and that proportion should be determined by recent survey trends.”<sup>15</sup> Using the proportion of the most recent 3-year average catch to recommend *an ABC, not an OFL*, as the SSC and Groundfish Committee have done, is inconsistent with the original intent of this approach and removes a critical scientific uncertainty buffer for the stock, as described in the SSC’s minority report.<sup>16</sup>

Ultimately, however, the empirical approach (and the specifications derived from it) has repeatedly shown itself as being inadequate to end overfishing immediately and rebuild the GB

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<sup>14</sup> Amendment 16 to the Northeast Multispecies Fishery Management Plan at 78-79. Available at: [http://archive.nefmc.org/nemulti/planamen/Amend%2016/final%20amendment%2016/091016\\_Final\\_Amendment\\_16.pdf](http://archive.nefmc.org/nemulti/planamen/Amend%2016/final%20amendment%2016/091016_Final_Amendment_16.pdf)

<sup>15</sup> 2015 Operational Assessment for Georges Bank cod at 39. Available at: [https://www.nefsc.noaa.gov/publications/crd/crd1524/Individual%20Stocks/GB\\_Atlantic\\_cod.pdf](https://www.nefsc.noaa.gov/publications/crd/crd1524/Individual%20Stocks/GB_Atlantic_cod.pdf)

<sup>16</sup> Memorandum from SSC to Tom Nies, “Terms of Reference – Overfishing levels (OFLs) and acceptable biological catch (ABC) recommendations for groundfish stocks for fishing years 2020 to 2022 at 12-13. Available at: [https://s3.amazonaws.com/nefmc.org/3g\\_SSC\\_response\\_GFSpecies\\_Oct17\\_FINAL.pdf](https://s3.amazonaws.com/nefmc.org/3g_SSC_response_GFSpecies_Oct17_FINAL.pdf)



cod stock. Therefore, it should not be used to propose FY 2020-2022 specifications in Framework 59. Given the continued overfished status and known chronic overfishing of GB cod, as well as the stock's unlikely ability to rebuild by 2026, CLF asserts that there should be no directed fishery for this stock. As with GOM cod, specifications should be based on incidental catch with measures to reduce bycatch rate over the FY 2020-2022 period.

Lastly, the Council should consider how to comprehensively address the biases and uncertainties that have resulted from the lack of adequate monitoring in this fishery. As it is currently impossible to set specifications using accurate and precise data, completing Amendment 23 should be the Council's highest groundfish priority in 2020.

Thank you for considering these comments.

Sincerely,

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