

Testimony of James A.Odlin

Before the Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard

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Good morning, Senator Snowe. My name is James Odlin.

Thank you for the opportunity to be here today and to provide an industry perspective on several questions you have raised with regards to groundfish management in New England.

**Interim Measures:**

When the National Marine Fisheries Service (NMFS) imposed an interim rule for the NE groundfish fishery in 2006, they chose a broad-brush management approach that was in complete conflict with the more proper approach ultimately chosen by the New England Fishery Management Council (Council). The interim rule imposed differential counting of days-at-sea on all management areas, with the result that one management area (western Gulf of Maine) and two stocks (Gulf of Maine cod, and Gulf of Maine yellowtail) were under-protected while other areas and stocks were overprotected. The Council approach (FW42) ultimately imposed more appropriate restrictions with a focus on problem areas and stocks.

The need for interim rule for 2006 was repeatedly characterized, by NMFS, as a failure of the Council to develop management restrictions within the necessary timeframe. What is left out of the discussion is the fact that the NMFS did not provide to the Council the scientific information it needed in time to develop those management recommendations.

Today, the Council and the industry face the same timing conundrum. At the September meeting of the Council, the Regional Administrator reported that the NMFS is preparing an interim rule for 2009 because the Council had “failed to do its job”. However, NMFS has known since 2004 that an assessment of all groundfish stocks (GARM III) was pending for 2008. Still, the final meeting of GARM III was scheduled for mid-August 2008, instead of an earlier timeframe, which may have afforded adequate time for the Council to develop recommendations.

At a special meeting in September to receive the GARM III advice, the Council did develop a recommendation for interim measures, and by a vote of 15 to 1, the Council did approve that recommendation. However, the Regional Administrator has unilaterally determined that the Council recommendation is not acceptable, and reported that the NMFS would begin work on different, more “simple” interim measures.

The industry is concerned that the NMFS will, in the interest of “administrative simplicity”, impose inappropriate restrictions for 2009 - restrictions that will once again cause unnecessary economic harm to the industry without providing adequate protection to appropriate stocks and areas. The industry supports the process outlined by the Magnuson

Stevens Act (MSA), which empowers the regional Councils to develop fishery management recommendations, and we do not support unilateral action by the NMFS.

NMFS personnel have suggested that an interim rule would need to achieve F-rebuild for some or all stocks. However, section 304(e)(6) of the rebuilding provisions of the MSA does not include any requirement for interim measures promulgated by NMFS under section 305(c) to achieve F-rebuild. In fact, section 304(e)(6) plainly states that interim measures may be implemented even though they are not sufficient by themselves to stop overfishing.

"(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery." (16 USC 1854(e)(6)).

Section 305(c) clearly states that the objective of interim measures is to "reduce" or "address" overfishing; not to achieve F-rebuild or end overfishing immediately.

NMFS personnel have also signaled a plan to use the interim rule to impose additional restrictions for stocks that have been newly declared "overfished" by the GARM III even though existing and proposed guidelines allow the Council one year to develop an appropriate rebuilding plan. Amendment 13 made it clear that status determination criteria are not effective until adopted by the Council, therefore NMFS is going beyond its authority if the interim rule includes restrictions for those stocks newly declared overfished by GARM III.

Today, the industry is faced with the overwhelming uncertainty of what kinds of measures will be implemented in the interim rule, but we can be certain that there will be no measures to mitigate the economic impacts.

### **Amendment 16:**

The NMFS has been putting extreme pressure on the Council to comply with the provisions of the recently reauthorized MSA, yet the agency has failed to provide the final guidance necessary to comply with those provisions. It is quite possible that the Council may develop policy and management measures that will need to be redeveloped at a later date. The NMFS is also pressuring the Council to develop rebuilding plans, in Amendment 16, for those stocks newly declared "overfished" by GARM III, even though they otherwise would have one year to develop rebuilding plans. This takes staff and Council time away from developing potential mitigation measures for the severe cutbacks anticipated in Amendment 16.

### **Science:**

The industry has no confidence in the Northeast Fisheries Science Center (Science Center) stock assessments for groundfish.

This year, the industry engaged the expertise of Dr. Doug Butterworth, University of Cape Town, South Africa, to participate in GARM III. Due to limited resources, the industry engaged Dr. Butterworth's attention to only the Gulf of Maine cod assessment and the assessment for white hake. In both cases, his intervention produced significantly better results in terms of calculating current biomass and fishing mortality levels as well as biomass and fishing mortality reference points. We believe that had we the resources and time to engage his attention to all 19 stocks we would have improved results for several other stocks.

I will list several examples of our concerns. (Please also note the attached letter from Council Executive Director Paul Howard to NMFS Regional Administrator Pat Kurkul that also expresses concerns about the results of GARM III, as well as a copy of Administrator Kurkul's response.)

- 1) According to the 2005 groundfish assessment – witch flounder – a highly valuable stock that comprises a significant part of groundfish landings by Maine boats – was determined by the Science Center to be nearly rebuilt. In the intervening years, the industry caught about 1/3 of the “scientifically determined” total allowable catch, and the fishing mortality was well below the “scientifically determined” target. However, GARM III now declares the stock as overfished and overfishing is occurring.
- 2) The GARM III assessment for Georges Bank cod produced different results than those produced by the Transboundary Resource Assessment Committee just a few short weeks prior to GARM III.
- 3) With regards to the Gulf of Maine winter flounder assessment, the GARM III panel noted that the “analysis could not be used to provide management advice nor stock projections”, yet the Science Center did just that to recommend a drastic reduction in fishing mortality.
- 4) The pollock assessment is an index-based assessment meaning it is dependent on the amount of fish caught in the trawl survey. For that type of assessment, scientists typically use a 3-year running average of survey indices. However, in GARM III the Science Center used only 1 year of data instead of 3, which has resulted in a determination of overfished. As you know, once declared overfished, a rebuilding program is required, and as I've stated earlier, NMFS is proposing to take action for this stock in the interim rule. Once the 2008 data is available, a 3-year calculation may show that the stock is not overfished, which would again reverse the status of this stock.
- 5) For the white hake assessment the Science Center used proxy age data for the time period of the 1960s and 1970s, which was obtained by assuming that the average relationship between age and length over the 1980s and 1990s applied to every year of the earlier period. However the Review Panel rejected this assumption because of a potential to introduce errors. Instead the Panel preferred Dr. Butterworth's assessment, which avoided the need to make this questionable assumption for the earlier years.
- 6) You will recall that in 2005 the biomass targets for several stocks were dramatically increased – in some cases doubled – and in at least one case, the target was set higher

than any observed level of abundance. In 2008, many of those same targets have been reduced; others have been increased. As you know, these wildly divergent “estimates” become the determining “facts” on which new management restrictions are based.

The industry cannot continue to withstand this constant whipsawing of scientific information.

The groundfish assessment process itself was problematic. A panel comprised of scientists external to the Science Center, developed final recommendations on the basis of analyses presented by Center staff, at each of a series of four weeklong meetings. However of the 5-member Panel for the last meeting, which provided the final management advice, only the Chair (Dr. O’Boyle) and Dr. Butterworth were present at all meetings. At each of the meetings, as many as 19 different stocks were discussed. The industry believes that this provided insufficient time to discuss any of the stocks at the level of depth required for reliable recommendations.

### **Vessel buyout:**

A buyout is crucial to lessening the negative impacts of Amendment 16. The industry has advanced a proposal to Congress for an industry-funded buyout. A buyout would remove excess capacity, give those who wish to leave the industry a dignified way to exit, and allow those who wish to remain the opportunity to succeed. A west coast groundfish buyout has provided increased profitability for fishing businesses and stability for fishing communities.

### **Sectors:**

The industry has been working for a long time on developing groundfish sectors. This has been a costly endeavor in terms of time and financial resources. Sector allocations will be based on landings histories of each vessel in the fleet, yet the industry has had considerable difficulty retrieving landings data from the NMFS. The Sustainable Harvest Sector submitted a roster of vessels with a data request nearly two years ago, and we have still not received the data. Sectors seem to be the only alternative to massive cuts in DAS and/or derby style fishing. At every step of the way during the development of Amendment 16, the NMFS has thwarted the Council’s ability to develop sectors.

If we are to be forced to adhere to a catch based management system (as opposed to DAS) the industry believes that ITQs, for several reasons primarily related to cost, would be preferable to sectors. According to the current draft of Amendment 16, sectors will be held responsible for the costs of dockside monitoring, at sea monitoring, development of an environmental assessment (yearly) as well as a sector manager salary. In addition, NMFS has decided that sector members will also be held joint and severably liable for ANY violation of the management restrictions, even though this type of liability was never recommended by the Council. However, it is unlikely that the Council would ever seriously contemplate development of an ITQ proposal for groundfish because of the onerous requirements proposed for the referendum process.

## **Recommendations:**

The future of groundfishing in Maine is bleak.

The State no longer has very many medium and no large vessels necessary to maintain a year-round landing stream, which is then necessary to maintain the shore-side infrastructure.

However, there are some actions that Congress could take to improve the outlook.

First and foremost, Congress must amend the Magnuson-Stevens Act in a way that clearly articulates the flexibility necessary for fisheries managers to restore fisheries resources while preserving fishing communities. The most recent reauthorization, at least from the draft guidelines proposed by the NMFS, will most likely decrease the flexibility manager's desperately need. Congress must also remove the requirement for a referendum for ITQ management as the referendum process serves only as a major obstacle to ITQ management.

Congress must insist on a new benchmark assessment for Georges Bank cod, pollock, and winter flounder.

Congress must insist on a complete analysis of the appropriate natural mortality estimate for each stock, instead of defaulting to a natural mortality rate of 0.2 for all stocks.

Congress must provide the funding necessary for a buyout, or alternatively advance the industry-funded buyout.

Congress must provide funding for the costs of sector monitoring. In other fisheries where dockside and at-sea monitoring are required, the cost to industry is more than 10% of the landings value. The NE groundfish fishery cannot sustain those costs now, or anytime in the near future.

Congress must clarify that when stocks are jointly managed by the US and Canada this be considered an agreement under MSA.

Congress must work more closely with the executive and legislative branches of Maine government to encourage the State to focus more resources on improving groundfish science and to make involvement in groundfish management a State priority.

Again, thank you for the opportunity to be here today. I am happy to answer any questions you may have.