

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 07/22/2002
Departmental Forms Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6086
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a new information collection received on 06/13/2002.

TITLE: Northeast Region Yellowtail Flounder Exemption Programs and Days- at-Sea Allocation Appeals

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0457

EXPIRATION DATE: 12/31/2002

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	8,700	877	0
Difference	8,700	877	0
Program Change		877	0
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of
Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

SUPPORTING STATEMENT
Yellowtail Flounder Exemption Programs and
Days-at-Sea Allocation Appeals
Northeast Region

INTRODUCTION

This submission requests emergency processing by the Office of Management and Budget (OMB) of this submission for a collection of information under the procedures set forth in Section 1320.13 of the regulations implementing the Paperwork Reduction Act of 1995 (PRA).

This submission would add new requirements that would allow fishing industry participants to enroll in an exemption program that will allow those fishing north of 40° N. latitude to possess yellowtail flounder, and those fishing in areas other than the Southern New England (SNE) regulated mesh area to possess yellowtail flounder in excess of the restrictive trip limits imposed for that area. In addition, this submission requests clearance of a provision that would allow Days-at-Sea (DAS) permit holders to submit relevant information in order to appeal their baseline allocation, as determined by the National Marine Fisheries Service (NMFS) based on the permit's maximum DAS used during the period of May 1, 1996 - April 30, 2001. The baseline is determined for the purposes of implementing a 20 percent reduction in DAS. These measures are to be implemented as part of a Settlement Agreement Among Certain Parties (Settlement Agreement) developed as part of a U.S. District Court for the District of Columbia (Court)-sponsored mediation in the case of Conservation Law Foundation, et al. v. Evans (Case No. 00CV01134). On May 23, 2002, the Court ordered implementation of the Settlement Agreement, as drafted, for August 1, 2002. Although NMFS intends to publish the provisions of the Settlement Agreement as a proposed rule by mid-June, 2002, insufficient time exists to obtain routine OMB clearance of this collection of information in order to allow the measures to be effective for August 1, 2002.

Upon approval and final clearance, NMFS intends to merge the requirements into the OMB-approved family of forms that currently covers the Northeast Region's permit requirements for fishing vessels, operators, and dealers for the Northeast Region Permits (OMB Control No. 0648-0202).

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

This collection of information is necessary to comply with the Court Order to reduce overfishing beginning with the second quarter of the 2002-2003 fishing season, beginning August 1, 2002. The Settlement Agreement was filed with the Court on April 16, 2002, and contained three fundamental parts for the Northeast Multispecies fishery management plan (FMP): Part I was implemented for May 1, 2002, Part II is to be implemented for August 1, 2002, and would continue until implementation of and Part III, which includes Amendment 13 to the FMP.

Amendment 13, which would bring the FMP into full compliance with the provisions of the Sustainable Fisheries Act and other applicable law, is to be implemented by August, 2003. After reviewing the Settlement Agreement, the Court had instead ordered on April 26, 2002, a more restrictive version of it. However, on May 23, 2002, the Court reconsidered its Order, and ordered the implementation of the Settlement Agreement as drafted.

Part II of the Settlement Agreement includes measures such as new area closures, restrictions on gear and DAS usage, as well as restrictive possession limits for some stocks of fish. Restrictive possession limits would be implemented for the SNE stock of yellowtail flounder, including the complete prohibition on its possession south of 40° N. latitude. However, other stocks of yellowtail flounder, such as Georges Bank yellowtail flounder, are not in need of such reductions and could support fishing pressure greater than the SNE stock. Therefore, allowing industry participants to enroll in an exemption program is necessary for those who fish north of the no-possession line to possess yellowtail flounder, and those that fish in areas other than the SNE stock area to possess more than the trip limit.

Part II of the Settlement Agreement also calls for the freeze of DAS for an individual permit at the maximum level used during the period May 1, 1996 to April 30, 2001. For most vessels subject to DAS, the call-in system used to track DAS will be used to determine this baseline. For limited access vessels not under the call-in system during the period May 1996 through June 1996, a vessel's DAS will be based on vessel trip reports (VTR) submitted to NMFS before April 9, 2002. These vessels include those who had 45-ft in length and less, hook gear, and gillnet permit categories. Since data may be incomplete for these vessels, these vessels may submit information in support of an appeal of the determined baseline.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

The yellowtail exemption programs would be used to distinguish vessels that fish north of 40° N. latitude, and in areas other than the SNE regulated mesh area, where the restrictive trip limits would apply. Vessels enrolled in these programs could possess yellowtail flounder, and could possess yellowtail flounder in excess of the trip limits, depending on the area fished and the program in which it is enrolled. Vessel operators could enroll in both programs. The information requested would be used by several offices of NMFS and the New England Fishery Management Council to evaluate the management program and future management proposals. The information may also be used by the U.S. Coast Guard to monitor compliance with the provisions of the FMP. In most cases, aggregated summaries of participants are made available, but for law enforcement, individual vessel information is often required. In addition to the uses specifically relating to multispecies management, the data collected through the effort monitoring will be incorporated into the NMFS databases which are used in many analyses by NMFS offices, the Regional Fishery Management Councils, the states, the Departments of State and Commerce, OMB, the Corps of Engineers, Congressional staffs, the fishing industry, and the public.

The information requested with regards to enrollment in the programs will enable NMFS to monitor and track the level of participation in this fishery, and its effect on the effort reduction. The information requested to issue exemption permits is the logical vessel and ownership identifiers (vessel name, NMFS permit number, owner, address), and the expected participation period. The information is collected verbally - either by phone or in person - and is filled in on blank permits which have an authorization stamp. These permits are kept on board the vessel during program participation to verify enrollment in the exemption program. It is anticipated that most vessels enrolling in the North of 40° N. latitude exemption program will do so only once during the permit year (May-April) although a small percentage may opt in and out more than once. The same number of vessels may enroll into areas other than the SNE regulated mesh area, however a larger percentage will opt in and out several times. A minimum enrollment period of 30-days will be specified for both programs.

The information requested with regards to appeals will enable NMFS to determine if the agency erred in determining a vessel's DAS baseline. The information requested to conduct an appeal includes the logical vessel and ownership identifiers (vessel name, NMFS permit number, owner, address), and information related to the DAS fished by a vessel that are in question. The information is collected by mail and in person. Only one appeal would be allowed.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This collection of information would be done via mail, phone or fax transmission, or in person. This format is used for all such exemption programs in the Northeast Region and minimizes the reporting burden on the public as well as the administrative burden on NMFS. No improved information collection technology has been identified to reduce this burden further. Every effort will be made in the future to use computer technology to reduce the public burden. The collection of information pertaining to whether a vessel is fishing south of 40° N. latitude may be automated in the future if the electronic vessel tracking system (VTS) is implemented.

4. Describe efforts to identify duplication.

Other than information such as the vessel owner's name, vessel name, and permit number needed to initially identify participants, no information will be collected that is already collected through another means.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Only the minimum data to meet the requirements of the above measures are requested from all respondents. Since most of the respondents are small businesses, separate requirements based on the size of business have not been developed.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

As the design of the exemption program included in the Settlement Agreement is to afford maximum flexibility within the fishery while still accomplishing the goals of the FMP, exemptions are issued at the convenience of the respondent. For this reason, exemptions are issued on-demand, and may likely exceed one during the year. To not conduct this collection, and thus not exempt vessels from the most restrictive possession limits, would require all vessels, regardless of the area fished, to not possess YT Flounder. If appeals are not allowed, then some vessels would receive a baseline allocation of DAS--which would then be further reduced by 20 percent per the provisions of the Settlement Agreement--that is not representative of their maximum DAS used during the qualifying period.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The data collection is consistent with OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Since these collections are the result of mediated settlement to a Court action, the provisions of the collection are based on consultation among the parties involved in the Settlement Agreement. The requirements are standard and do not differ substantially from those used routinely in the Northeast Region. A proposed rule announcing the provisions of the Settlement Agreement is expected to be published shortly.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Neither payments nor gifts are given to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data will be kept confidential as required by NOAA Administrative Order 216-000, Confidentiality of Fisheries Statistics, and will not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e., vessel name, owner, etc.).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The following information is summarized in Table 1 at the end of the text.

Regulatory changes contained in this action add new burdens associated with those changes. Numbers reflect estimates for the multispecies fishery only.

Those vessel operators who fish north of 40° N. latitude or fish outside the SNE regulated mesh areas at least once per year would be most likely to enroll in the exemption programs. The vessel operators seeking to participate in either or both of these programs would be required to notify NMFS of the desired dates for entry and exit. It is difficult to estimate the burden associated with the exemption program because the frequency of participation will be determined entirely by the individual vessel owner. The effort needed to enter and exit the exemption program is more than offset by the flexibility the program offers. The burden calculation is based on the estimation that 1,400 vessel operators will enroll in and withdraw from the North of 40° Exemption Program once each during the year for a total of 2,800 notifications. This number presumes that some may enroll once, and never withdraw. Enrollment in and withdrawal from the SNE yellowtail flounder trip limit exemption program is estimated as twice during the year, for a total of 5,600 notifications per year per program, or 8,400 total. Participants in the exemption program will be required to enroll for a minimum of thirty (30) days and carry an Exemption Certificate on board their vessel. Notifications are on demand, made in person or via telephone, and estimated at 2 minutes per notification.

With the establishment of a new baseline DAS level and reductions in allowable fishing DAS from that level, it is anticipated that 300 vessels will appeal their baseline. These vessels were those who did not take part in the call-in system prior to Amendment 7 to the FMP (1996), and will rely on their VTR records to corroborate or correct NMFS data on their maximum DAS level. On average, these appellants may spend two (2) hours gathering and presenting the documentation needed.

Regulatory changes contained in this action add new burdens associated with those changes. Numbers reflect estimates for the multispecies fishery only. The estimated annualized cost to respondents for the hour burden this collection assumes a respondent wage and overhead value of \$15/hour.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

For the most part, this information collection does not require respondents to purchase new or additional equipment or services. Most computers, telephones and/or facsimile machines utilized by the respondents would have already been purchased as part of customary and usual business practices, thus start up costs associated with these programs are negligible.

14. Provide estimates of annualized cost to the Federal government.

The following information is summarized in Table 1 at the end of the text.

Regulatory changes contained in this action add new burdens associated with those changes. Numbers reflect estimates for the multispecies fishery only.

Costs associated with the exemption program reflect a cost of \$25/hour to the government. The cost to the government for the DAS baseline appeals is expected to require one hour of time at the GS-9 level (\$18.86 including overhead) for review, and one hour at the GS-12 level (\$27.35) for a hearing. Additionally, telephone, handling and travel costs are estimated at about \$25 per appeal. Thus, the total estimated cost to the government per appeal is about \$71.

Annualized costs to the federal government for these programs include staff costs and system operation associated with processing the information.

The total estimated costs to the government are \$ 49,525 (Table 1).

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This is a program change resulting from new requirements.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Results from this collection may be used in scientific, management, technical or general informational publications such as Fisheries of the United States which follows prescribed statistical tabulations and summary table formats. Data are available to the general public on request in summary form only; data are available to NMFS employees in detailed form on a need-to-know basis only.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

All forms will display the OMB control number and expiration date along with information relevant to the Paperwork Reduction Act of 1995.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-1.

All instances of this submission comply with 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods are employed in the information collection procedures; the requirements are mandatory for all participants in the indicated fisheries.

Table 1. Summary of burden estimates under the Yellowtail Flounder Exemption Programs and Days-at-Sea Allocation Appeals.

Permit Requirement	# of Entities	Items Per Entity	Total # of Items	Response Time	Total Burden	Cost to Gov't
Exemption Programs						
-- Possession north of 40°	1,400	2	2,800	0.033	92	2,300
-- SNE YT Trip Limit	1,400	4	5,600	0.033	185	4,625
Exemption totals	1,400	6	8,400		277	\$6,925
DAS Baseline appeal	300	1	300	2	600	42,600
Grand totals	1,400 ¹		8,700		877	\$49,525

¹ - Exemption totals and grand totals equal 1,400 because it is anticipated that the same universe of entities will apply for one or both exemption programs and will also appeal their DAS allocation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONSERVATION LAW FOUNDATION,)	
et al.,)	
Plaintiffs,)	
)	
v.)	Civil Action No. 00-1134 (GK)
)	
DONALD EVANS, et al.,)	
)	
Defendants.)	
)	

ORDER

The Court has received the various motions for reconsideration of its Remedial Order, issued April 26, 2002, filed by the Conservation Law Foundation, the federal Defendants, Northeast Seafood Coalition, the State of New Hampshire, the State of Maine, the Commonwealth of Massachusetts, the State of Rhode Island, Stonington Fisheries Alliance, Saco Bay Alliance, Northwest Atlantic Marine Alliance, Cape Cod Commercial Hook Fishermen’s Association, Craig A. Pendleton, Paul Parker, Associated Fisheries of Maine, Inc., the City of Portland, Maine, the City of New Bedford, Massachusetts, and the Trawlers Survival Fund.

An Opposition to these Motions has been filed by the National Audubon Society, Natural Resources Defense Council, and The Ocean Conservancy.

The Court has carefully considered all the arguments presented and has concluded that the motions for reconsideration should be

granted.¹ Movants are indeed correct that the important changes made by the Court in the complex and carefully crafted Settlement Agreement Among Certain Parties ("Settlement Agreement") would produce unintended consequences. Those changes would (1) not only fail to produce the results the Court was seeking to obtain, but might further imperil the particular vulnerable species for which the Court was trying to provide additional protection; (2) seriously unbalance the comprehensive partial Settlement Agreement which settling parties intended to be implemented as an integrated whole; and (3) cause grave economic and social hardship, as well as injustice to individuals, to families, to fishing communities, and to surrounding cities and states.²

As Movants have noted in their papers, several of the changes made in the partial Settlement Agreement were never briefed or fully explored before the Court, even though some of them were advocated for by the government and other parties in the individual briefs filed during the lengthy process of briefing and mediation.

¹ The Opposition is simply incorrect in arguing that Movants have failed to meet the standard for reconsideration under Fed. R. Civ. P. 59(e). As noted, *infra*, the moving parties have provided new evidence and have demonstrated manifest injustice, both of which provide more than sufficient justification for granting the motions for reconsideration.

² It would appear that some interests still went unrepresented in the mediation process despite efforts at involving all concerned. See, for example, the letter from the N.H. Hook Fishermen's Association, in Appendix A, which includes all post-Remedial Order correspondence received by the Court.

The development of an appropriate remedy in this case is particularly complex given the vital interests that are at stake. The Court is mindful, not only of the importance of protecting the New England groundfish species, but also of the very real impact any regulation has on those individuals and communities that depend, and have depended for generations, on such fishing. The experience of the litigants, the public, and the Court during these last three months of intense work on development of a remedial order demonstrates the need for a participatory, collaborative, deliberative process that will thoroughly and thoughtfully explore, on the basis of the most current and widely accepted scientific data,³ the complexities of the issue and its many interrelated elements. The Court hopes that the experience with the mediation process, and the productive working relationships which developed during that process, can continue to motivate and guide the parties as all of them focus on the development of Amendment 13.

Wherefore, it is this _____ day of May 2002 hereby

ORDERED that the Court's Remedial Order of April 26, 2002, and its Amended Remedial Order of May 1, 2002, are **vacated**; and it is

FURTHER ORDERED that all motions for reconsideration are **granted** insofar as they request adoption of the provisions of the Settlement Agreement Among Certain Parties; and it is

³ National Standard Two requires use of "the best scientific information available." 16 U.S.C. § 1851(a)(2).

FURTHER ORDERED that the Settlement Agreement Among Certain Parties, dated April 16, 2002, shall be **implemented** according to its terms, and this Court shall retain jurisdiction until promulgation of Amendment 13; and it is

FURTHER ORDERED that the Secretary shall, as was agreed in the Stipulated Order submitted to the Court on April 18, 2002, **promulgate** an **Amended Interim Rule**, to become effective no later than **June 1, 2002**, to reduce overfishing during the first quarter of the 2002-2003 fishing season; and it is

FURTHER ORDERED that the Secretary shall, as was agreed in the Stipulated Order submitted to the Court on April 18, 2002, **promulgate** an **Amended Second Interim Rule**, to become effective no later than **August 1, 2002**, to reduce overfishing beginning with the second quarter of the 2002-2003 fishing season, beginning August 1, 2002, and continuing until implementation of a Fishery Management Plan Amendment that complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and it is

FURTHER ORDERED that the Secretary shall, as was agreed in the Stipulated Order submitted to the Court on April 18, 2002, promulgate, no later than **August 22, 2003**, a **Fishery Management Plan Amendment** that complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and it is

FURTHER ORDERED that the Secretary shall, no later than

December 1, 2002, develop, prepare, publicize, and make public the most current and reliable scientific information available to enable completion of the Fishery Management Plan Amendment referred to in the preceding paragraph no later than August 22, 2003; the Secretary shall, no later than **December 1, 2002**, calculate the TAC for all species governed by Amendment 9; and it is

FURTHER ORDERED that for all gear sectors, NMFS shall provide 5% observer coverage, or higher, if necessary to provide statistically reliable data. Effective May 1, 2003, NMFS shall provide 10% observer coverage for all gear sectors, unless it can establish by the most reliable and current scientific information available that such increase is not necessary; and it is

FURTHER ORDERED that the present action is temporarily **stayed** pending such further proceedings as may be required with respect to each of the three administrative actions set forth above; and it is

FURTHER ORDERED that the parties shall submit a Joint Praecipe no later than **September 5, 2002**, informing the Court of the steps that have been taken to comply with this Order and to meet the deadlines herein for December 1, 2002, and August 22, 2003.

Gladys Kessler
U.S. District Judge

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EXHIBIT A

Interim Action

FOR 1 MAY 2002 UNTIL REPLACED BY EXHIBIT B MEASURES

INTERIM ACTION ADDITIONAL EFFORT REDUCTION MEASURES

When fishing under a multispecies DAS –

- Restrict vessels from fishing more than 25 percent of their allocated DAS during May through July

Additional measures that apply everywhere for duration of action

- Count multispecies DAS as a minimum of 15 hours, for any trip longer than 3 hours
- Prohibit “front loading” of the DAS clock (require that vessels leave port within 1 hour after calling into the DAS program to prevent vessels from accumulating time for the purposes of directing on GOM cod)

ADDITIONAL CLOSURE AREAS

- Close the inshore Western Gulf of Maine closure area
- Close the existing Cashes Ledge closure area year round
- Add additional inshore closure areas, i.e. statistical area blocks 124 and 125 during the month of May and 132 and 133 during June

Additional gear restrictions

- Require 6.5 inch diamond or 6.5 inch square mesh codend for trawl vessels and 6.5 inch mesh nets for trip gillnet vessels when fishing under a multispecies DAS in GOM (current mesh size restriction allows all vessels a choice of 6 inch diamond or 6.5 inch square mesh throughout net)
- Reduce dayboat gillnet allowance to 50 roundfish nets with minimum 6.5” mesh, 100 flatfish nets with minimum 7” mesh, and 150 monkfish nets with minimum 10” mesh

Additional recreational measures

Private Recreational vessels –

- Increase the cod minimum size to 23 inches
- The bag (possession) limit for cod will be 10 fish

Charter and Party Vessels –

- Increase the cod minimum size limit to 23 inches
- Vessels intending to charter/party fish in the Gulf of Maine closed areas must declare into charter/party fishery for the duration of the closure or for three months whichever is greater.
- Limit 10 cod/haddock in the Gulf of Maine

All status quo measures will continue to apply.

EXHIBIT B

Second Interim Action

The following interim measures will be implemented August 1, 2002 and continue until the implementation of Amendment 13 - all other status quo measures will also apply during that time and throughout the range.

When fishing in all areas under multispecies Days at Sea (DAS)

- Freeze Days at Sea (DAS) using the period of May 1, 1996 - April 30, 2001 at the maximum DAS used by a permit in any single year, not to exceed the current allocation. No vessel shall receive less than 10 days. For limited access vessels not under the call-in system during the period May 1996 through June 1996, a vessel's DAS will be based on vessel trip reports submitted to NMFS before April 9, 2002. Otherwise, DAS will be based on NMFS call-in system.
- DAS will be reduced by 20% from the above baseline, taking into account DAS used prior to the Second Interim Action.
- Count DAS at status quo rates as counted prior to the Interim Action
- The minimum size for cod that may be sold shall be 22".
- 5% observer coverage, or that level that is necessary to provide statistically reliable data, shall be mandated for all gear sectors. This level shall be no lower than that level that the NMFS has already budgeted for in fiscal year 2002-2003. Increases above this level are subject to additional funding. Statistical analysis shall be performed by the NMFS by September 2002.
- Trip limit for open access hand-gear vessels shall be reduced to 200 lbs of regulated species
- Freeze on issuance of any new open access hand-gear permit to any vessel that has never been issued such permit, or has not submitted an application for such permit, as of the date of implementation of interim measures.
- Prohibit front loading of the clock for all areas (require that vessels leave port within 1 hour after calling into the DAS program).
- Western Gulf of Maine year round closure continued unless modified by amendment .
- Prohibit use of de-hookers ("crucifiers") with no less than 6" spacing between the fairlead rollers.

- Trawl mesh shall be no less than 6.5" diamond or 6.5" square in the cod end.
- Mesh size in monkfish gillnets shall be no less than 10" and limited to 150 nets.
- Mesh sizes in the large mesh permit category shall be 2" greater than the current regulated mesh size.

Georges Bank specific measures

- All vessels using gillnet mesh shall use no less than 6.5" with a limit of 50 nets. Each net must have 3 tags, except for monkfish gillnets if 10" or greater mesh size.
- The cod trip limit shall be 2000 lbs/day, with a maximum trip limit of 20,000 lbs/trip (as a trip is currently defined). Cod landing limits and clock running computations on Georges Bank shall be applied as set forth in 50 C.F.R. § 648.86(b).
 - Close thirty minute squares - 80, 81 and 118, 119 & 120 south of 42° 20' during May 2003.
- Hooks on any limited access multi-species vessel shall be limited to 3600 in number and must be 12/0 circle hooks.

Gulf of Maine (GOM) specific measures

- All trip vessels using gillnet mesh shall use no less than 6.5" with a limit of 150 nets and each net must have a tag, except monkfish gillnets of 10" or greater mesh.
- Cashes Ledge shall be closed year-round in accordance with its current configuration as set forth in NMFS regulations.
- Cod trip limit 500 lbs/day, with a maximum trip limit of 4,000 lbs/trip.
- Hooks on any limited access multi-species vessel shall be limited to 2000 in number and must be circle hooks of 12/0.
 - Open areas 124, 125 in January, February, and March.
 - For dayboat gillnet vessels, stand-up gillnet mesh shall be no less than 6.5" with a limit of 50 nets; Tie-down gillnet mesh shall be no less than 7", with a limit of 100 nets. 10" or greater gillnets limit of 150 nets. During the months of March through June only tie-down nets may be used except for monkfish gillnets of 10" or greater mesh size. Tags for all nets (including monkfish nets) shall be limited to 150 tags - - three tags per stand-up, two tags per tie-down, and one tag per monkfish nets.

- Close statistical blocks 124 and 125 during May and 132 and 133 in June

Southern New England specific measures

The boundary for the area where specific southern New England measures apply is described as follows:

Bounded on the east by straight lines connecting the following points:

<u>Lat.</u>	<u>Long.</u>
(*)	70°00'
40°50'	70°00'
40°50'	69°40'
40°18.7'	69°40'
40°22.7'	69°00'
(**)	69°00'

(*) South facing shoreline of Cape Cod

(**) Southward to its intersection with the EEZ

Bounded on the west by:

A line beginning at the intersection of 74°00' longitude and the south facing shoreline of Long Island, NY, and then running southward along the 74°00' longitude line.

- Trawler net mesh in the cod end shall be no less than 7.0” diamond or 6.5”square cod end.
- All vessels using gillnet mesh shall use no less than 6.5" with a limit of 75 nets and each net must have two tags except monkfish gillnets of 10” or greater mesh.
- Yellowtail flounder trip limit:
 - March 1 - May 31: 250 lbs possession.
 - June 1 - February 28: 750 lbs./day, with a maximum trip limit of 3,000 lb./trip
- Hooks on any limited access multi-species vessel shall be limited to 2000 in number and must be 12/0 circle hooks.
- South of 40 degrees Latitude – there shall be no possession of Yellowtail Flounder.

The following Georges Bank specific measures apply to the that portion of the current southern New England regulated mesh area east of the eastern boundary described above:

- All vessels using gillnet mesh shall use no less than 6.5" with a limit of 50 nets.
- Hooks on any limited access multispecies vessel shall be limited to 3600 in number and must be 12/0 circle hooks.

Recreational measures - all areas

Private Recreational Vessels

- Increase cod/haddock fish size to 23".
- 10 cod/haddock creel limit, except 5 cod creel limit in Gulf of Maine during Dec. 1 - Mar. 31.

Party/Charter Vessels

- Increase cod/haddock fish size to 23" for vessels not on a DAS.
- Ten- cod/haddock creel limit Gulf of Maine Apr. 1 thru Nov. 30.
- 5 cod creel limit Gulf of Maine Dec. 1 - Mar. 31.
- Vessels intending to charter/party fish in the Gulf of Maine closed areas must declare into charter/party fishery for the duration of the closure or for three months whichever is greater.

All status quo measures will continue to apply.

EXHIBIT C

Council and Amendment 13

It is understood and acknowledged by all parties, including the Federal Parties, that the Non-Federal Settling Parties agree to the promulgation of the foregoing measures, and the interim measures of the Federal Parties, conditioned upon the following covenants and undertakings. The Non-Federal Settling Parties to this agreement stipulate and covenant to be bound by each of the following conditions and undertakings:

1. For all stocks governed by Amendment 9, for the purposes of developing management measures applicable to the interim period and for the implementation of Amendment 13, Non-Federal Settling Parties agree to support measures sufficient for the attainment of biomass and fishing mortality targets by 2009, or later for those stocks where sound biological considerations warrant a longer timetable. By way of illustration but without intent to be bound, such stocks may include Georges Bank cod, redfish, and halibut.
2. The Non-Federal Settling Parties retain the right to review and analyze the new Bmsy and Fmsy values provided by the Working Group on Evaluation of Biological Reference points for groundfish to assess their scientific basis and assumptions behind their calculations with the intent to revise these long-term biomass and F-targets if scientifically justified.
3. The Non-Federal Settling Parties agree to support and advocate for a “thaw” of the “frozen” DAS that shall be developed and submitted to the Council for analysis and consideration as part of the Amendment 13 process, it being the intent of the parties to this agreement that all such frozen latent effort not be indefinitely frozen.
4. The Non-Federal Settling Parties agree to support and advocate that the Council consider the Gulf of Maine Inshore Fisheries Conservation and Stewardship Plan for 2002 as an area management alternative for the Gulf of Maine, Georges Bank, and Southern New England for the purposes of implementation as a component of Amendment 13.
5. The Non-Federal Settling Parties agree to support and advocate that the Council consider a groundfish permit stacking plan for implementation as a component of Amendment 13.
6. The Non-Federal Settling Parties agree to support and advocate for implementation of a multispecies groundfish fishery management plan fully compliant with the SFA, federal fishery regulations and guidelines, will be developed and implemented through appropriate regulations no later than August 22, 2003.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONSERVATION LAW FOUNDATION,)
et al.)
)
Plaintiffs,)
)
v.)
)
DONALD L. EVANS, et al.)
)
Defendants.)
)
)
_____)

Case No. 1:00CVO1134 GK

[EXHIBIT D]

STIPULATED ORDER

Upon consideration of the Motion for Entry of Stipulated Order and Stay of Litigation filed by certain parties (“the Settling Parties”), together with the Settlement Agreement among the Settling Parties, including the exhibits thereto, as well as any opposition thereto, it is hereby ORDERED as follows:

1. The Secretary shall promulgate an Interim Rule to reduce overfishing during the first quarter of the 2002-03 fishing season, to become effective not later than May 1, 2002.
2. The Secretary shall promulgate, for effectiveness not later than August 1, 2002, a Second Interim Rule to reduce overfishing beginning with the second quarter of the 2002-03 fishing season, beginning August 1, 2002, and continuing through the anticipated implementation of a Fishery Management Plan Amendment that complies with the overfishing, rebuilding and bycatch provisions of the Sustainable Fisheries Act.
3. The Secretary shall promulgate, not later than August 22, 2003, a Fishery Management Plan Amendment that complies with the overfishing, rebuilding and bycatch provisions of the Sustainable Fisheries Act.

4. The Court shall retain jurisdiction through implementation of Amendment 13 with respect to the deadlines set forth in paragraphs 1 through 3 above.

5. The above-captioned action is stayed pending such further proceedings as may be required with respect to each of the three administrative actions set forth above.

Requested April 16, 2002, by:

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Conservation Law Foundation

Counsel for Conservation Law Foundation

William C. Henchy

Counsel for Plaintiff-Intervenors Paul Parker, Craig A. Pendleton, Northwest Atlantic Marine Alliance, Inc., Stonington Fisheries Alliance, Saco Bay Alliance, and Cape Cod Commercial Hook Fishermen's Association, Inc.

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Tierney

David E. Frulla
Brand & Frulla, P.C.

Counsel for Associated Fisheries of Maine,
Inc., the City of Portland, Maine, the City of
New Bedford, Massachusetts, the Trawlers
Survival Fund

SO ORDERED:

Dated: _____

United States District Judge

Serve copies upon:

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SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) REQUIRED PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify--

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to,

information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

16 U.S.C. 1853

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297