Conservation
Law Foundation

NOTICE OF PETITION FOR RULEMAKING

BEFORE THE U.S. DEPARTMENT OF COMMERCE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. § 553(e)

FOR PROMULGATION OF RULEMAKINGS THAT END OVERFISHING AND REBUILD ATLANTIC COD

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I. EXECUTIVE SUMMARY

Conservation Law Foundation (CLF) submits this petition for rulemaking under 5 U.S.C. § 553(e) of the Administrative Procedure Act (APA) seeking to compel the U.S. Department of Commerce and the National Oceanic and Atmospheric Administration (NOAA) to take immediate and decisive action to end overfishing and rebuild Atlantic cod populations in U.S. waters.[1]

Atlantic cod shaped New England's cultural heritage and economic development for centuries. Once the backbone of the region's fishing industry, the fishery ultimately collapsed. It has been more than 30 years since a federal court first ordered NOAA to prevent overfishing of Atlantic cod.[2] Further, despite strengthened mandates under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and 24 amendments plus 67 framework adjustments to the Northeast Multispecies Fishery Management Plan (NE Multispecies FMP), NOAA has not yet ended overfishing or rebuilt Atlantic cod.

Fundamental principles of U.S. fishery management include mandatory statutory duties to prevent overfishing while achieving optimum yield on a continuing basis and to expeditiously rebuild overfished fisheries.[3] Once a fishery[4] is identified as overfished, actions must be taken to end overfishing immediately and prepare plans that rebuild the fishery in a time period that is "as short as possible," taking into account various factors, "not to exceed 10 years" unless the biology of the stock, environmental conditions, or management measures under an international agreement dictate otherwise.[5] Effective measures based on these rebuilding have successfully rebuilt 50 fish stocks from previously overfished levels across the nation.[6] Unfortunately, Atlantic cod (among other chronically overfished New England stocks) is a glaring exception, having been declared overfished more than 20 years ago and still hovering at historic low population levels.

The scientific understanding of cod stock structure has changed.

Since 1977, Atlantic cod has been managed as two stocks in the US—one in the Gulf of Maine (GOM) and the other in Georges Bank (GB) (this management area under the two-stock approach includes both Georges Bank proper and adjacent waters off Southern New England). As early as 2012, the Council's Science and Statistic Committee (SSC) identified Atlantic cod

[1] The information cited should properly be considered part of the basis for a final agency action on the Petition.
[2] *See Conservation Law Found. et al. v. Mosbacher*, 1991 WL 501640 (D. Mass., Aug. 28, 1991), *aff'd sub nom. Conservation Law Found. v. Franklin*, 989 F.2d 54 (1st Cir. 1993).
[3] 16 U.S.C. §§ 1851(a)(1), 1854(e).
[4] The MSA defines a "fishery" as "one or more stocks of fish which can be treated as a unit for purposes of conservation and management, and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics." *Id.* § 1802(13).
[5] *Id.* § 1854(e)(4)(A)(ii).
[6] NOAA, *Status of the Stocks 2023 Annual Rep. to Congress on the Status of U.S. Fisheries*, 3 (May 2024), https://www.fisheries.noaa.gov/s3/2024-04/2023SOS-final.pdf.

population stock structure as an area of uncertainty. Recent scientific advancements involving a wide variety of data types (including tagging, genetics, and fishermen's ecological knowledge), led the Atlantic Cod Stock Structure Working Group to conclude that the two-stock approach was not valid. Their findings supported the recognition of five distinct biological populations in U.S. waters: Eastern Gulf of Maine (EGOM), Western Gulf of Maine (WGOM) spring spawners, WGOM winter spawners, GB (now including just the bank proper), and Southern New England (SNE). These results were confirmed by rigorous peer review in 2020.

A multi-year research track assessment (2021-2023) found that for assessment purposes, these five biological populations should be grouped into four stock units by combining the WGOM spring and winter spawners into a single stock (collectively, WGOM). This four-stock structure approach passed peer review in 2023 and has subsequently been affirmed by NOAA as the best scientific information. Based on new reference points, the research track assessment determined that all four newly identified stocks are overfished and that the WGOM and SNE cod stocks are experiencing overfishing.[7]

Management track assessments completed in 2024 reconfirmed that all four stocks are overfished, with WGOM and SNE cod at only 3% of their biomass targets, EGOM at 12%, and GB at 32%. These assessments also confirmed that WGOM and SNE cod are experiencing overfishing with SNE cod subject to fishing pressure more than 700% above the overfishing threshold. This underscores the urgent need for NOAA to initiate rebuilding plans because continuing to manage as two stocks increases the risk of overfishing the weakest components and delays rebuilding.

Stock	Stock Status	Overfishing Occurring?
WGOM	Overfished	Yes
SNE	Overfished	Yes
GB	Overfished	No
EGOM	Overfished	No

The Council took action to meet statutory obligations (and the urgency of the situation) to stop overfishing and rebuild the fishery.

To prevent any further delay, the New England Fishery Management Council (Council) undertook a multi-year, phased approach to transition from two-stocks to four based on this new understanding. Phase I involved formal adoption of the four new stock boundaries and implementation of short-term management measures. As planned, Phase II will be a broader, long-term approach to implementing new management units, with potential allocation revisions and conservation and management measures to protect spawning cod populations. Initially, the Council (with NOAA's input) intended Phase I to adopt the new stock structure in an

[7] Atl. Cod Rsch. Track Working Grp., *Rsch. Track Assessment of Atl. Cod*, NEFSC, 12–13 (July 14, 2023), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2023&species_id=4&stock_id=11&review_type_id=5&info_type_id=-1&map_type_id=&filename=Atlantic%20cod%20WG%20FULL%20REPORT%20format%20w.%20exec%20summ%20(1).pdf.

amendment (Amendment 25) and to utilize a framework (Framework 69) to establish associated status determination criteria, 2025-2027 catch limits, and management measures. Both Amendment 25 and Framework 69 were developed with significant stakeholder engagement and were evidence of the Council's commitment to improving the long-term health of this fishery. During the development of both actions, NOAA supported the Council's plan to publish the two actions concurrently, and even encouraged it based on workload concerns.

In developing Amendment 25 and Framework 69, the Council's Phase I approach sought to minimize disruption to the commercial fishery associated with reallocation of quota among sectors. This was accomplished using existing potential sector contributions established under Amendment 16 (for the original GOM and GB stocks) to allocate catch entitlements under the four new stock areas. This represented a bridge approach, deferring broader questions of reallocation to Phase II.

NOAA supported the Council's approach during the development of Amendment 25 and Framework 69, but ultimately disapproved Amendment 25 on process grounds and implemented an emergency action using the two-stock structure.

Despite years of stock-structure debate and alarming assessment results, NOAA disapproved Amendment 25 on May 19, 2025, and failed to publish Framework 69 in a timely fashion.[8] In its disapproval, NOAA confirmed the "biological stock definitions are supported by extensive collaborative research by scientists and fishermen and based on the best scientific information available, consistent with MSA National Standard 2."[9] NOAA specified that the Council could resolve its disapproval in a new or revised amendment with management measures that include "SDCs [status determination criteria], distribution of ABCs [acceptable biological catch], and accountability measures for the four cod stocks as developed and included in Framework 69."[10]

To ensure the fishery could operate on May 1, 2025, the Agency took emergency action —again acknowledging the Council's recommended 2025 catch limits in Framework 69 were "based on the best scientific information available and reflect[ed] the biological conditions of the four stocks and the levels of catch that are expected to prevent overfishing."[11] Yet under the emergency action, NOAA continues to manage Atlantic cod as two stocks, thus increasing the likelihood of overfishing and compromising rebuilding despite mandatory statutory duties.

In June 2025, the Council postponed its work on its previously planned 2025 priorities to focus on revising Amendment 25 and addressing the recommendations identified in NOAA's

[8] The proposed rule for Framework 69 was eventually published on December 8, 2025, 90 Fed. Reg. 56,836 (Dec. 8, 2025), but its fate was uncertain for months despite NOAA's statutory deadline to determine its consistency with the Act and other applicable law within 15 days of transmittal from the Council. 16 U.S.C. § 1854(b)(1).

[9] NOAA, Letter to the NEFMC Regarding Amendment 25 Review (May 19, 2025), https://d23h0vhsm26o6d.cloudfront.net/5a_20250515-A25-Council-Decision-Letter-0648-XE237-v2-Signed.pdf.

[10] *Id*.

[11] Fishing Year 2025 Measures Emergency Action, 90 Fed. Reg. 18,804 (May 2, 2025).

disapproval letter.[12] The Revised Amendment 25 adopted the four updated Atlantic cod stock units, their corresponding status determination criteria, and other specifications (formerly in Framework 69). The Council took final action at its September 2025 meeting and voted to submit the Revised Amendment 25 to the Agency for review and a determination.[13] A preliminary submission of the amendment was transmitted to NOAA on December 12, 2025,[14] and NOAA published its Notice of Availability in the federal register on January 13, 2026.[15] Because the Revised Amendment 25 addresses all the stated reasons for its prior disapproval, aligns with the National Standards, and continues to advance MSA mandates, we urge NOAA to expeditiously approve it and initiate rebuilding plans. Any further delay based on internal agency processes or politics is unreasonable.[16]

While recent stock structure research refined our understanding of the population dynamics and spatial distribution of cod (ultimately forcing NOAA and the Council to operate under the assumption that prior rebuilding plans are no longer in effect), it did not alter the agency's rebuilding obligations under MSA. Atlantic cod has been overfished for decades, with the former GOM and GB stocks failing to meet rebuilding targets at every juncture since the early 2000s. Putting aside past failures under the two-stock approach, NOAA and the Council have known that these four cod stocks are overfished since at least the July-August 2023 peer-review,[17] and this understanding was reconfirmed in June of 2024 by the management track assessment.[18] Yet no rebuilding plans have been initiated.

The MSA was enacted and amended to ensure that once a stock is identified as overfished, actions are taken to end overfishing immediately and plans are prepared within two years (or less) that rebuild the fishery. The plain words of the Act say, "end overfishing immediately" and specify rebuilding in a time period that is "as short as possible."[19]

To protect the long-term viability of the fishery, NOAA must incorporate the four cod stock structure in the NE Multispecies FMP, end overfishing on the WGOM and SNE

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[12] Letter from Michael Pentony, Reg'l Administrator, NOAA Fisheries, to Rick Bellavance, Chairman, NEFMC (May 19, 2025) (on file with NEMFC Library).
[13] NEFMC, *Final Motions to the Council* (Sept. 2025), https://d23h0vhsm26o6d.cloudfront.net/Final-Motions-to-Council-September-2025.pdf.
[14] NEFMC, *Groundfish Revised A25 Preliminary Submission* (Dec. 12, 2025), https://d23h0vhsm26o6d.cloudfront.net/251212_Groundfish_Revised-A25_Preliminary-Submission.pdf.
[15] Amendment 25 (Revised) to the Ne. Multispecies Fishery Mgmt. Plan; Atl. Cod Stocks in Need of Conservation and Mgmt., 91 Fed. Reg. 1257 (Jan. 13, 2026).
[16] The APA does not require any finding of "impropriety lurking behind agency lassitude" to "hold that agency action is 'unreasonably delayed.'" *Telecomm. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (Citing *PCHRG v. FDA*, 740 F.2d 21, 34 (D.C. Cir. 1984)).
[17] *See* Jean-Jacques Maguire et al., Summary Rep. of the Atl. Cod Rsch. Track Assessment Peer Review, (July 31 – Aug. 3, 2023), https://d23h0vhsm26o6d.cloudfront.net/15bPanelSummaryReportoftheAtlanticCodRTPeerReview.8-17-23.pdf.
[18] *See* John Wiedenmann et al., 2024 June Mgmt. Track Peer Review Panel Rep., (June 2024), https://d23h0vhsm26o6d.cloudfront.net/2.a.xi_2024-June-Management-Track-Peer-Review-Panel-Report_508_7_18_24.pdf.
[19] 16 U.S.C. § 1854(e)(3)(A), 4(A)(i).

stocks, and move enforceable rebuilding plans forward for all four stocks.

Specifically, CLF petitions the Department of Commerce and NOAA to expeditiously approve the Revised Amendment 25,[20] *and* e*ither*

1) **immediately notify the Council that it must take action to end overfishing on the WGOM and SNE cod stocks, and prepare rebuilding plans within two years for all four cod stocks, consistent with 16 U.S.C. § 1854(e)(3)(A), (4); *or***
2) **prepare a Secretarial Amendment (and any accompanying regulations) within 9 months that stops overfishing on the WGOM and SNE cod stocks and rebuilds all four cod stocks, consistent with § 1854 (c), (e)(4), (5).**

II. PETITIONER'S INTEREST

Founded in 1966, CLF is a non-profit member-supported organization that works to solve environmental problems threatening the natural environment and communities of New England. In pursuit of that mission, CLF has advocated for NOAA to meet its statutory mandates including to prevent and end overfishing, rebuild overfished stocks, and ensure adequate accountability in fisheries to "protect, restore, and promote the[ir] long-term health and stability." *Id.* § 1853(a)(1)(A).

CLF first challenged NOAA's failure to prevent overfishing and rebuild overfished groundfish stocks, including Atlantic cod, in 1991. *See Conservation Law Found. et al. v. Mosbacher*, 1991 WL 501640 (D. Mass. 1991) (entering settlement agreement order requiring NOAA to develop new groundfish rebuilding plans by a date certain), *aff'd sub nom. Conservation Law Found. v. Franklin*, 989 F.2d 54 (1st Cir. 1993) (rejecting fishing associations' request to vacate the settlement agreement). In finding the settlement agreement just, fair, and equitable, the Court stated the Council would be allowed the "initial opportunity to develop a groundfish rebuilding program that meets the terms and conditions of this Consent Decree." *Id.* at *1. However, the Court made clear that if the program fell "short of successful and timely development and submission to the Secretary," NOAA would "not be excused from complying with the deadlines for development" of the groundfish rebuilding program. *Id.*

A decade later, CLF challenged NOAA's implementation of the 1996 Sustainable Fisheries Act amendments. *Conservation Law Found. v. Evans*, 209 F. Supp. 2d 1, 15 (D.D.C. 2001) (finding Amendment 9 failed to minimize bycatch and bycatch mortality in the groundfish fishery in violation of the SFA.) In 2013, CLF challenged NOAA's catch limits for GOM cod in Framework 50. *See Conservation Law Found. v. Pritzker*, 37 F.Supp.3d 254 (D.D.C. 2014) (finding cod carryover violated MSA because it was not considered when setting the annual catch limit (ACL) for cod and it exceeded the SSC's acceptable biological catch recommendation). Most recently, CLF challenged NOAA's catch limits for Atlantic cod in Framework 59 on grounds that the specifications could not rebuild cod stocks and were based on an arbitrary application of the Council's control rule. *Conservation Law Found. v. Ross*, No. 19-

[20] If NOAA cannot implement the repackaged Amendment 25 by the start of the FY on May 1, 2026, it should issue an interim final rule adopting the four-stock structure, status determination criteria, catch limits, accountability measures, and other provisions in the repackaged amendment.

5365, 2020 WL 2610894, (April 27, 2020). CLF voluntarily dismissed this case when the next specifications package was finalized because NOAA appeared to be moving toward rebuilding Atlantic cod consistent with statutory obligations.

On February 13, 2020, CLF petitioned NOAA for rulemaking (albeit a different suite of rules) to end overfishing and rebuild the cod fishery; and supplemented it with new scientific information on September 16, 2020. NOAA denied that petition on April 7, 2022, but some of the same issues remain at the heart of this petition. A copy of the 2020 petition and its supplement are incorporated by reference and attached as Attachments 1 and 2.

Petitioner's Right to Petition

Under the APA, all citizens have the right to petition federal agencies for the "issuance, amendment, or repeal" of an agency rule. 5 U.S.C. § 553(e). A "rule" is the "whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy…" *Id.* § 551(4). CLF brings this petition for emergency and permanent rulemaking before NOAA under that authority.

The APA further requires that "within a reasonable time, each agency shall proceed to conclude a matter presented to it." *Id.* § 555(b). The Secretary must "fully and promptly consider" all petitions presented to him. *WWHT, Inc. v. F.C.C.*, 656 F.2d 807, 813 (D.C. Cir. 1981). If a petition is denied, the agency must provide "a brief statement of the grounds for denial," 5 U.S.C. § 555(e), and the petitioning party is entitled to a "response on the merits of the petition." *Fund for Animals v. Babbitt*, 903 F. Supp. 96, 115-16 (D.D.C. 1995). Federal courts have authority to compel agency action on petitions that are unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

The APA also provides for judicial review of NOAA's final agency action on this Petition. *Id.* at §§ 701-706. Under the APA's judicial review provision, agency actions are to be set aside if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *See id.* at § 706(2). It is well settled that in any such action an "agency must examine the relevant data and articulate a satisfactory explanation for its action" that does not "run[] counter to the evidence before the agency" and that "include[s] a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).

NOAA has ample legal authority to take the requested actions under the MSA. 16 U.S.C. §§ 1854(b)(1)(B), (b)(3), (c)(1), (e)(1)-(5); *Id.* §§ 1855(c), (d). NOAA must now notify the Council of its duties or prepare its own Secretarial Amendment with conservation and management measures that seek to end overfishing immediately and rebuild the four cod stocks in a timeframe consistent with rebuilding requirements of the Act.

III. THERE HAS BEEN A HISTORICAL FAILURE TO END OVERFISHING & REBUILD THE COD FISHERY.

Atlantic cod has been managed as two stocks, one in the GOM and the other in GB (Figure 1) since 1977.[21] Under the two-stock approach, NOAA has been unable to end overfishing for decades. The first assessment of Atlantic cod after the MSA was implemented was conducted in 1977 and it determined that both stocks were subject to overfishing based on the definition of the day.[22] Following the adoption of the current reference point definition of the fishing mortality rate (F_{MSY}) that would produce maximum sustainable yield (MSY), the GOM and GB cod were subject to overfishing[23] as far back as the 2002 stock assessments. Every assessment since then led to the same overfishing status designation through to the last assessments conducted under the two-stock approach in 2021.[24]

Likewise, NOAA has been unable to rebuild Atlantic cod. As far back as the 2002 stock assessments,[25] GOM and GB cod have been overfished.[26] In 2004, NOAA implemented the first rebuilding plans for GOM cod and GB cod in Amendment 13.[27] GOM cod failed to rebuild under its first ten-year plan and again under its second ten-year plan. At the time of the last GOM cod assessment, and shortly before implementing a third ten-year rebuilding plan in 2023,[28] scientists estimated spawning stock biomass (SSB) was only 5% of its biomass target.[29] GB cod has remained in its original 2004 rebuilding plan with a terminal date of 2026. The rejection of the GB analytical assessment in 2015 made it impossible to quantitatively assess rebuilding progress thereafter, but as of the 2021 assessment, survey indices continued to trend downwards with no indication of stock recovery.[30]

The two-stock approach under which these historical assessments were conducted, and rebuilding plans developed, is no longer the best available science and the mismatch between this approach and the true biological stock structure of Atlantic cod likely contributed to its

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[21] F.M. Serchuk and S.E. Wigley, *Assessment and Mgmt. of the Georges Bank cod fishery: a historical review and evaluation.*, 13 J. Northw. Atl. Fish. Sci (1992).
[22] F.M. Serchuk et al, *Analysis of the Georges Bank and Gulf of Maine Cod Stocks,* NEFC Ref. Doc. 77-24, (1977), https://www.nefscnoaa.gov/publications/series/whlrd/whlrd7724.pdf.
[23] NEFSC, *55th Ne. Reg'l Stock Assessment Workshop Assessment Summary Rep.*, NEFSC 13-01, (2013).
[24] *See* Table 1, Attachment 1; NEFSC 2021a. Gulf of Maine Cod. Management Track Assessment Report. Available: https://apps-nefsc.fisheries.noaa.gov/saw/sasi.php; NEFSC 2021b. Georges Bank Cod. Management Track Assessment Report. Available: https://apps-nefsc.fisheries.noaa.gov/saw/sasi.php.
[25] NEFSC, *55th Ne. Reg'l Stock Assessment Workshop Assessment Summary Rep.*, NEFSC 13-01, (2013).
[26] Based on the threshold definition of spawning stock biomass at maximum sustainable yield (SSB_{MSY}). Note that multiple assessments prior to 2002 also showed low biomass under earlier reference points and definitions, see Table 1 in Appendix 1.
[27] Amendment 13 Final Rule, 69 Fed. Reg. 22,906 (Apr. 27, 2004).
[28] Framework Adjustment, 65 Final Rule, 88 Fed. Reg. 56,527 (Aug. 18, 2023).
[29] NOAA, *Gulf of Maine Atl. cod, 2021 Update Assessment Rep.* (Oct. 2021). https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2021&species_id=4&stock_id=2&review_type_id=3&info_type_id=-1&map_type_id=&filename=2021_COD_GOM_ASSESSMENT_v3.pdf.
[30] NOAA, *Georges Bank Atl. cod, 2021 Mgmt. Track Assessment Rep.* (Sept. 2021). https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2021&species_id=4&stock_id=1&review_type_id=2&info_type_id=-1&map_type_id=&filename=2021_COD_GB_REPORT_ver3.pdf.

historical rebuilding failures and persistent overfishing.[31]

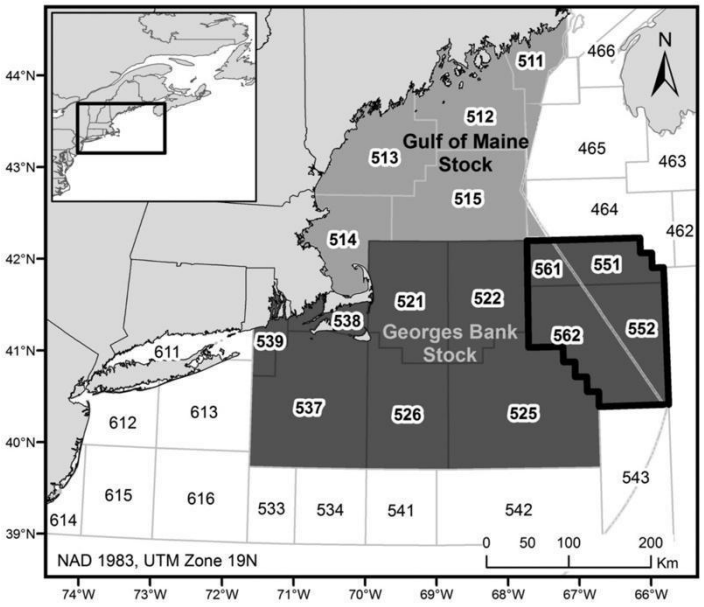

Figure 1: Map showing the GOM and GB stock boundaries used for management of Atlantic cod in the New England region. The area bounded by the thick black line indicates the eastern population of GB cod, which is managed as a transboundary resource jointly by the U.S. and Canada.[32]

IV. THE BEST AVAILABLE SCIENCE DEMANDS ACTION.

A. <u>The Current Understanding of Cod Stock Structure is Not New.</u>

The issue of cod stock structure is not a new one: in 2012 the Council's SSC identified population structure as an area of uncertainty and recommended a "comprehensive evaluation of scientific information on cod population structure and its management implications, including the possibility of revising management units."[33] A subsequent 2012 workshop on stock structure of Atlantic cod in the Gulf of Maine region found general agreement about the inaccuracy of the two stock management boundaries but failed to reach consensus about revised biological stock boundaries.[34]

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[31] *See generally* Lisa Kerr, Steven Cardin & Adrienne Kovach, *Consequences of a Mismatch Between Biological and Mgmt. Units on our Perception of Atl. Cod off New England*, 71 ICES J. of Marine Sci., (Sep. 2014); Douglas Zemeckis et al., *Spawning Site Fidelity by Atl. Cod (Gadus morhua) in the Gulf of Maine: Implications for Population Structure and Rebuilding*, 71 ICES J. of Marine Sci., (Sep. 2014).
[32] Douglas Zemeckis et al., *Stock Identification of Atlantic Cod (Gadus morhua) in US Waters: An Interdisc. Approach,* 71 ICES J. of Marine Sci., 1490, 1490 (Sep. 2014).
[33] Memorandum from Sci. and Stat. Comm. to Paul Howard, Exec. Dir. 3 (Jan. 30, 2012) (on file with NEFMC Library).
[34] John Annala, *Rep. of the Workshop on Stock Structure of Atl. Cod in the Gulf of Maine Region* 1–2 (July 24, 2012), https://gmri-org-production.s3.amazonaws.com/documents/Microsoft_Word_-_Cod_workshop_final_report_25_July_2012_1.pdf.

The Atlantic Cod Stock Structure Working Group ("Working Group") was formed in 2018. It had a broad range of expertise and a two-year working timeline that allowed for thorough scrutiny and consideration of a wide variety of data types including genetics, spawning information, egg and larval distributions, life history characteristics, migratory patterns based on natural markers (e.g., otolith and body shape, parasites) and tagging, as well as fishermen's ecological knowledge. The Working Group found compelling evidence for a lack of congruence between true population structure and the two-stock approach, whereas it found strong scientific support and consensus across data types that cod found off New England is comprised of five biological stocks:[35] EGOM, WGOM spring spawners, WGOM winter spawners, GB, and SNE. These findings were accepted by rigorous peer review in May of 2020.[36]

The onset of the Working Group was marked by a Cod Stock Structure Symposium at the University of New Hampshire in June of 2018 that was well attended by a wide range of stakeholders including active commercial and recreational groundfishermen. The efforts of the Working Group were met with support and enthusiasm for updating cod stock structure and aligning it with fishing industry perspectives. Following publication of the Working Group's report, additional public workshops supported by New Hampshire Sea Grant, the Council, and NOAA were held in 2021 to present the findings on each of the new stocks followed by an open public discussion to ensure comprehensive information sharing.[37] These meetings created a transparent, inclusive process that allowed stakeholders to fully engage with the emerging science and its management implications.

B. <u>The Research Track Assessment (2021-2023) Identified all Four Cod Stocks as Overfished.</u>

In late 2021, following these workshops, the Atlantic Cod Research Track Assessment Working Group (Research Track) was formed. In addition to the standard research track terms of reference, an additional ninth term of reference was added to:

> Apply the findings of the Atlantic Cod Stock Structure Working Group and identify what assessment approaches the available data can support in defining the appropriate scale of Atlantic cod stock assessment. Consider implications for management processes and other practical limitations in the final units and boundaries used for stock assessments."[38]

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[35] Richard McBride & Kent Smedbol, NMFS-NE-273, *An Interdisc. Review of Atl. Cod (Gadus morhua) Stock Structure in the Western N. Atl. Ocean*, (Dec. 2022), https://doi.org/10.25923/sk1x-z919.

[36] Memorandum from Jake Kritzer et al. to Thomas A. Nies, Exec. Dir. (May 29, 2020) (on file with NEFMC Library).

[37] NH Sea Grant, *2021 Atl. Cod Stock Structure Workshops,* U. NH, https://seagrant.unh.edu/2021-atlantic-cod-stock-structure-workshops (last visited May 5, 2025).

[38] Atl. Cod Rsch. Track Working Grp., *Rsch. Track Assessment of Atl. Cod*, NEFSC., 12–13 (July 14, 2023), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2023&species_id=4&stock_id=11&review_type_id=5&info_type_id=-1&map_type_id=&filename=Atlantic%20cod%20WG%20FULL%20REPORT%20format%20w.%20exec%20summ%20(1).pdf.

In response, the Research Track combined the WGOM spring and winter spawners, which could not be separated for data purposes due to their spatial overlap, into a single WGOM unit and developed robust analytical models for the resulting four stock units (Figure 2). Their work passed peer review during the summer of 2023.[39] Notably, the peer review panel found that the ninth term of reference had been met and commented that "[t]here were clearly some signs of mis-specification in the cod assessments in the past and the Panel agrees that aligning the stocks with the assessment units is a significant step towards improving the assessments."[40]

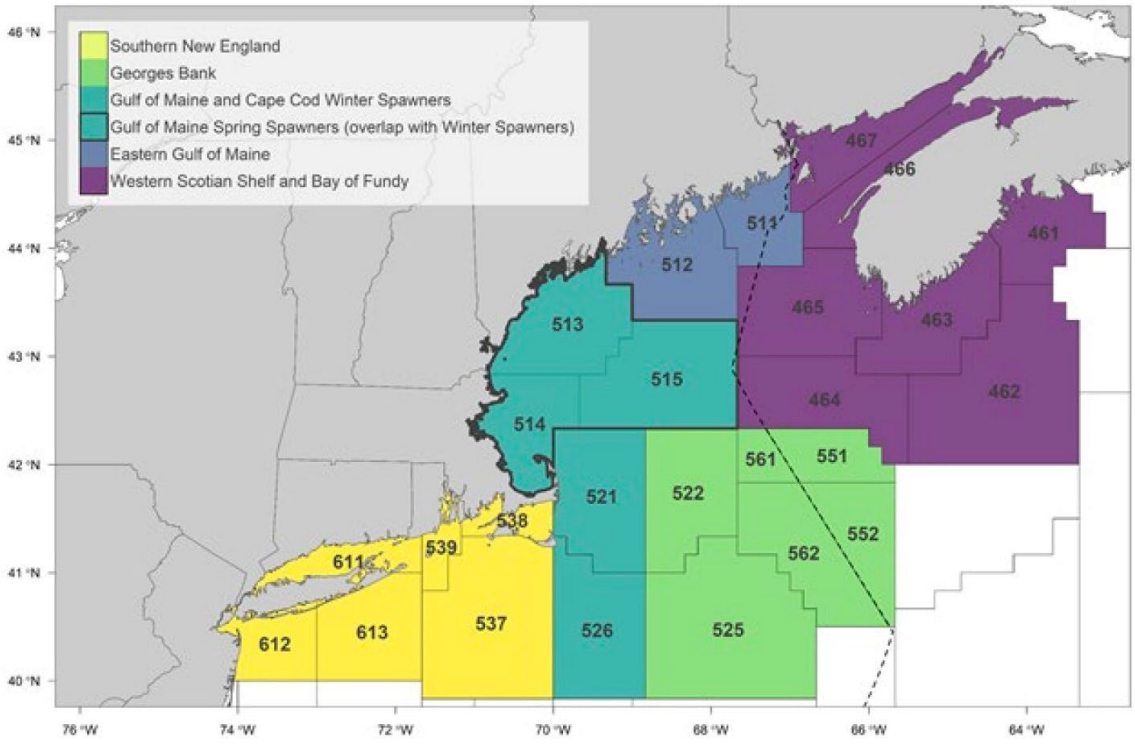

Figure 2: Map showing the new EGOM, WGOM (comprised of separate winter and spring spawners), GB, and SNE cod stock structure proposed by the Working Group and adopted by the Research Track Assessment.[41]

The analytical assessments developed by the research track reflected the new stock structure and led to clear conclusions about the poor status of all four new stocks: relative to

[39] NOAA, *Atl. Cod: 2023 Rsch. Track Peer Review,* https://www.fisheries.noaa.gov/event/atlantic-cod-2023-research-track-peer-review (last updated May 21, 2024).
[40] Jean-Jacques Maguire et al., *Summary Rep. of the Atl. Cod Rsch. Track Stock Assessment Peer Review,* 24, (Aug. 3, 2023), https://www.fisheries.noaa.gov/s3//2023-08/PanelSummaryReportoftheAtlanticCodRTPeerReviewAugust172023-mlt-508-8-23-23ajd-508gw.pdf.
[41] Atl. Cod Rsch. Track Working Grp., *Rsch. Track Assessment of Atl. Cod*, NEFSC, 419 (July 14, 2023), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2023&species_id=4&stock_id=11&review_type_id=5&info_type_id=-1&map_type_id=&filename=Atlantic%20cod%20WG%20FULL%20REPORT%20format%20w.%20exec%20summ%20(1).pdf.

newly developed biological reference points, all four stocks were overfished and three were severely so.[42] In addition, WGOM and SNE cod were also subject to overfishing.[43]

C. <u>The Management Track Assessments (2024) Confirmed All Four Cod Stocks are Overfished</u>.

Management track assessments with updated data were conducted in 2024 based on the research track assessment and associated peer review panel recommendations. All four management track assessments passed peer review in June of 2024, and their results were deemed acceptable for management advice.[44] The results confirmed the research track assessment findings—all four cod stocks are overfished and two are subject to overfishing.

1. WGOM cod is overfished with overfishing occurring.

As of 2023 (the terminal year of the assessment), WGOM cod SSB was **only 3% of its target biomass** while **fishing mortality was 63% above the overfishing threshold.**[45] Furthermore, relative to the new biological reference points, the stock has been **subject to overfishing for the entire 1981-2023 time period** covered by the assessment and has been in an **overfished state for all but a very brief period in the early 2000s**.[46] It is also important to note that an initial version of the assessment included the extremely low spring 2023 bottom long-line survey data,[47] but the peer review panel recommended excluding it due to the strong influence on assessment results for recent years.[48] There is thus substantial uncertainty around the assessment results. If the spring 2023 datapoint is in fact valid, stock status would be even worse and, as noted in the assessment report, projected catch at F_{MSY} should have been 3-6 times lower than what was ultimately recommended.

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[42] *Id*. at 353–355.
[43] *Id.*
[44] John Wiedenmann et al., *2024 June Mgmt. Track Peer Review Panel Rep.*, 4–5, (June 2024), https://www.fisheries.noaa.gov/s3//2024-07/2024-June-Management-Track-Peer-Review-Panel-Report-508-7-18-24.pdf.
[45] NOAA, *Western Gulf of Maine Cod, 2024 Mgmt. Track Assessment Rep.* 1 (July 10, 2024), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2024&species_id=4&stock_id=12&review_type_id=3&info_type_id=-1&map_type_id=&filename=Western_Gulf_of_Maine_cod_Update_4.pdf.
[46] *Id.* at 4.
[47] *Id.* at 2.
[48] John Wiedenmann et al., *2024 June Mgmt. Track Peer Review Panel Rep.* 31 (June 2024), https://www.fisheries.noaa.gov/s3//2024-07/2024-June-Management-Track-Peer-Review-Panel-Report-508-7-18-24.pdf.

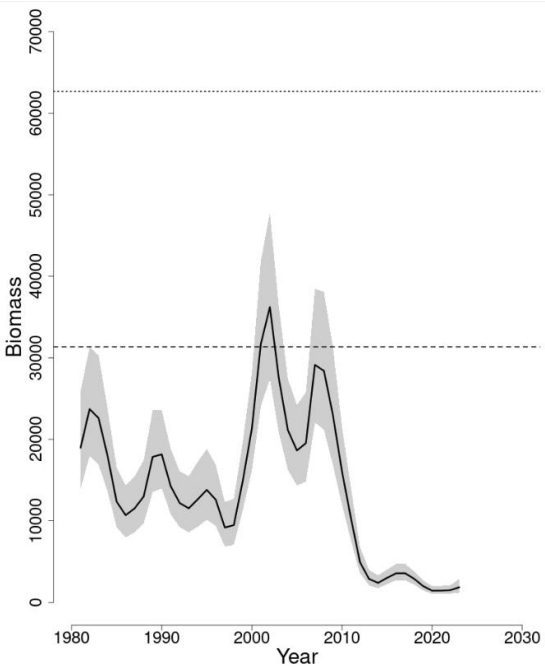

Figure 1: Trends in spawning stock biomass of Western Gulf of Maine cod between 1981 and 2023 from the current assessment and the corresponding $SSB_{Threshold}$ ($\frac{1}{2}$ SSB_{MSY} *proxy*; horizontal dashed line) as well as SSB_{Target} (SSB_{MSY} *proxy*; horizontal dotted line) based on the 2024 assessment. SSB was not adjusted for a retrospective pattern because the retrospective pattern was minor. The approximate 90% lognormal confidence interval is shown.

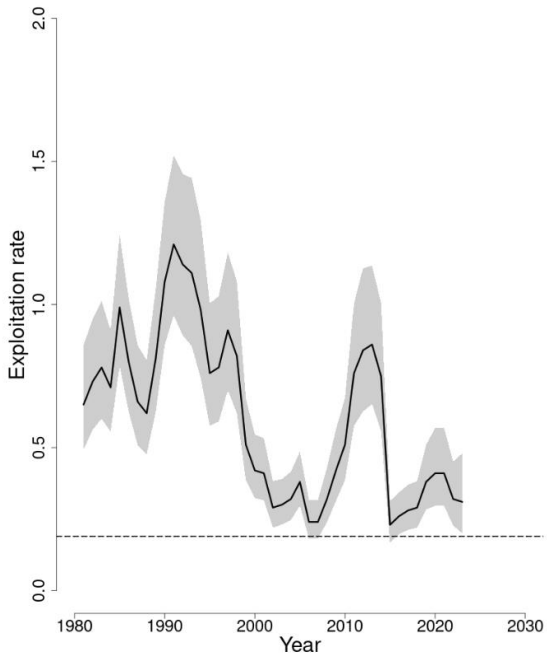

Figure 2: Trends in the fully selected fishing mortality (F_{Full}) of Western Gulf of Maine cod between 1981 and 2023 from the current assessment and the corresponding $F_{Threshold}$ (F_{MSY} *proxy*=0.19; horizontal dashed line). F_{Full} was not adjusted for a retrospective pattern because the retrospective pattern was minor. The approximate 90% lognormal confidence interval is shown.

Figure 3: Left: WGOM cod SSB between 1981 and 2023 relative to the target SSB (horizontal dotted line) and overfished threshold (horizontal dashed line). Right: Fishing Mortality relative to the overfishing threshold (horizontal dashed line). Grey shading indicates 90% confidence intervals. Reproduced from the 2024 management track assessment.[49]

2. SNE cod is overfished with overfishing occurring.

As of 2023, SNE cod SSB was **only 3% of the target biomass** while **fishing mortality was 706% above the overfishing threshold**.[50] Relative to the new reference points, the stock has been **overfished since 1983** and **subject to strong overfishing for the entirety of the 1981-2023 time period** covered by the assessment.[51]

[49] NOAA, *Western Gulf of Maine Cod, 2024 Mgmt. Track Assessment Rep.* 4 (July 10, 2024), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2024&species_id=4&stock_id=12&review_type_id=3&info_type_id=-1&map_type_id=&filename=Western_Gulf_of_Maine_cod_Update_4.pdf.
[50] NOAA, *Southern New England Cod, Mgmt. Track Assessment Rep.* 1 (July 15, 2024), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2024&species_id=4&stock_id=14&review_type_id=3&info_type_id=-1&map_type_id=&filename=Southern_New_England_Cod_2024_report_revised_projections.pdf.
[51] *Id.* at 4–5.

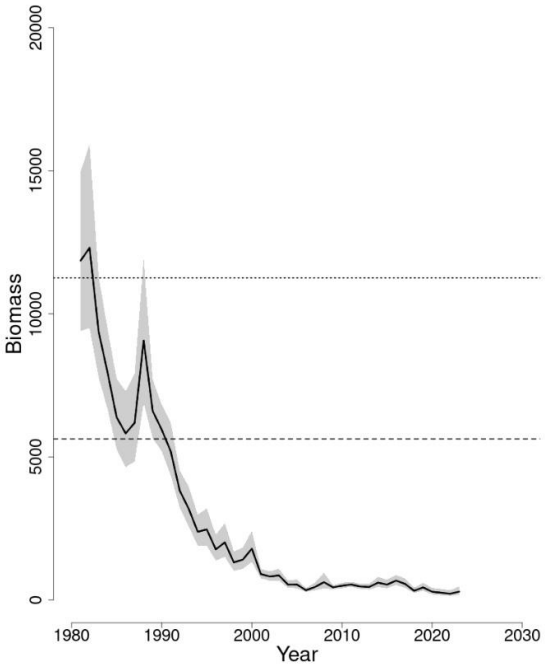

Figure 1: Trends in spawning stock biomass of Southern New England Cod between 1981 and 2023 from the current (solid line) assessment and the corresponding $SSB_{Threshold}$ ($\frac{1}{2}$ SSB_{MSY} *proxy*; horizontal dashed line) as well as SSB_{Target} (SSB_{MSY} *proxy*; horizontal dotted line) based on the 2024 assessment. The approximate 90% lognormal confidence intervals are shown.

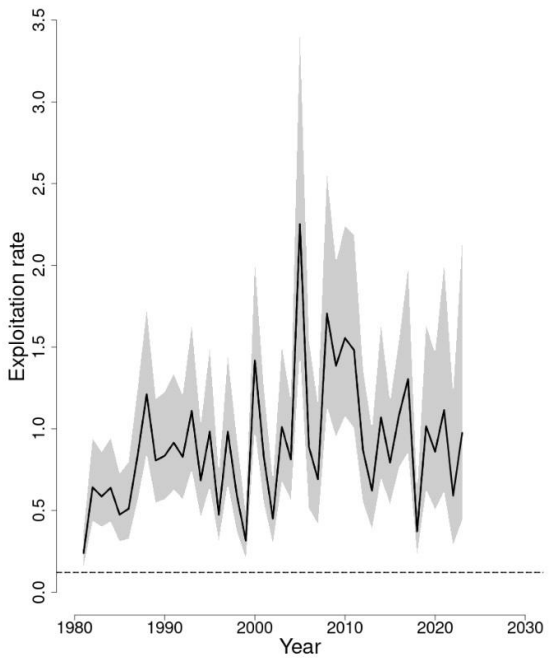

Figure 2: Trends in the fully selected fishing mortality (F_{Full}) of Southern New England Cod between 1981 and 2023 from the current (solid line) assessment and the corresponding $F_{Threshold}$ (F_{MSY} *proxy*=0.121; horizontal dashed line) based on the 2024 assessment. The approximate 90% lognormal confidence intervals are shown.

Figure 4: Left: SNE cod SSB between 1981 and 2023 relative to the target SSB (horizontal dotted line) and overfished threshold (horizontal dashed line). Right: Fishing Mortality relative to the overfishing threshold (horizontal dashed line). Grey shading indicates 90% confidence intervals. Reproduced from the 2024 management track assessment.[52]

3. GB cod is overfished.

SSB for GB cod has declined precipitously since the 1980s. As of 2023, SSB was **32% of the biomass target**, representing an all-time low for the time period covered by the assessment (1978-2023).[53] Projections through 2027 furthermore showed that fishing at F_{MSY} would lead to further declines in SSB.[54]

4. EGOM cod is overfished.

Following a steep decrease prior to 2000, EGOM cod SSB remains low and as of 2023 was **12% of the biomass target**.[55]

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[52] *Id.*

[53] NOAA, *Georges Bank Cod, Mgmt. Track Assessment Rep.*, 8 (June 10, 2024), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2024&species_id=4&stock_id=1&review_type_id=3&info_type_id=-1&map_type_id=&filename=2024_COD_GB_Report.pdf.

[54] *Id.* at 2.

[55] NOAA, *Eastern Gulf of Maine Cod, Mgmt. Track Assessment Rep.,* 8 (July 1, 2024), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2024&species_id=4&stock_id=13&review_type_id=3&info_type_id=-1&map_type_id=&filename=Eastern_Gulf_of_Maine_Atlantic_Cod_Update_2024_Post_Review.pdf.

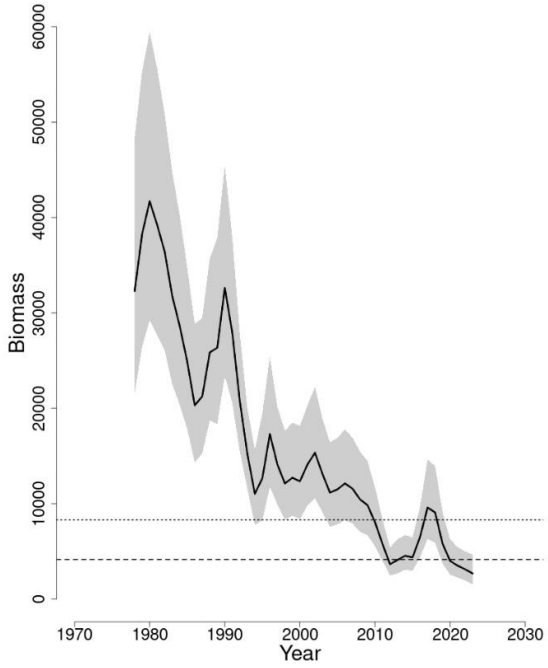

Figure 1: Trends in spawning stock biomass of Georges Bank Atlantic cod between 1978 and 2023 from the current Management Track (solid line). The corresponding $SSB_{Threshold}$ ($\frac{1}{2}$ SSB_{MSY} *proxy*; horizontal dashed line) as well as SSB_{Target} (SSB_{MSY} *proxy*; horizontal dotted line) are based on the 2024 assessment. The approximate 90% lognormal confidence intervals are shown.

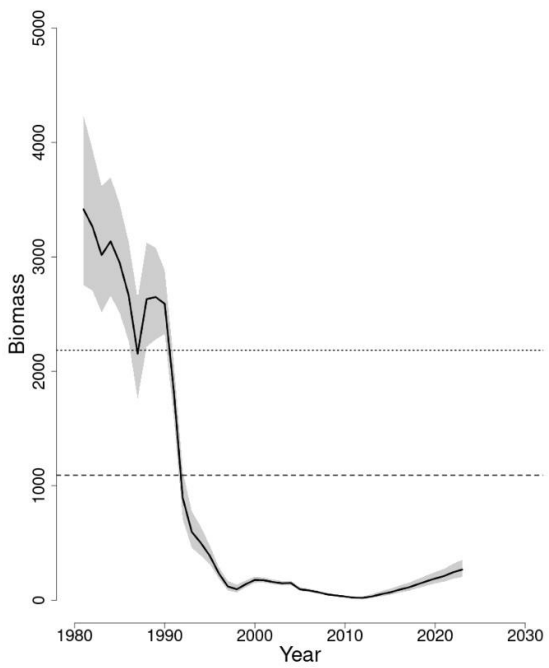

Figure 1: Trends in spawning stock biomass of Eastern Gulf of Maine Atlantic Cod between 1981 and 2023 from the current assessment and the corresponding $SSB_{Threshold}$ ($\frac{1}{2}$ SSB_{MSY} *proxy*; horizontal dashed line) as well as SSB_{Target} (SSB_{MSY} *proxy*; horizontal dotted line) based on the current assessment. The approximate 95% lognormal confidence intervals are shown.

Figure 5: GB cod SSB between 1978 and 2023 (left) and EGOM cod SSB between 1981 and 2023 (right) relative to the target SSBs (horizontal dotted lines) and overfished thresholds (horizontal dashed lines). Grey shading indicates 90% confidence intervals. Reproduced from the 2024 management track assessments.[56]

V. NOAA'S DELAY IN APPROVING AMENDMENT 25 HAS IMPEDED INCORPORATION OF ALL FOUR STOCKS INTO THE NE MULTISPECIES FMP.

Transitioning from managing as two stocks to managing as four was widely understood to be a challenge.[57] Since 2020, however, the Council has actively engaged in educating the public and stakeholders about this new cod stock structure and its implications.[58] These efforts included numerous meetings, workshops, and consultations to ensure that all parties were informed about the issues prior to initiating management actions. In 2023 the Council adopted a multi-year priority to "develop a transition plan for Atlantic cod management."[59]

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[56] *Id.* at 4; NOAA, *Georges Bank Cod, Mgmt. Track Assessment Rep.,* 8 (June 10, 2024) at 4.
[57] Mark Grant (GARFO), *Draft for Committee Discussion*, NEFMC (Mar. 24, 2024), (on file with NEFMC Library).
[58] NEFMC, *Atl. Cod Mgmt. Transition Plan,* https://www.nefmc.org/library/atlantic-cod-management-transition-plan, (last visited Nov. 13, 2025).
[59] NEFMC, *2023 New England Fishery Mgmt. Council Priorities,* (Jan. 13, 2023) https://d23h0vhsm26o6d.cloudfront.net/230113_Approved-_2023_Priorities_2023-07-14-200243_fvab.pdf.

The Council unanimously adopted a phased approach to this transition plan at its April 2024 Council meeting. Phase I would define the stocks in an amendment (Amendment 25) and use the next annual specifications framework (Framework 69) to establish status determination criteria and develop options for apportioning commercial and recreational catch limits for the four new stocks. Phase II was envisioned to implement a broader, long-term approach to adopt new management units, potentially adjust allocations, and include measures to protect spawning cod populations.[60] It was expected that once the new cod stocks were added to the Northeast Multispecies FMP, that NOAA would promptly notify the Council that rebuilding plans were required. The initiation and development of Amendment 25 and Framework 69 were also guided heavily by NOAA General Counsel's process recommendations.

In developing Amendment 25 and Framework 69, the Council sought explicitly to minimize disruption to the groundfish Sectors by avoiding any immediate reallocation of Potential Sector Contribution (PSC). To accomplish this, the Council retained individual permit PSCs established under Amendment 16 for the original GOM and GB stocks, applying these two-stock historical PSCs to allocate sector annual catch entitlements (ACE) under the four new stock areas.[61] The Council treated this as a bridge approach, intentionally deferring any broader reallocation questions to Phase II.[62] Because the new WGOM stock area spans portions of both former stock areas, the bridge approach required an apportioning of WGOM commercial catch between its northern portion (former GOM) and southern portion (former GB) using a method based on catch history from a subset of years.[63] Development of the bridge approach and apportionment method included substantial industry and public input.

Amendment 25 would incorporate the new Atlantic cod stock structure into the NE Multispecies FMP, based on the latest research, had it been approved. The Council noted in Amendment 25 that failure to revise the stock structure and maintain the two-stock approach was inconsistent with peer-reviewed science and untenable because stock assessments are no longer conducted for prior GOM and GB cod.[64] By adopting the new structure, the Council aimed to improve assessment accuracy and management effectiveness. It expected that this would provide long-term conservation benefits by preventing the loss of spawning populations and distributing fishing pressure across biological populations. Recognizing the new stock structure would also enable the development of stock specific management measures that recover depleted stocks and strengthen overall resilience.[65]

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[60] NEFMC, *Final Motions* (Apr. 16-18, 2024), https://d23h0vhsm26o6d.cloudfront.net/Final-Motions-to-Council-April-2024.pdf.

[61] NEFMC, *Amendment 25 (Revised) Appendix III Development of Phase 1 Measures for Atl. Cod Mgmt. Transition Plan: Bridge Approach for Sector Allocation*, at 1, (Dec. 12, 2025) https://d23h0vhsm26o6d.cloudfront.net/A3_250911_Amendment-25-Revised_Appendix-III_Development-of-Phase-1-Cod-Transition_Sector-Allocation-Bridge-Approach.pdf.

[62] *Id*. at 2.

[63] *Id.* at 3.

[64] NEFMC, *Northeast Multispecies Fishery Mgmt. Plan Amendment 25 Final Submission,* (Mar. 2025), at 9, https://d23h0vhsm26o6d.cloudfront.net/250305_Groundfish_Amendment-25_final_submission.pdf.

[65] *Id.* at 14–15 (citing R.S. McBride & R.K. Smedbol, An Interdisc. Review of Atl. Cod Stock Structure in the Western N. Atl. Ocean, NOAA, (2022), https://repository.library.noaa.gov/view/noaa/48082.

On September 25, 2024, the Council took final action on Amendment 25. A preliminary submission was provided to NOAA on November 14, 2024, and a final submission was transmitted on March 5, 2025.[66] On the same day, NOAA published a notice of availability and request for comment on Amendment 25.[67] The proposed rule made no mention of NOAA's concerns about the parallel approach it had supported throughout development of the action. It was not until NOAA notified the Council on May 19, 2025 that it was disapproving Amendment 25 that it mentioned "that the procedural approach to using Framework 69 as a companion trailing action to Amendment 25 did not fully address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act."[68] This disapproval unreasonably ignored the facts and reversed course on prior agency advice to the Council.

NOAA's disapproval letter made the following recommendations consistent with requirements in 16 U.S.C. §1854(a)(3)(C), stating:

> the Council must include in a revised amendment the elements necessary for the action to be consistent with the National Standards and required provisions of the Magnuson-Stevens Act. These management measures must include the SDCs, distribution of ABCs, and accountability measures for the four cod stocks, as developed and included in Framework 69.[69]

Although the Council transmitted Framework 69 to the agency on March 11, 2025, just six days after receipt of Amendment 25, it took NOAA 272 days to publish a proposed rule implementing Framework 69. This is inconsistent with 16 U.S.C. § 1854(b)(1)(A),(B), which sets a firm 15-day deadline for NOAA's determination and, if that determination is affirmative, publish such regulations in the federal register. Alternatively, if that determination is negative, notify the council of its disapproval, any inconsistencies, and provide recommendations on revisions. *Id.* NOAA has never adequately explained why two rule packages submitted within days of each other took such divergent rulemaking paths.

VI. THE REVISED AMENDMENT 25 MUST BE APPROVED.

Faced with Amendment 25's disapproval, the Council had to decide whether to repackage its work and resubmit the action or step aside and allow NOAA to proceed through Secretarial action. It went with the former and, in mid-2025, the Council shifted its attention from previously planned priorities to concentrate on developing a Revised Amendment 25[70] that

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[66] *Id*. at 2.
[67] Amendment 25 Notice of Availability, 90 Fed. Reg. 11,246 (Mar. 5, 2025).
[68] Letter from Michael Pentony, Reg'l Admin'r, to Rick Bellavance, NEFMC Chairman, (May 19, 2025) (on file with NEFMC Library).
[69] *Id*. at 2.
[70] NEFMC, *Final Motions to the Council* (June 2025), https://d23h0vhsm26o6d.cloudfront.net/Final-Motions-to-Council-June-2025.pdf.

would fully address the deficiencies identified in NOAA's disapproval letter.[71] It adopted the four new Atlantic cod stock units and carried forward their associated status determination criteria and ABC specifications (among other things) originally housed in Framework 69. The Council took final action on the Revised Amendment 25[72] at its September 2025 meeting and voted to forward it to NOAA for review. A preliminary version was transmitted on December 12, 2025, followed by NOAA's publication of the Notice of Availability in the Federal Register on January 13, 2026.[73]

In revising Amendment 25, the Council addressed all concerns identified by NOAA in its disapproval letter. NOAA did not identify allocation concerns as a reason for disapproving Amendment 25. Nevertheless, in its revision the Council acknowledged concerns raised earlier regarding potential allocation impacts and provided additional analysis[74] clarifying how the bridge approach would function and explaining why it would not change individual permit PSC and sector ACE calculations. While the original Amendment 25 was deemed administrative in nature (because it only changed the management units) and thus merited a categorical exclusion from environmental review requirements under NEPA, the Revised Amendment 25 benefits from a full environmental assessment including the impacts on human communities.

VII. ANY FURTHER RELIANCE ON THE TWO-STOCK APPROACH COMPROMISES REBUILDING AND EXACERBATES OVERFISHING.

Instead of approving Amendment 25 and Framework 69 in advance of the start of FY 2025 as intended, NOAA issued an emergency action rule for FY 2025.[75] Rather than adopt the scientifically supported four stock approach in its emergency action, NOAA continued the outdated two stock management approach but set catch limits for these two stocks by aggregating ACLs calculated for the four distinct stocks in Framework 69. By focusing its regulatory efforts on emergency action rather than the timely publication of Amendment 25 and Framework 69, NOAA unreasonably delayed the formal adoption of the scientifically supported four-stock approach, undermined efforts to implement more accurate and effective conservation measures and perpetuated a management framework that has repeatedly failed to end overfishing and rebuild cod.

National Standard 1 requires conservation and management measures that "prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the

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[71] NOAA Fisheries, Letter to the New England Fishery Mgmt. Council Regarding Amendment 25 Review (May 19, 2025), https://d23h0vhsm26o6d.cloudfront.net/5a_20250515-A25-Council-Decision-Letter-0648-XE237-v2-Signed.pdf.

[72] NEFMC, *Final Motions to the Council* (Sept. 2025), https://d23h0vhsm26o6d.cloudfront.net/Final-Motions-to-Council-September-2025.pdf.

[73] Amendment 25 (Revised) to the Northeast Multispecies Fishery Mgmt. Plan; Atl. Cod Stocks in Need of Conservation and Mgmt., 91 Fed. Reg. 1257 (Jan. 13, 2026).

[74] Appendix III to Revised Amendment 25, https://d23h0vhsm26o6d.cloudfront.net/A3_250911_Amendment-25-Revised_Appendix-III_Development-of-Phase-1-Cod-Transition_Sector-Allocation-Bridge-Approach.pdf.

[75] Fishing Year 2025 Measures Emergency Action, 90 Fed. Reg. 18,804 (May 2, 2025).

United States fishing industry,"[76] and National Standard 2 requires measures be "based upon the best scientific information available."[77] By aggregating catch limits for four biologically distinct stocks into two management units, the emergency action contradicts the best available science and increases the likelihood of continued statutory non-compliance under MSA by failing to end overfishing on WGOM and SNE cod and compromising the rebuilding of all four stocks.

The mismatch between the two-stock approach and true population structure has been repeatedly linked to persistent overfishing and failures to rebuild.[78] A Council-contracted simulation analysis comparing the approaches confirmed overfishing would likely continue on WGOM and SNE cod, particularly in the short term, and rebuilding would be delayed.[79] These findings are alarming for SNE cod, where the management track assessment documented overfishing at 8 times the sustainable level,[80] and the simulation concluded rebuilding is not possible under the two-stock approach.[81] It is also crucial to recognize the numerous uncertainties[82] in Framework 69's four-stock catch limits themselves. This is particularly true for WGOM cod where exclusion of the bottom long-line survey datapoint and overly optimistic projections heighten the risk of overfishing.[83] Combining these already uncertain limits derived for four stocks into the outdated two stocks only increases the risk of overfishing. By continuing to manage under this outdated and inaccurate approach, NOAA's emergency action ignores the best scientific information available, and fails to prevent overfishing and rebuild the fishery.

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[76] 16 U.S.C. §1851(a)(1).
[77] *Id.* §1851(a)(2).
[78] Lisa A. Kerr, Steven X. Cadrin & Adrienne I. Kovach, *Consequences of a Mismatch Between Biological and Mgmt. Units on our Perception of Atl. Cod off New England*, 71 ICES J. of Marine Sci. 1366–1381 (July 6, 2014), https://doi.org/10.1093/icesjms/fsu113; Douglas R. Zemeckis et al., *Spawning Site Fidelity by Atl. Cod (Gadus morhua) in the Gulf of Maine: Implications for Population Structure and Rebuilding*, 71 ICES J. of Marine Sci. 1356–1365 (July 22, 2014), https://doi.org/10.1093/icesjms/fsu117.
[79] J. Roger Brothers et al., *Comparing Candidate Spatial Mgmt. Unit Structures for U.S. Atl. Cod: Preliminary Demonstrations*, (Mar. 20, 2024), https://d23h0vhsm26o6d.cloudfront.net/3_REVISED_CodStockStructureMSE_TechReport_March2024_SSCreview.pdf.
[80] NOAA, *Southern New England Cod 2024 Mgmt. Track Assessment Rep,* (2024), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2024&species_id=4&stock_id=14&review_type_id=3&info_type_id=-1&map_type_id=&filename=Southern_New_England_Cod_2024_report_revised_projections.pdf.
[81] J. Roger Brothers et al., *Comparing Candidate Spatial Mgmt. Unit Structures for U.S. Atlantic Cod: Preliminary Demonstrations*; (Mar. 20, 2024), https://d23h0vhsm26o6d.cloudfront.net/3_REVISED_CodStockStructureMSE_TechReport_March2024_SSCreview.pdf.
[82] Memorandum from Sci. and Stat. Comm. to Cate O'Keefe, Exec. Dir., (July 31, 2024) (on file with NEFSC Library); Memorandum from Sci. and Stat. Comm. to Cate O'Keefe, Exec. Dir., (September 4, 2024) (on file with NEFSC Library).
[83] NOAA, *Western Gulf of Maine Cod, 2024 Mgmt. Track Assessment Rep.,* NEFSC, 2 (July 10, 2024), https://apps-nefsc.fisheries.noaa.gov/saw/sasi_files.php?year=2024&species_id=4&stock_id=12&review_type_id=3&info_type_id=-1&map_type_id=&filename=.

VIII. NOAA IS LONG OVERDUE TO END OVERFISHING AND INITIATE REBUILDING PLANS FOR ATLANTIC COD.

The new understanding of cod stock structure improves our ability to effectively manage the species, but it does not alter NOAA's statutory obligation to rebuild. Given that the four-stock structure is the best available science and that no valid assessments exist for the former two stocks, NOAA and the Council have had to operate under the assumption that prior rebuilding plans are no longer in effect. This has created a void in rebuilding progress that must be remedied. Setting aside past failures, NOAA has known that these four stocks have been overfished since the research track assessment peer review was completed three years ago, and this status was confirmed by accepted management track assessments completed two years ago.

The APA authorizes courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). Actions are "unlawfully withheld" when they fail to meet a statutory deadline. *Norton v. S. Utah Wilderness All. et al.*, 542 U.S. 55, 64 (2004); *Leigh et al., v. U.S. Dep't of Interior*, No. 2:22-cv-01200-MMD-BNW, 2024 WL 4279156 (D. Nev., Sep. 23, 2024). Even if nothing in the MSA explicitly contemplates this situation – changed understanding of stock structure - the Act's plain language compels actions to end overfishing immediately once identified as overfished and to initiate plans that rebuild in a timely manner. Either the Council or the Secretary must promptly prepare rebuilding plans that set a time period for rebuilding that is "as short as possible," taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations, and interactions of the overfished stock within the marine ecosystem.[84] Any continued failure to act by NOAA is wholly unreasonable; *see Telecomm. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) (finding unreasonable delay can be determined in part by considering whether "Congress has provided a timetable or other indication of speed…").

We urge NOAA to approve and implement the Revised Amendment 25 as expeditiously as possible, and definitely before the start of the fishing year on May 1, 2026. If it cannot complete APA rulemaking by publishing a proposed rule in the federal register and finalizing after public comment, then it should issue an interim final rule and allow public comment on that rule prior to publishing a final rule. NOAA must immediately thereafter ensure that rebuilding plans are initiated consistent with the MSA and other applicable laws.

[84] 16 U.S.C. § 1854(e)(3)(A), (4)(A)(i).

IX. CONCLUSION

Atlantic cod presents a unique and urgent case in U.S. fisheries management. Atlantic cod has been subject to nearly three decades of unsuccessful rebuilding efforts. The updated understanding of stock structure and the peer reviewed adoption of four stock assessment models for the region do not lessen the imperative to rebuild. Rather, they enhance the scientific precision of management actions for this imperiled species. We are not asking the Secretary of Commerce or NOAA to go beyond what the APA and MSA already demand. We are simply asking it to recognize the extensive work completed by the Council, implement the Revised Amendment 25 before May 1, 2026, and begin the urgent, overdue actions required to set Atlantic cod on a genuine course to recovery. Continued delay in approving actions necessary to end overfishing and initiate new rebuilding plans for Atlantic cod, or in developing the plans through a Secretarial Amendment, is unacceptable.

To protect the long-term viability of the fishery, NOAA must incorporate the four cod stock structure in the NE Multispecies FMP, end overfishing on the WGOM and SNE stocks, and move enforceable rebuilding plans forward for all four stocks.

Specifically, CLF petitions the Department of Commerce and NOAA to expeditiously approve the Revised Amendment 25,[85] *and* e*ither*

1) **immediately notify the Council that it must take action to end overfishing on the WGOM and SNE cod stocks, and prepare rebuilding plans within two years for all four cod stocks, consistent with 16 U.S.C. § 1854(e)(3)(A), (4); *or***
2) **prepare a Secretarial Amendment (and any accompanying regulations) within 9 months that stops overfishing on the WGOM and SNE cod stocks and rebuilds all four cod stocks, consistent with § 1854 (c), (e)(4), (5).**

Thank you for your consideration and please do not hesitate to contact us if you have any questions.

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[85] If NOAA cannot implement the Revised Amendment 25 by May 1, 2026, it should issue an interim final rule adopting the four-stock structure, status determination criteria, catch limits, accountability measures, and other provisions in the revised amendment.