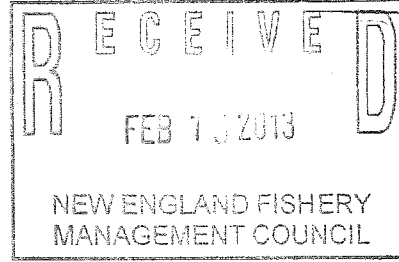


# ADDITIONAL HABITAT CORRESPONDENCE

Received

Feb. 15, 2014 – Feb. 20, 2014



Mr. Tom Nies  
New England Fishery Management Council  
50 Water Street  
Newburyport, Massachusetts 01950  
Fax: 978-465-3116

**Proposed Stellwagen Bank Sanctuary Ecological Research Area (DHRA)**

Dear Mr. Nies:

I am writing to you as a recreational angler regarding the proposed habitat protection measures being considered by the New England Fishery Management Council (NEFMC). I strongly oppose any changes to the Western Gulf of Maine closed area and strongly support *No Action*.

In the past few years since the introduction of catch shares, we have been forced to run further offshore to locate ground fish with the high costs of marine fuel. I do not feel it is justified to deny public access in a 55 square NM area from recreational anglers forcing them fish further offshore in small boats. The waters located in the SBNMS have been fished by recreational anglers for decades. Recreational anglers do not harm the bottom fishing with hook and line. Currently most recreational anglers are fishing for ground fish for only six months because of the prohibition on cod from Nov - mid April.

The recreational sector always seems to be left out of focus when it comes to spotlighting NEFMC issues and initiatives; in reality, the socioeconomic importance of recreational fishing cannot be ignored in this critically important vote. I strongly support *No Action*, and ask that the NEFMC recognize the significance of our recreational fishing industry and the socioeconomic impact this will place on the recreational fisherman and charter/party boat owners.

Any additional closed areas for the charter/party and recreational anglers will create an adverse effect on a sector that is already operating under rules with strict bag limits, minimum size limits, a hard TAC and a five-and-a-half month closed season on GOM cod. The fish that we do extract are used for personal consumption for meals at home and also are part of the allocation recommended by the NEFMC and approved by the NMFS. This proposed closure clearly does not justify the future socioeconomic impact on the recreational fishing sector. Charter customers and recreational fisherman spend millions of dollars to go fishing supporting many local businesses, from tackle shops charter and party boats, restaurants and hotels which will all be affected by being denied access.

Respectfully signed,

Date:

2/12/14

(sign name)

(print name)

Matthew S. Westgortz

(address, city, state)

Arthuro, MA 02703

I am opposed to the closing. I fish that area on a charter several times a year with a group. We stay at hotels, eat at restaurants, buy equipment for fishing, closing will hurt more than fishermen.

Skip Orłowski  
Electric Motion Company  
860-738-6261



**From:** lee salisbury [mailto:leebethpage@aol.com]  
**Sent:** Monday, February 17, 2014 10:51 AM  
**To:** Tom Nies  
**Subject:** Codfishing



I come to your area at least 3 times a year from N  
Y., and won't come as often if you close Stellwatwr banks to hook and line fishing for cod and  
Pollack and Boston bonefish.

Mr. Tom Niles

New England Fishery Management Council

50 West St.

Newburyport Ma. 01950

Re: Proposed SERA II, Stellwagen Bank Sanctuary Ecological Research Area

Dear Mr. Niles,

My Name is Mike Connolly. I operate/manage Green Harbor Marina in Marshfield Ma. I sit on the Board of Directors of the Massachusetts Marine Trades Association, (MMTA) the Marine and Environmental Education Alliance (MEEA) and the Motoring Technical Training Institute Advisement Committee. (MTTI)

I am writing to you to express my thoughts in regards to the proposed habitat protection measures being considered by the NEFMC. No one loves the wild and the appreciates the beauty of our planet more than I. The ocean and the species who call it home are extremely important on so many accounts. It is with our community's best interest in mind, that I *strongly oppose closing the proposed 55 square mile "reference area" from charter/party, recreational fisherman, and lobsterman.* On the heels of "The Great Recession" it would be **economically irresponsible** for anyone to consider risking the livelihood of so many fishermen who make their living in and around this exact location. The repercussions of a closing/restriction of this type would surely extend deep into every coastal business in the Commonwealth. **Jobs will be lost** in all facets of coastal businesses. The business model I have now has changed as we try to dig out of the recession here on the coast. Fishermen, are the most important customers for coastal businesses. The boating industry was one of the hardest hit industries during the "Great Recession". Thirty five percent of boat dealers and manufactures have gone out of business. The recreational boater coming into boating, who does not fish, has all but disappeared as the "Baby Boomer" generation reaches the later stages of life. Our industry needs all the help we can get, so please, I urge you, not another blow to our industry as we try to get back on our feet.

**Please vote Alternative No. 1, No Action**

Thank you for your understanding,

Sincerely,

Mike Connolly

Green Harbor Marina

[mike@greenharbormarina.com](mailto:mike@greenharbormarina.com)

781-837-1181



February 14, 2014

Mr Tom Nies  
New England Fisheries Management Council  
50 Water Street  
Newburyport, MA 01950



Dear Tom

My name is Captain Rick Foley and I run Rebecca Lee Charters from Humarock MA. I am a small scale charter business and while it is not my main source of income I do rely upon the additional income to help make ends meet. ( My good paying manufacturing job was sent to China in 2006 ) I am writing this to oppose the creation of the SERA II, and more specifically the 55 square mile reference area, on Stellwagen Bank. I strongly oppose the proposed changes to the recreational / charter regulations in the Western Gulf of Maine and therefore support Alternative 1, No Action. While I strongly support sensible conservation and research I have yet to hear any meaningful or logical description of what the 55 square mile closure hopes to accomplish.

Additional closed areas for the charter / party and recreational fleet that operate from the South Shore to the Cape will create further financial hardships as we will have to travel yet further, thus further increasing costs and reducing clients actual fishing times. As it is, in the last 2 years we have added 7 to 10 miles each way to compensate for the lack of fish on the western edge of the bank since catch share management opened that area to the large draggers that just hammer the area all winter and spring. It boggles my mind that NEMFC has allowed this and that the charter / party and recreational group is not allowed to take 1 fish from that area during that time. With the current regulations, one of these large draggers can take the equivalent of 100 or more full limit recreational trips in a 24 hour period.

In summary, I strongly support Alternative 1, No Action. Further closures will have tremendous negative economic impact on all the local businesses that get so much of their revenue from the South Shores Charter / party and recreational angling community.

Thank You for Your Consideration,

Captain Rick Foley  
Charter Boat " Rebecca Lee" Humarock MA  
Rfoley9391@hotmail.com

Here is my quick letter: I urge you to vote "NO CHANGE" to proposed 55 sq. mile habitat closure at the New England Fisheries Management Council meeting. The local economy tied to the recreational, charter, and party boat industry is already suffering greatly and any change will put many companies out of business.

This is getting ridiculous here.... First, the Catch Shares Management fiasco wiped all of the cod off of Stellwagen Bank in one winter. Our fishing went from OUTSTANDING to NON-EXISTENT in one year. That was 100% management's fault. We paid the price in many ways. We suffered. We lost a lot of money.

1. We had to travel further to find fish to catch. No longer were we able to travel 15-22 miles to Stellwagen in April, May, June, and October (Yes, we already gave up Nov., Dec., Jan., Feb., March, and ½ of April) to catch all of the fish that our customers "demanded" and have come to expect... Our trips became 33-40 miles to find scattered fish. This more than doubled our gas costs. That extra time aggravated customers. That extra distance increased the risk of traveling because of the often inclement and changing weather. This uncertainty causes many trips to be canceled out of caution. Those were trips that would have been run had we only had a short run to the fishing grounds, as we have had in the past.
2. Our customers didn't want to travel that far, so they didn't come back in the numbers they had in the past. Also, they didn't come back because the fishing wasn't as good as it was in the past. My cod trips are down 30+% (that's a decline of \$15,000+ in case you were wondering, with no chance of making it up on the backs of other customers).
3. Many of our spring customers used to come back in the summer/fall....previously....we've lost those trips as well. By my estimates, I've lost \$8,000-\$10,000/year because of the lack of repeat customers).
4. Bait and tackle stores are suffering because "cod" is king to their business. People buy bait, jigs, lures, rods, reels for cod...but they also buy other gear there as well....but without the initial cod fishing gear, they don't come back either.
5. Marinas are hurting because A: people aren't fishing as much (less gas) and there are fewer boats in the marinas (people can't rationalize having a boat without a strong cod fishery). And repairs aren't as necessary because people aren't using their boats as much.
6. Hotels are missing out on significant off-season and high-season clientele. Our clientele, as charter boats, is primarily from OTHER STATES. By my estimates, 50% of our customers book rooms when they come here.
7. Yes, they eat in OUR LOCAL RESTAURANTS...if they were here.  
...A \$1,000 trip is worth nearly \$2,000 to the local economy here.

FEB 18 2011

NEW ENGLAND FISHERY  
MANAGEMENT COUNCIL

Secondly, this proposal to close access to our last solid fishing grounds is outrageous because it will tip the scales and ruin the groundfishing business on the entire South Shore of Massachusetts. Customers will not fish here if they know that they will have to run 40+ miles EACH WAY to fish. They will choose other ports that are closer to the fishing grounds or they will fish for other species altogether. Need I mention that closing such a large productive area will force every fisherman to concentrate their efforts in the few remaining areas that hold fish? Yes, the same number of fishermen fishing in 1/5 of the area....those other areas are going to get wiped out.

There are HUNDREDS OF LOCAL BUSINESSES THAT WILL BE VERY ADVERSELY IMPACTED BY THIS RULING.

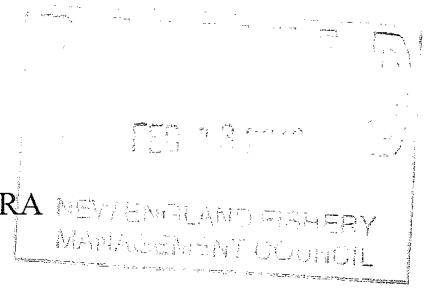
I STRONGLY URGE YOU TO VOTE "NO CHANGE" TO THE SERA PROPOSAL.

Sincerely,

Capt. Rich Antonino  
Black Rose Fishing Charters  
4 Sleepy Hollow Drive  
Plymouth, MA 02360  
508-269-1882



Mr. Tom Nies  
New England Fishery Management Council  
50 West Street  
Newburyport, Massachusetts 01950



Re: Proposed Stellwagen Bank Sanctuary Ecological Research Area- SERA

Dear Mr. Nies,

My name is Dennis Pateras. I own a 21' Center Console boat that my family and I use to recreational fish out of Marshfield, MA. I'm also a resident of Marshfield and know how much the recreational and charter fishing fleets help this great New England town as well as the surrounding towns socially and economically.

I strongly oppose any changes to the Western Gulf of Maine closed area and strongly support Alternative No.1, No Action to the proposed habitat protection measures being considered by the NEFMC.

The proposed 55 square mile reference area is specifically where my family, friends and I fish for cod, haddock, pollack, redfish, and cusk. Before Sector Management, fishing was great along the western edge of Stellwagen Bank and the nearby shoals about 15-21 nautical miles each way. Sector Management has allowed Large Draggers to come to Stellwagen Bank and clean out all stocks of cod, haddock, pollack etc. on the Western edge and all Non-WGOM closed area grounds. It's simply stunning to me how NEFMC and NMFS discontinued the 800 lb. trip limit in the Gulf of Maine and allowed Large Sector Draggers to operate without a daily limit and "rape" Stellwagen Bank (simply stunning). Now I'm forced to go out 30 to 35 miles each way in my small 21' center console to fish making every trip for me and my kids more dangerous.

If this SERA proposal is approved we will have to transit the entire "reference area" to get north of it to get to any potentially fishable waters 40 to 45 miles offshore in an area loaded with gill nets and tub-trawl gear. This is unfair to me, my family, my friends and the rest of the Recreational Community and surrounding towns. This proposal will have a devastating detrimental economic & social impact to all for-hire operators and recreational fishermen as well as other supporting businesses such as tackle shops, restaurants, lodging facilities & marinas.

The socioeconomic importance of Recreational Fishing cannot be ignored in this critically important vote. It would be a travesty if the council took action and prevented common folks like me the opportunity to continue to spend quality time on the water with my kids fishing for ground fish in an area that I can reasonable get to inside the proposed 55 square mile reference area. Please vote Alternative No. 1, No Action.

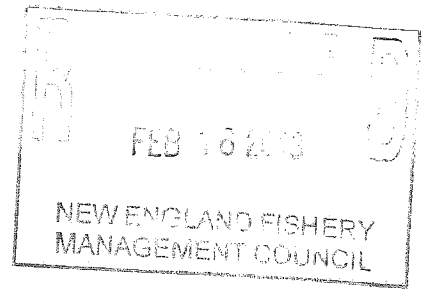
Sincerely,

Dennis Pateras  
14 Parsons Walk  
Marshfield, MA  
781-837-7531  
Dennis\_Pateras@yahoo.com

cc. Mr. John Bullard, Administrator, NMFS  
Mr. Paul Diodati, Director, MA. Division of Marine Fisheries  
Dr. David Pierce, MA. Division of Marine Fisheries  
Mr. Barry Gibson Recreational Fishing Alliance  
Mr. Frank Blount NEFMC  
Mr. Stephen James SBCBA  
Mr. Dave Preble NEFMC

February 17, 2014

Mr. Terry Stockwell, Chair  
New England Fishery Management Council



VIA ELECTRONIC MAIL

Dear Terry:

We write to request that the Council defer Habitat OA2 decision making on groundfish spawning and remand that consideration to the Groundfish Committee. We note that the Council identified "changes to spawning closures" as a groundfish priority for 2014, and we concur that the Groundfish Committee is the appropriate body for consideration of those changes.

The draft EIS for Habitat Omnibus Amendment 2, section 2.2.1.1, improperly describes the "no action" alternative as the Western Gulf of Maine closed area, Cashes Ledge closed area, and the rolling closures. These areas were never identified as spawning areas, but instead were identified as areas of high groundfish catch (particularly Gulf of Maine cod). Therefore it is inappropriate to include these areas in a "no action" alternative for spawning protection.

The draft EIS offers alternative 2 that would memorialize the sector rolling closures in the Gulf of Maine as groundfish spawning protection areas. We object to that re-designation.

The rationale for implementation of the groundfish rolling closures, the Western Gulf of Maine closure, and the Cashes Ledge closure comes with a long history (see attached) but that history provides little to no scientific rationale for designating those areas as spawning areas. Instead all of these closures were developed and implemented primarily to reduce mortality in areas that then supported high catch of Gulf of Maine cod.

We urge you to task the Groundfish Committee with a comprehensive evaluation of appropriate measures to protect groundfish spawning.

As always we appreciate your consideration of our views.

Sincerely,  
Maggie Raymond  
Associated Fisheries of Maine

Jackie Odell  
Northeast Seafood Coalition

## **Gulf of Maine groundfish closed areas**

The current rolling/seasonal closed areas in the Gulf of Maine evolved from 1996 through the present. The following summary identifies regulatory actions that implemented or modified the closures.

Amendment 7 (1996): Closures to sink gillnets designed to protect harbor porpoise were extended to all vessels “until such time as the Council implements additional time/area closures by framework action”. These closures were described as “seasonal/spawning” closures but no justification is provided in the document for describing them as spawning closures. The closures were: Mass Bay Closure (March 1-March 30), Northeast Closure (8/15-9/13), and the Mid-coast Closure (11/01-12/31). Dates for these closed areas were determined prior to Amendment 7 based on recommendations of the Harbor Porpoise Take Reduction Team in order to reduce harbor porpoise takes. The Amendment 7 document does not include any description of cod spawning or cod catches during these closures.

Framework 15 (September 6, 1996): Extended the Mid-Coast Closure Area for sink gillnets to September 15 through December 31 in order to reduce porpoise takes.

Framework 19 (October 24, 1996): Replaced Mid-Coast Closure (11/01-12/31) with a “Jeffreys Ledge” Closure (blocks 132 and 139) during May in order to mitigate economic impacts of the Mid-Coast Closure while achieving the same conservation goals. Analysis of the change was based on the landings of cod from the two areas/time periods.

Framework 20 (May, 1997): Considered, but did not adopt, seven area closure alternatives. Alternatives included a Jeffreys Ledge year round closed area to protect juvenile cod, a March through August closure of blocks 131 and 138 and parts of 124, 123, 130, 132, 137, and 139. Analysis of these alternatives focused on their effect on cod landings. There is no mention of spawning closures in the document.

Framework 23 (March 27, 1997): Closed certain areas to fishing with sink gillnets in Cape Cod Bay and the Great South Channel to protect northern right whales.

Framework 25 (May 1, 1998): Adopted area closures “...targeting the areas of highest cod landings.” These closures included the areas of the highest cod landing patterns and a year round closure (WGOM Closed Area). While not cited in the framework document, during the development of these closures there was public discussion that the closures were targeting pre-spawning or spawning aggregations of cod. The rolling closures that were adopted were:

124/125: March  
131/132/133: April  
138/139/140: May  
129/145/146/147/152: June  
Northeast Closure: August 15-September 13

Framework 26 (January 18, 1999): Additional protection adopted for “spawning cod” through the addition of two seasonal closed areas for the 1998 fishing year only. FW 26 also referred to the closures that were already in place as designed to reduce mortality and protect spawning cod. However, the document does not include any explanation of how cod spawning areas/times were identified.

119/124/125: February  
123/124/125/130: April

Framework 27 (May 1, 1999): Measures in this framework were established based on cod fishing effort (i.e. areas of highest cod landings), but considered impacts on all regulated species, including those overfished. Analysis compared the impacts of the proposed closures on landings of cod, white hake, and plaice for the no action, proposed action, and four other options. Expanded the seasonal closures to:

121-125: March/April, October/November  
129-133: April/May  
136-138: May  
139-140: May/June  
141-147, 152: June  
Cashes Ledge, July – October

Framework 31 (January 1, 2000): Added a closure in February to the closures scheduled under FW 27:

124/125: February

Framework 33 (May 1, 2000): Added as a backstop measure to extend the Cashes Ledge Closure for an additional month (November) and closure of blocks 124/125 in January if 50 percent of the GOM cod target TAC was landed by July 31. Also adopted a May closed area on Georges Bank. Once this framework was implemented, the GOM closed areas were:

121-123: March/April, October/November  
124-125: January (if triggered), February/March/April, October/November  
129-133: April/May  
136-138: May  
139-140: May/June  
141-147, 152: June  
Cashes Ledge: July/August/September/October, November (if triggered)

FW 33 Interim Rule (May 2002): As a result of the interim rule implementing the FW 33 lawsuit negotiated settlement, seasonal closed areas were revised. The resulting closures were:

121-123: March/April  
124-125: April/May, October/November  
129-131: April/May  
132-133: April/May/June  
136-138: May/June  
139-140: May/June  
141-147, 152: June  
Cashes Ledge: Year round

Amendment 13 (May 1, 2004): Continued the seasonal closed areas as described under the interim rule.

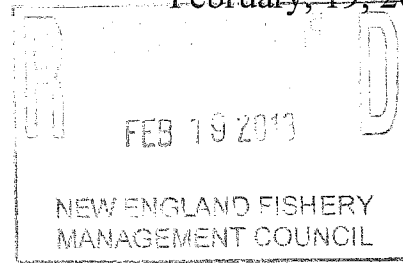
121-123: March/April  
124-125: April/May, October/November  
129-131: April/May  
132-133: April/May/June  
136-138: May/June  
139-140: May/June  
141-147, 152: June  
Cashes Ledge: Year round

Amendment 16 (May 1, 2010): Exempted sector vessels from the seasonal closures with the exception of those listed below, and directed the Plan Development Team to “analyze the existing rolling closures and determine which areas should remain closed to protect cod spawning aggregations. To date, this analysis has not been accomplished.

124-133: April  
132, 133, 138: May  
139-152: June

Mr. Tom Nies  
New England Fisheries Management Council  
50 Water Street  
Newburyport, MA 01950

February, 19, 2014



Dear Mr. Nies:

I am writing to you as owner of the charter fishing boat **RELENTLESS** located in Green Harbor, MA regarding the proposed habitat protection measures being considered by the New England Fisheries Management Council. I strongly oppose any changes to the Western Gulf of Maine closed area and strongly support *Alternative 1, No Action.*

Additional closed areas for the charter/party and recreational angler will create an adverse effect on a sector that is already operating under rules with strict bag limits, minimum size limits, a hard TAC and a five and a half month closed season on GOM cod. If the DHRA on Stellwagen Bank is adopted, the charter/party and private vessels fishing out of the South Shore of Massachusetts will be forced to transit greater distances. This could be over forty nautical miles to locate cod and haddock for anglers to take home for dinner. Being forced to run these greater distances will result in a loss of customers who can fish out of other ports with less time transiting and also brings up concerns for safety where many boats do not have or required to have life rafts and EPIRBS. The DHRA will result in a major disadvantage to the charter party fleet from our area. We have already lost a large number of cod charters to the boats fishing out of Rhode Island and New York in the winter while we are tied to the dock.

The presentation made by the Stellwagen Bank National Marine Sanctuary demonstrating how they determined very little fishing takes place in the WGOM southern area using VTR data is wrong. It is my understanding the Vessel Trip Reports (VTR) data used to determine where the SERA would be located was from over three years ago. During that period the cod stock was healthier and boats were able to locate fish on Stellwagen Bank on the shoal water (15-25 fathom). Since the transition to catch shares where a concentration of large draggers fishing 24/7 on the bank in the winter and spring without daily trip limits, the charter/party and recreational anglers have been forced to fish east of the bank (WGOM) in order to locate cod and

haddock. An analysis of the past two years of VTR data would clearly indicate this change in fishing locations.

Charter and party boats fish multiple stops, sometimes up to twenty in a single day which may be in a ten square nautical mile area. At the end of the day, the only indication of where we fished is a single coordinate on the VTR using the center point of all of our stops as stated in the instructions.

I also have concerns that once a DHRA is established many more will follow. Currently in the Florida Keys National Marine Sanctuary there are eighteen Sanctuary Preservation Areas which allow no bottom fishing with catch and release only and many no fishing at all. I feel that the establishment of the DHRA is the first step in making Stellwagen Bank a "NO FISHING ZONE" as recommended by some environmental groups.

This proposal would cause economic hardship to an industry which is trying to run a successful business and only fishes about six months a year because our customers want cod. Just like everything else expenses keep rising with inflation, especially fuel costs which are now over four dollars a gallon. Unlike the Stellwagen Bank National Marine Sanctuary where the operating costs are funded by tax payer dollars and subsidized by the National Marine Sanctuary Foundation through donations by World Wildlife Fund, universities and private donations, charter boats, head boats and the private angler absorb all of their own expenses.

The added costs and loss of customers will result in an economic disaster to the charter/party industry and other marine related businesses. I encourage council members to read on the Greater Atlantic Region Office website ***"The Economics of the Recreational For-Hire Fishing Industry in the Northeast United States for 2013" report. There was over \$4.9 billion in expenditures on fishing trips and durable equipment expenditures across the Greater Atlantic Region in 2011.***

The recreational angler has little impact on the bottom using weights, cod jigs and hook and line to harvest fish for personal consumption. Creating a DHRA and shutting out the recreational angler will have no benefit to the protection of juvenile cod compared to the massive amount of fish eaten daily by spiny dogfish in the area. Any changes other than STATUS QUO, NO ACTION will virtually be the end of the charter/party industry from the South Shore of Massachusetts which fishes Stellwagen Bank. Fishing on

Stellwagen Bank results in over ninety percent of my charter revenue and having any location restricted to fishing after the seasonal closure placed on GOM cod will be detrimental. This will also result in a loss of revenue to the local hotels, tackle shops, restaurants, marinas, boat dealers etc. in the local area. If you have any questions please feel free to contact me anytime.

Respectfully,

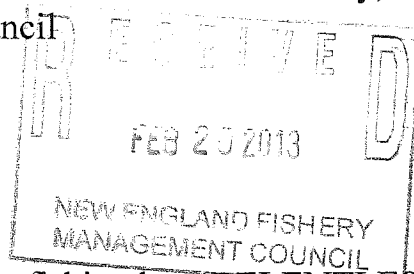
David Waldrip  
Charter Boat Relentless, Green Harbor, MA  
[captdave@relentlesscharters.com](mailto:captdave@relentlesscharters.com)

Copy: Mr. John Bullard  
Mr. George Darcy  
Mr. Terry Stockwell  
Mr. Barry Gibson  
Mr. Charlie Wade  
Mr. Paul Diodati  
Dr. Dave Pierce  
Mr. Frank Blount  
Mr. David Simpson  
Mr. Mark Alexnder  
Ms. Cheri Patterson  
Mr. Vincent Balzano  
Ms. Ellen Gothel  
Mr. Tom Demsey  
Dr. Michael Sissenwine  
Ms. Laura Ramsden  
Mr. Mark Gibson  
Mr. Matthew McKenzie  
Mr. David Preble  
Ms. Mary Beth Tooley  
Mr. John Quinn  
Mr. Michael Pierdinock



Mr. Tom Nies  
New England Fisheries Management Council  
50 Water Street  
Newburyport, MA 01950

February, 19, 2014



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This proposal would cause economic hardship to an industry which is trying to run a successful business and only fishes about six months a year because our customers want cod. Just like everything else expenses keep rising with inflation, especially fuel costs which are now over four dollars a gallon. Unlike the Stellwagen Bank National Marine Sanctuary where the operating costs are funded by tax payer dollars and subsidized by the National Marine Sanctuary Foundation through donations by World Wildlife Fund, universities and private donations, charter boats, head boats and the private angler absorb all of their own expenses.

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Respectfully,

David Waldrip  
Charter Boat Relentless, Green Harbor, MA  
[captdave@relentlesscharters.com](mailto:captdave@relentlesscharters.com)

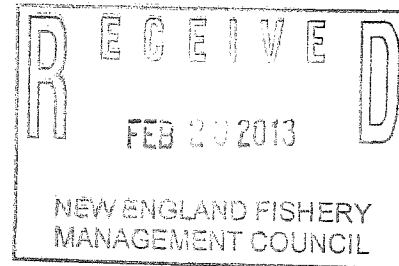
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Ms. Cheri Patterson  
Mr. Vincent Balzano  
Ms. Ellen Gothel  
Mr. Tom Demsey  
Dr. Michael Sissenwine  
Ms. Laura Ramsden  
Mr. Mark Gibson  
Mr. Matthew McKenzie  
Mr. David Preble  
Ms. Mary Beth Tooley  
Mr. John Quinn  
Mr. Michael Pierdinock



**MAINE COAST  
FISHERMEN'S  
ASSOCIATION**

February 19, 2014

Chairman Terry Stockwell  
New England Fisheries Management Council  
Habitat Committee  
50 Water Street, Mill 2  
Newburyport, MA 01950



Dear Terry,

The Maine Coast Fishermen's Association (MCFA) represents 35 of the remaining community-based fishermen in Maine who participate in the fishery as members of the Maine Coast Community Sector. These fishermen have dependably landed about 1/3 of the total groundfish harvest in the state of Maine since the transition to sectors and are actively engaged in preserving Maine's struggling fishing communities. MCFA fishermen believe in approaching fisheries management with conservation and communities in mind to ensure that we are not the last generation of working small-boat fishermen in Maine. As such, we write to you today to express our hope for maintaining habitat and groundfish protection in the western, eastern and central Gulf of Maine through the upcoming selection of the preferred alternatives within the Omnibus Habitat Amendment.

There is a strong consensus among the fishermen within the Maine Coast Fishermen's Association and the Maine Coast Community Sector, that the current groundfish mortality and habitat closed areas best protect important habitat, fish stocks and, and the inshore fleet. The proposed changes, for the most part, to the current closed areas will be an economic loss for our active fishermen, and gaining access to previously closed areas is perceived to be useless and likely to have a negative economic and biological impact rather than a positive one for the inshore fleet.

Since our fishermen are disbursed throughout the coast of Maine and fish inshore, we have gathered their input on the proposed alternatives in the eastern, central and western Gulf of Maine, but will refrain from commenting on alternatives on George's Bank and in Southern New England.

*Eastern Maine*

Very few of our active fishermen fish in Eastern Maine, as there are very few groundfish left in these areas, and as such our fishermen have mixed views about the needs for these closed areas. Those fishermen from MCFA who fish out of Port Clyde, who do have a history of fishing in these areas, have helped develop Alternative 2 and still believe that this option could provide positive recruitment potential for that area of the Gulf of Maine. With the potential for forage fish to return downeast with the new access to the Penobscot and St. Croix rivers and the potential benefits to rebuilding the groundfish stocks, we support adding the new habitat management areas east of Penobscot Bay and at Machias. However, the inclusion of a habitat area over Toothaker Ridge that would eliminate mobile gear access, especially when combined with the will ensure the end of

groundfishing boats fishing from midcoast Maine. Therefore, we cannot support any alternative that includes Toothaker.

### *Central Maine*

We can only support Alternative 1 – no action. Jeffreys Bank should stay as it is to maintain current habitat protections that already protect a spawning area in the southwest corner. Modifying the Jeffreys Bank habitat area would negatively impact the local fishing businesses in Port Clyde with few habitat benefits. Lobster gear is there throughout the current Jeffreys Bank closure. If the management area were to be switched to the proposed modified version with the east/west orientation, it would be bad in two ways. First, the new opened area to the north would not be accessible to historic groundfish tows, like skate tow, because the area is already filled with lobster gear. It is likely that the new closed area to the east and west would soon be filled with lobster pots. Once lobster gear is in an area, the groundfish tow cannot be reclaimed within a fisherman's lifetime, or at least it hasn't been yet. Fishermen are struggling with access to fishing grounds every fishing trip, and this modification would only benefit lobstermen. Most importantly, the expansion westward to protect the sand/gravel bottom would prevent access to an area that currently provides 30-50% of the flat fish catch in the region, an important and essential source of income and fish for the small trawlers in midcoast Maine.

Similarly, Cashes Ledge should remain intact. For inshore vessels along the coast of Maine, the trip to Cashes is perceived to be of little economic gain. It is possible that fixed gear vessels out of Southern Maine could set some gillnets in the central basin and possibly along the eastern gulf off of Three Dory Ledge and on Sigsbee Knoll, but interest is limited since fuel costs are so high. Dragners out of Port Clyde could potentially tow the same basin because there is most likely fish in there, but the perception is that there would be too much gear interaction and the abundance of lobster traps would prevent a tow from being re-established.

Overall, the fishermen think that the benefit will be maximized by keeping Cashes Ledge closed. This is an extremely unique area in the Gulf of Maine and inviting further effort would be a step backwards in resource and habitat protection.

### *Western Maine*

We support alternative 1 – no action. The biggest point of concern with opening up the eastern edge and the northwest corner of the current Western Gulf of Maine closure is the increased fishing effort in the area will displace the smaller, inshore vessels because they won't be able to compete with the larger trawl vessels. Currently, fishermen in the sector fish along the northeast corner of the closed area on fish that spill out. At this point, the catch is relatively constant and known. Business plans can be made based on average catches in this area. However, if the area is opened and new effort arrives, business plans become obsolete, and the fishermen are predicting huge economic losses.

There was agreement that there'd be fish inside the current closure, but all of the fishermen were adamant that they would rather see the area stay closed as there is some important habitat to protect in this area and it helps preserve fish stocks. The 50 fathom depth is the most productive zone in this

area, and the fishermen would like to see this closed to provide refuge for the existing fish as they can currently fish the spillover fish are beyond the closed area boundaries.

A constant theme throughout our meetings with fishermen was the uncertainty that these changes would cause. Perhaps the gillnet fleet would benefit for a short time by being able to access all these areas if only bottom tending mobile was excluded but the worry is that the smaller closed areas, with increased access for both the inshore and offshore fleet, would continue to drive down fish stocks that cannot handle the increased fishing pressure in the Gulf of Maine and the inshore fleet would suffer.

Thank you for the opportunity to provide comments on the current alternatives in the Omnibus Habitat Amendment.

Sincerely,

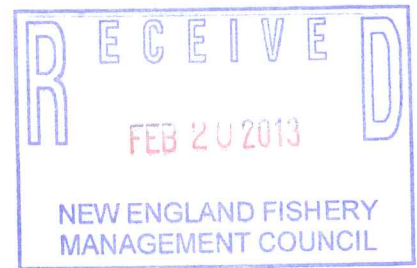
A handwritten signature in black ink, appearing to read "Ben Martens", with a long horizontal flourish extending to the right.

Ben Martens

February 19, 2014

Associated Fisheries of Maine  
Northeast Seafood Coalition  
Fisheries Survival Fund

**Strawman Proposal  
Preferred Alternative  
Habitat Omnibus Amendment 2**



The Associated Fisheries of Maine, the Northeast Seafood Coalition, and the Fisheries Survival Fund collectively represent the majority of groundfish and scallop interests in the Northeast. We have been active participants in the development of the Omnibus Habitat Amendment 2.

This document represents our response to the call by the Northeast Regional Administrator John Bullard (December 18, 2013 plenary meeting of the New England Fishery Management Council) for "strawman" proposals for preferred alternatives that meet the objectives of the Omnibus Habitat Amendment.

The preferred alternatives described below are intended to modify and/or replace existing groundfish year round closed areas and existing habitat management areas.

February 19, 2014

Omnibus EFH Amendment DEIS – Volume 1, pages 28-29

GOALS:

1. Redefine, refine or update the identification and description of all EFH for those species of finfish and mollusks managed by the Council, including the consideration of HAPCs;
2. Identify, review and update the major fishing activities (MSA and non-MSA) that may adversely affect the EFH of those species managed by the Council;
3. Identify, review and update the major non-fishing activities that may adversely affect the EFH of those species managed by the Council;
4. Identify and implement mechanisms to protect, conserve, and enhance the EFH of those species managed by the Council to the extent practicable;
5. Define metrics for achieving the requirements to minimize adverse impacts to the extent practicable;
6. Integrate and optimize measures to minimize the adverse impacts to EFH across all Council managed fishery management plans;
7. Update research and information needs;
8. Review and update prey species information;
9. Enhance groundfish fishery productivity;
10. Maximize societal net benefits from the groundfish stocks while addressing current management needs

OBJECTIVES:

- A. Identify new data sources and assimilate into the process to meet goals (state, federal and other data sources);
- B. Implement review of existing HAPCs and consider modified or additional HAPCs (Goal 1);
- C. Review EFH designations and refine or redefine where appropriate as improved data and analysis become available (Goal 1);
- D. Develop analytical tools for designation of EFH, minimization of adverse impacts, and monitoring the effectiveness of measures designed to protect habitat (Goal 1, Goal 3 and Goal 5);
- E. Modify fishing methods and create incentives to reduce the impacts on habitat associated with fishing (Goal 4);
- F. Support restoration and rehabilitation of fish habitat which have already been degraded (by fishing and non-fishing activities) (Goal 4);
- G. Support creation and development of fish habitat where appropriate and when increased fishery resources would benefit society (Goal 4);
- H. Develop a strategy for prioritizing habitat protection (Goal 4);
- I. Develop criteria for establishing and implementing dedicated habitat research areas (Goal 7);
- J. Design a system for monitoring and evaluating the benefits of EFH management actions including dedicated habitat research areas (Goal 7);
- K. Improved groundfish spawning protection; including protection of localized spawning contingents or sub-populations of stocks (Goals 9 and 10);
- L. Improved protection of critical groundfish habitats (Goals 9 and 10);
- M. Improved refuge for critical life history stages (Goals 9 and 10);
- N. Improved access to both the use and non-use benefits arising from closed area management across gear types, fisheries, and groups. These benefits may arise from areas designed to address the other three groundfish closed area objectives. (Goals 9 and 10).



February 19, 2014

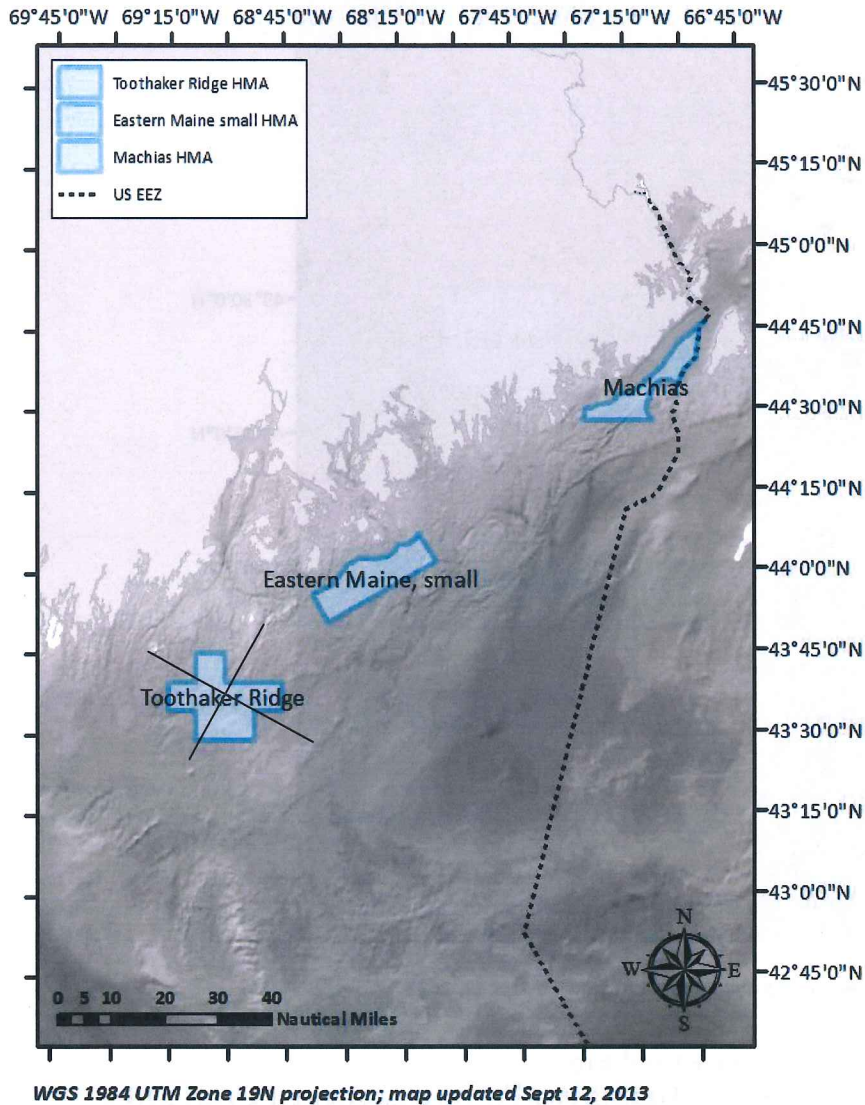
**HABITAT MANAGEMENT DECISIONS:**

**GULF OF MAINE**

- **Eastern Gulf of Maine**

**See page 45, Volume 3, Omnibus EFH Amendment 2 Draft EIS**

Preferred alternative is Eastern Gulf of Maine/Scotian Shelf Habitat Management Alternative 3, excluding Toothaker Ridge.

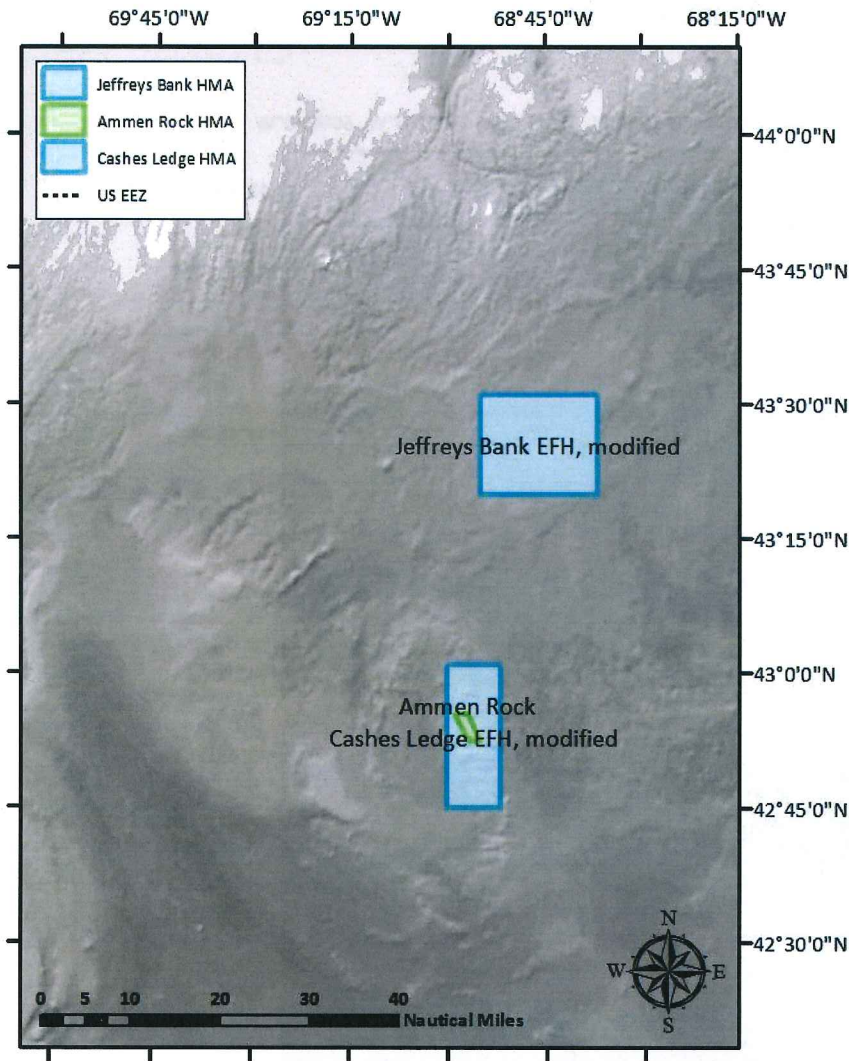


Addresses goals #4 (objective E) and #10. See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS

February 19, 2014

- **Central Gulf of Maine**

**See page 54, Volume 3, Omnibus EFH Amendment 2 Draft EIS**  
Preferred alternative is Alternative 4, Jeffreys Bank EFH modified and Ammen Rock/Cashes Ledge EFH modified.



*WGS 1984 UTM Zone 19N projection; map updated Sept 12, 2013*

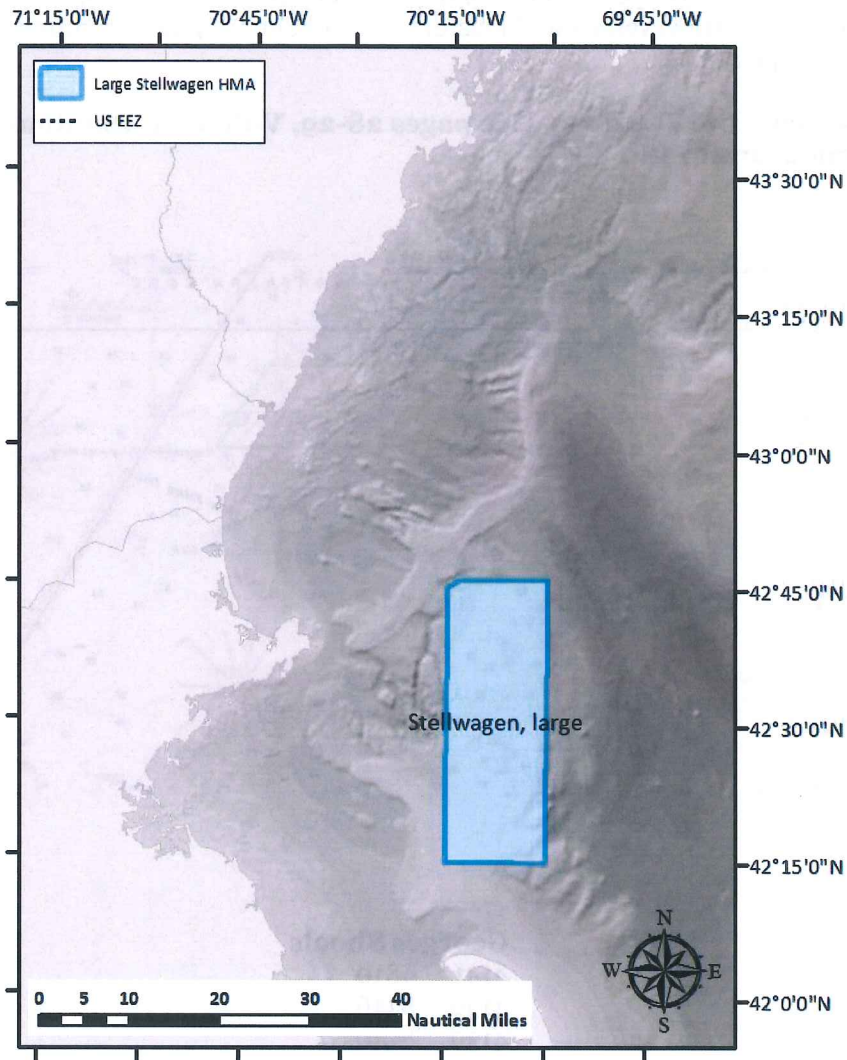
Addresses goals #4 (objective E) and #10.  
**See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**

February 19, 2014

- **Western Gulf of Maine**

**See page 64, Volume 3, Omnibus EFH Amendment 2 Draft EIS**

Preferred alternative is Western Gulf of Maine Habitat Management Alternative 6.



Addresses goals #4 (objective E), #7 (objective I) and #10.

**See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**

February 19, 2014

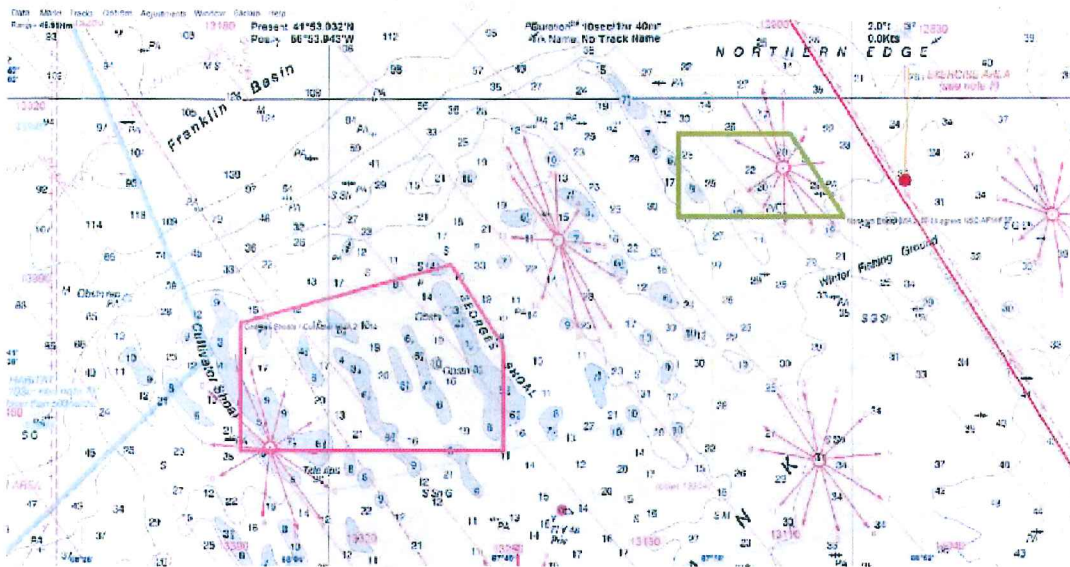
GEORGES SHOAL, GREAT SOUTH CHANNEL, AND SOUTHERN NEW ENGLAND

• **Georges Bank**

**See page 76, Volume 3, Omnibus EFH Amendment 2 Draft EIS**

Preferred alternative is a modification of Georges Bank Habitat Management Alternative 5 maintaining the Georges Bank Shoals HMA, adding a Northern Edge HMA and removing the gear modification area (GMA). This alternative would replace the area currently known as Closed Area II. The area currently known as Closed Area II will be open for a maximum of 135 days/year to bottom trawl fishermen due to agreement between groundfish sector trawl vessels and lobstermen, and due to spawning protection closure February 1 – April 15.

Addresses goals #4 (objective E) and #10. **See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**



Coordinates:

**Northern Edge**

4150 6701  
4150 6720  
4157 6720  
4157 6707  
4150 6701

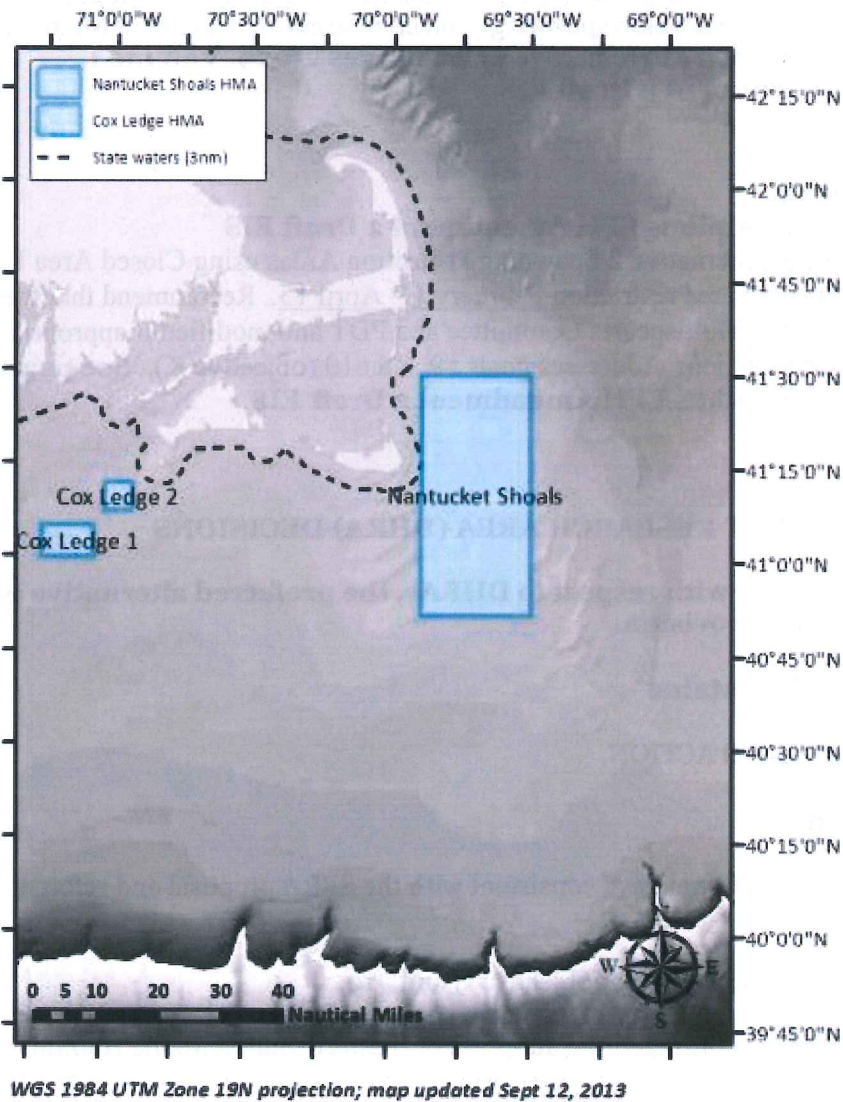
**Georges Shoals**

4141 6810  
4146 6746  
4139 6740  
4130 6740  
4130 6810  
4141 6810

February 19, 2014

- **Great South Channel and SNE**

**See page 88, Volume 3, Omnibus EFH Amendment 2 Draft EIS**  
Preferred alternative is Great South Channel/SNE Habitat Management Area, Alternative 5.



Addresses goals #4 (objective E) and #10.  
**See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**

February 19, 2014

## **GROUND FISH SPAWNING DECISIONS**

- **Gulf of Maine**

**See page 91, Volume 3, Omnibus EFH Amendment 2 Draft EIS**

The no action alternative improperly identifies the Western Gulf of Maine and Cashes Ledge closures, and the rolling closures (section 2.2.1.1) as spawning protection areas. We support the continuation of the sector rolling closures until such time that the Groundfish Committee can develop spawning protection areas in the Gulf of Maine that would address Goals # 9 and #10 (objective K). **See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**

- **Georges Bank**

**See pages 103-104, Omnibus EFH Amendment 2 Draft EIS**

Preferred alternative is Alternative 2 Spawning Protection Areas using Closed Area I and Closed Area II, spawning area restriction February 1 – April 15. Recommend that these areas be reviewed by the Multispecies Committee and PDT and modified if appropriate in a future multispecies action. Addresses goals #9 and #10 (objective K). **See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**

## **DEDICATED HABITAT RESEARCH AREA (DHRA) DECISIONS**

**In all decision making with respect to DHRAs, the preferred alternative is Alternative 5 sunset provision.**

- **Eastern Gulf of Maine**

Preferred alternative is NO ACTION.

- **Stellwagen**

Preferred alternative is alternative 3, consistent with the SERA proposal and reference area 2.

Addresses goals #4 (objective E), #7 (objective I) and #10.

Support for this DHRA is contingent on adoption of Western Gulf of Maine Habitat Management Alternative 6.

- **Georges Bank**

Preferred alternative is NO ACTION.

February 19, 2014

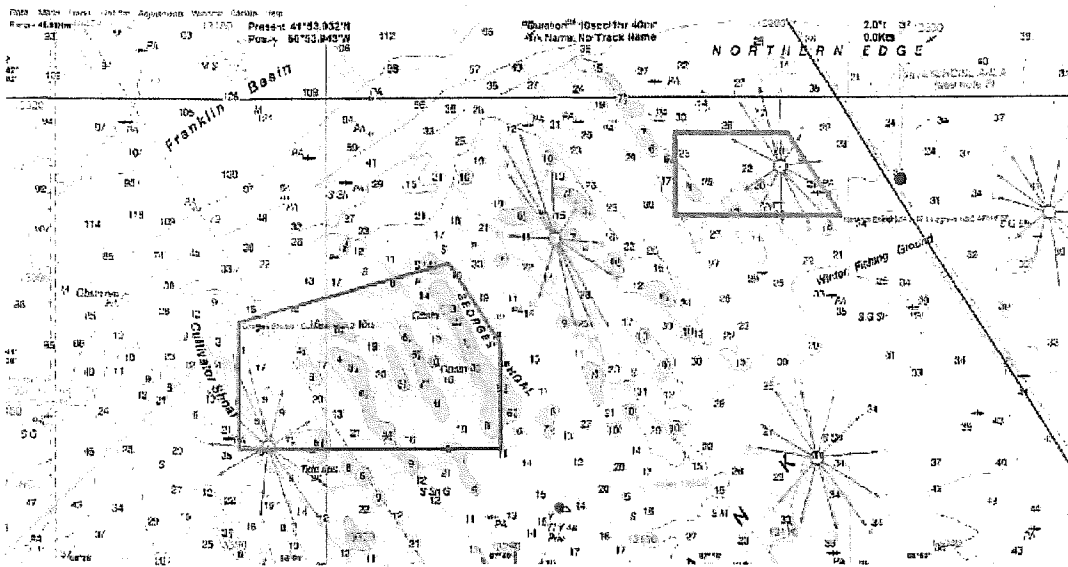
GEORGES SHOAL, GREAT SOUTH CHANNEL, AND SOUTHERN NEW ENGLAND

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Addresses goals #4 (objective E) and #10. **See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**



Coordinates:

**Northern Edge**

4150 6701  
4150 6720  
4157 6720  
4157 6707  
4150 6701

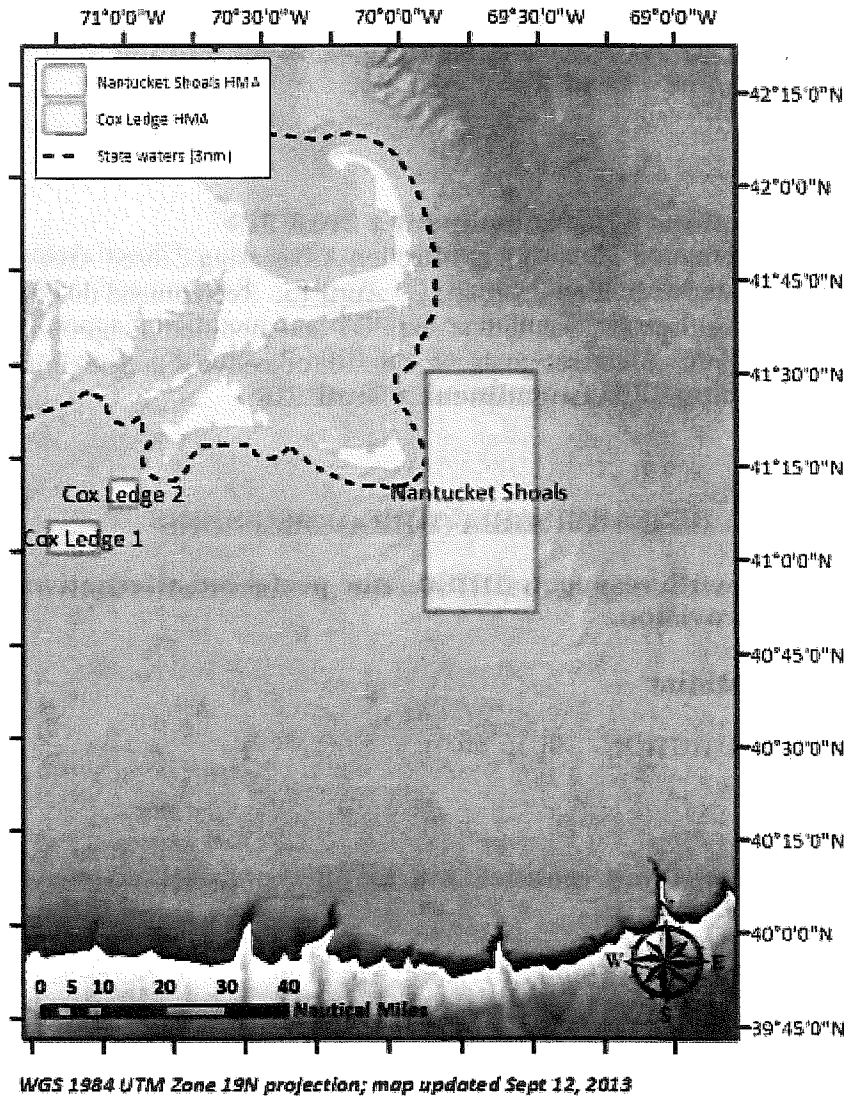
**Georges Shoals**

4141 6810  
4146 6746  
4139 6740  
4130 6740  
4130 6810  
4141 6810

February 19, 2014

- **Great South Channel and SNE**

See page 88, Volume 3, Omnibus EFH Amendment 2 Draft EIS  
Preferred alternative is Great South Channel/SNE Habitat Management Area,  
Alternative 5.



Addresses goals #4 (objective E) and #10.  
See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS



February 19, 2014

## **GROUND FISH SPAWNING DECISIONS**

- **Gulf of Maine**

**See page 91, Volume 3, Omnibus EFH Amendment 2 Draft EIS**

The no action alternative improperly identifies the Western Gulf of Maine and Cashes Ledge closures, and the rolling closures (section 2.2.1.1) as spawning protection areas. We support the continuation of the sector rolling closures until such time that the Groundfish Committee can develop spawning protection areas in the Gulf of Maine that would address Goals # 9 and #10 (objective K). **See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**

- **Georges Bank**

**See pages 103-104, Omnibus EFH Amendment 2 Draft EIS**

Preferred alternative is Alternative 2 Spawning Protection Areas using Closed Area I and Closed Area II, spawning area restriction February 1 – April 15. Recommend that these areas be reviewed by the Multispecies Committee and PDT and modified if appropriate in a future multispecies action. Addresses goals #9 and #10 (objective K). **See pages 28-29, Volume 1, Omnibus EFH Amendment 2 Draft EIS**

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- **Eastern Gulf of Maine**

Preferred alternative is NO ACTION.

- **Stellwagen**

Preferred alternative is alternative 3, consistent with the SERA proposal and reference area 2.

Addresses goals #4 (objective E), #7 (objective I) and #10.

Support for this DHRA is contingent on adoption of Western Gulf of Maine Habitat Management Alternative 6.

- **Georges Bank**

Preferred alternative is NO ACTION.



EARTHJUSTICE



OCEANA

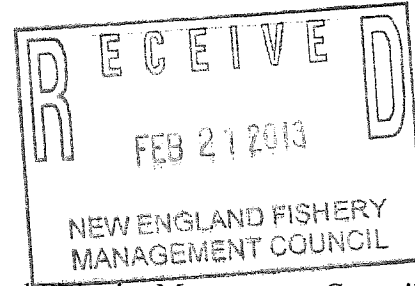
Protecting the World's Oceans



THE PEW CHARITABLE TRUSTS

February 20, 2014

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



Dear Mr. Nies:

We are writing to provide preliminary comments to the New England Fisheries Management Council (Council) and the National Marine Fisheries Service (NOAA Fisheries) on the Draft Environmental Impact Statement (DEIS) and associated alternatives for the Omnibus Essential Fish Habitat (EFH) Amendment (Amendment).

**I. INTRODUCTION**

After years of development and much delay, this Amendment is being finalized at a time when numerous groundfish stocks including both Georges Bank and Gulf of Maine cod, Gulf of Maine haddock, and yellowtail flounder are in a time of crisis. Stock assessments exhibit significant retrospective patterns and scientists have already cautioned that their assessments may be optimistic in terms of predicting the actual condition of those stocks. With cod, age structure is significantly truncated and weights at age are low. The effect of climate change on the temperature, chemical composition and movement of our ocean waters has never been more evident and its implications more uncertain. Ecosystems are in a state of flux with the introduction of new species and changed environmental conditions. At no time in the management of our oceans has there been a greater need for precaution to help mitigate against this ecological and commercial uncertainty. Rather than promise enhanced protection of EFH and measures that will provide stability and resilience in the face of these challenges, the Council and NOAA Fisheries appear poised to approve an Amendment that will drastically reduce the extent of EFH protected and allow trawls and other fishing in areas of the New England waters that have served for nearly twenty years as refuges for innumerable species.

The Council will select preferred alternatives at its February meeting. This letter identifies some of our concerns with the Amendment and its approval process. In summary, we request that the Council take the following actions:

**A. Requested Actions**

- 1. The Council should methodically assess each proposed alternative and management measure to determine whether it advances the specific goals and objectives of the Amendment and the EFH provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA);<sup>1</sup>**

<sup>1</sup> Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884 (2007) ; 50 CFR § 600.815 (a) (10) Review and revision of EFH components of FMPs. NOAA Fisheries is intended to be an active participant in this process, providing written recommendations for the EFH components of the relevant fishery management plans. § 600.815 (b) Development of EFH recommendations for Councils.

2. **The Council should include alternatives that protect prey species as EFH for regulated species;<sup>2</sup>**
3. **The Council should select preferred alternatives that best achieve the goals and objectives of the Amendment and the EFH provisions of the MSA, and identify the specific scientific basis for each selection in order to inform NOAA Fisheries' and the public's review of the DEIS;**
4. **The Council should identify any goal or objective that will not be met through this amendment and explain how it will be addressed in the future; and**
5. **The Council should request that the Science and Statistical Committee (SSC) review the Amendment's goals and objectives and offer its guidance on how best to meet them, based on the available alternatives and information.**

#### **B. The MSA and the Relationship Between Habitat and Fisheries**

The MSA defines EFH in broad terms that are fundamentally grounded in ecological science and oriented toward species needs, requiring that the focus of the Council's EFH management efforts be upon "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity."<sup>3</sup> The term "substrate" is further defined in the MSA's implementing regulations to include "sediment, hard bottom, structures underlying the waters, and associated biological communities."<sup>4</sup>

The MSA requires NOAA Fisheries and regional councils to develop and implement fishery management plans that minimize adverse impacts to essential fish habitat in the marine environment including places where young fish can find refuge, food, and other conditions promoting growth to maturity, places that protect key prey species and the habitat needed to support these prey, especially those prey needed by pre-spawning adult fish essential to spawning migrations, the production of eggs and milt, and successful courtship and spawning, and the places where spawning fish and their spawn aggregate.<sup>5</sup> All of these key aspects of the behavioral ecology of fish must be considered when developing and selecting alternatives. Periodic updates and improvements to the EFH program should occur no less than once in five years.<sup>6</sup>

NOAA Fisheries and the Council are charged with stewardship of living marine resources through management of wild-capture fisheries of the Gulf of Maine/Georges Bank region. These fish and shellfish resources are available as products of intricate marine ecosystems that depend upon many factors including: the population structure of individual species, the relative mix of species and ecological community types, predator-prey dynamics, and the diversity of habitat types needed to support not only the fish that are harvested directly but the myriad of interconnected species that form the fabric of functional ecosystems and are thus integral to their survival and health.

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<sup>2</sup> 50 CFR § 600.815(a)(7).

<sup>3</sup> 16 U.S.C. § 1823(10).

<sup>4</sup> 50 CFR § 600.10.

<sup>5</sup> 16 U.S.C. § 1853(a)(7): Every fishery management plan must "describe and identify essential fish habitat for the fishery . . . and 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."

<sup>6</sup> 50 CFR § 600.815 (a) (10): Review and revision of EFH components of FMPs.

The relationship between the integrity of habitat and the health of wild animal populations is indisputable; habitat loss through degradation is prominent among factors leading to the extinction of animal populations and consequently is a key focus of both the Endangered Species Act and the MSA.<sup>7</sup> The marine ecosystems and the fish that they yield have been in decline for decades due to fishery management practices that have not been adequately informed by ecosystem science, unintended mortality of non-target species, or adequate data on fishing impacts and habitat degradation. The transformation of marine ecosystems to a new state offering fewer benefits and less predictability is expected considering information from a diversity of ecosystems around the world.<sup>8</sup> With our fish stocks in their current state, and the effects of climate change already being felt in the region, it is urgent that meaningful habitat protection is implemented in New England.

## II. Critical Actions to Ensure Compliance with Legal Requirements

### A. The Council must methodically assess each proposed alternative and management measure to determine whether it advances the specific goals and objectives of the Amendment and the EFH provisions of the MSA.

The MSA and the National Environmental Policy Act (NEPA) require a considered process, based on the best scientific information available, to conserve and restore ocean ecosystems and sustain fisheries into the future. A comparative analysis of alternatives must be developed to facilitate objective decision making within a scientific and quantitative framework.

The MSA requires an EFH Amendment to both (1) enhance EFH and (2) minimize the adverse effects of fishing to such habitat to the extent practicable and in this case the goals are to be attained through a review of available data and evaluation of existing EFH management areas, including habitat areas, groundfish closed areas, and Habitat Areas of Particular Concern.

NEPA requires that the EFH Amendment incorporate a broad range of EFH management alternatives. The central purpose of NEPA is to ensure that both decision-makers and the public are well-informed about the potential adverse environmental effects of proposed actions and the range of available alternatives and mitigation measures that could reduce those adverse effects.<sup>9</sup> This is best accomplished through an EIS. The NEPA requirement that a comprehensive range of the reasonable alternatives be analyzed is “the heart of the [EIS].”<sup>10</sup> The Council and NOAA Fisheries must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”<sup>11</sup> The environmental impacts of the proposed action and any alternatives must be presented in comparative form, “sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public.”<sup>12</sup> The central purpose of NEPA “is to ensure that agencies are fully aware of any adverse environmental effects of their actions, and of all feasible alternatives which may

<sup>7</sup> 16 U.S.C. §§ 1531-1544 (1973) and 16 U.S.C. §§ 1801-1884 (2007).

<sup>8</sup> Travis et al 2013. Integrating the invisible fabric of nature into fisheries management. PNAS. Available at: [www.pnas.org/cgi/doi/10.1073/pnas.1305853111](http://www.pnas.org/cgi/doi/10.1073/pnas.1305853111)

<sup>9</sup> See, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)(NEPA ensures that the agency will “carefully consider detailed information concerning significant environmental impacts” and that such information is available to the public); accord, *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 97 (1983). NOAA Fisheries’ regulations emphasize its duty to prepare an EIS that adequately informs the public of the environmental impacts of the proposed action: “An EIS must provide a full and fair discussion of significant environmental impacts.” (National Oceanic and Atmospheric Administration Administrative Order 216-6, hereafter “AO 216-6”) AO216-6 § 5.04.a.1.

<sup>10</sup> 40 C.F.R. § 1502.14; 42 U.S.C. § 4332(2)(c)(iii).

<sup>11</sup> 42 U.S.C. § 4332(2)(E).

<sup>12</sup> 40 C.F.R. § 1502.14.

have lesser adverse effects on the environment, so that final decision-making will be informed by a full understanding of relevant environmental impacts.”<sup>13</sup>

The record of debate and comment letters on the Council’s EFH DEIS demonstrate the unresolved conflicts over uses of the available resources in New England.<sup>14</sup> Thus it is incumbent upon the Council to carefully describe appropriate alternatives to recommended courses of action based upon transparent analyses that show the environmental impacts of fishing on EFH along with the cost and benefits associated with each alternative. In the particular case where the Council will be selecting habitat protection areas and management measures throughout an ecologically diverse region with identified sub-areas, the analysis must illuminate the cumulative benefits associated with ensembles of areas within and among sub-areas. It is not sufficient to consider individual component alternatives as if the overall ecological performance of the region did not depend upon interactions among the various sets of areas considered in the DEIS.

Substantive technical work has been completed by the Council and NOAA Fisheries to inform the development of the EFH alternatives. Nonetheless, the systematic relationship between this scientific information and the specific alternatives has not yet been made sufficiently clear. The available information must be laid out in a systematic decision framework, thus allowing all concerned stakeholders the opportunity to evaluate each alternative as compared to the others, and as measured against the goals and objectives of the Amendment.

**B. The Council must select a set of preferred alternatives that best achieves the goals and objectives of the Amendment and meets the MSA’s EFH requirements, and identify the specific scientific basis for each selection in order to inform NOAA Fisheries’ and the public’s review of the DEIS.**

The Council must adhere to the established goals and objectives of this Amendment as well as the EFH requirements of the MSA, and ensure that the best available scientific information is relied upon to guide and direct the preferred alternative selection process. These goals and objectives clearly signal the Council’s intent for the Amendment and closely follow the EFH requirements specified in the MSA.

The significant work of the Council’s Habitat Plan Development Team (PDT) and Closed Area Technical Team (CATT) has identified new areas that could be important additions to the region’s EFH portfolio. The Council’s utilization of the analysis, however, has been haphazard. The resulting alternatives are not simply based on the technical analysis but also rest on anecdotal information provided by individual users about the commercial import of particular places. In most cases, these anecdotal views were provided without scientific support or further analysis by the Council.

The discussions at the Council over the past several years indicate that this management body approaches the new EFH amendment with two foregone conclusions: (1) the existing system of groundfish closed areas and associated habitat areas (*status quo*), spanning over six thousand square nautical miles, is no longer needed and should be replaced by new areas, and (2) the overall area devoted to EFH protection should be substantially reduced. With respect to the first assumption, there has been little discussion of how the existing areas, with or without management changes (e.g., more gear restrictions), would perform against the goals and objectives of the amendment when compared with the proposed alternatives. Regarding the second assumption, the Council

<sup>13</sup> American Oceans Campaign v. Daley, 183 F. Supp. 2d 1, 21(D.D.C. 2000).

<sup>14</sup> Letter to Council Executive Director, Thomas Nies, from CLF et al, dated June 8, 2013; Letter and appendix to NOAA Fisheries Regional Administrator John K. Bullard, April 9, 2013 from The Pew Charitable Trusts; Public comments, NEFMC meeting, December 18, 2013 available at: [www.nefmc.org/habitat/council\\_mtg\\_docs/Dec%202013/council\\_habitat\\_dec\\_2013.html](http://www.nefmc.org/habitat/council_mtg_docs/Dec%202013/council_habitat_dec_2013.html)

has introduced alternatives for every sub-region that would eliminate all EFH areas if selected and implemented. In most regions, except for the Gulf of Maine, every alternative other than the *status quo* alternative would lead to substantially less area protected. Although some have suggested that more focused protection of better habitat might provide more benefit than the larger areas, there have been no rigorous analyses to support this contention.

The Council's interest in scaling back the total area devoted to EFH protection is apparent from Council deliberations and the range of alternatives included in the DEIS. Thus, this Amendment will very likely add protection in new smaller areas, simultaneously remove protection from substantially larger areas, with a substantial net loss for habitat protection. Reducing EFH protection is difficult to reconcile with the Amendment's goals and objectives (e.g., goal 9, objectives F and L; see Appendix I), which call for protection, restoration, and rehabilitation of degraded fish habitat and enhancing groundfish productivity. While it is theoretically possible that smaller areas would perform better, this is not well supported by the science presented in the DEIS. These important goals and objectives are best met by enhancing protection of existing habitat areas and building the portfolio of key habitat areas by adding additional large areas.<sup>15</sup>

The question of what the final ensemble of EFH areas must achieve for the region has not been addressed adequately. If the Council ultimately chooses to change the overall extent of EFH, will the ensemble of EFH be enough to meet the biological goals specified in the Amendment and the MSA? These are complicated scientific questions on which the Council must seek guidance from its SSC.

When the SSC evaluates the status of a stock, it uses the best available science to determine how much can be taken each year without jeopardizing the future of that resource. Because the science is inherently uncertain, precaution is taken in establishing an Acceptable Biological Catch (ABC) that is more precautionary than the estimated maximum sustainable yield. Similarly, ecological science must be brought to bear on the question of how much habitat can be exploited by fisheries without compromising the ecosystem's capacity to deliver fish and other ecosystem services. How much of each type of EFH is needed and what biological risks are attendant to erring on the side of less EFH protection? The Council's Habitat Committee spent years developing the Swept Area Seabed Impact (SASI) model<sup>16</sup> and applying the Local Indicators of Spatial Association (LISA)<sup>17</sup> cluster analysis for identification of seabed areas that are vulnerable to fishing impacts, yet the alternatives present in the DEIS capture only a small fraction of these vulnerable areas. What is the scientific basis for deciding that only a fraction of these areas shall be protected from some gear, and what are the associated risks? These questions have not been answered adequately and must be directed to the SSC. Without further analysis and guidance, the Council, NOAA Fisheries, and the public will be unable to make responsible decisions on issues of significant importance.

Amendment Objective M and the MSA's own definition of EFH both seek to improve refuge for the critical life history stages of managed fish. The combined efforts of the Habitat PDT and the CATT have provided a strong basis from which the Council could have developed alternatives to improve the protection of habitat areas needed at critical life history stages such as juveniles, eggs of substrate spawners such as Atlantic herring (an important forage fish), and expanded protection for the largest individual fish which contribute the most to future generations. Proposals put forward by the CATT and PDT that would have helped achieve this objective, however, have been consistently rejected for inclusion in the DEIS, particularly in near-shore areas. If the

<sup>15</sup> Edgar GJ et al., (2014) Global conservation outcomes depend on marine protected areas with five key features. *Nature* 506:216-220.

<sup>16</sup> Summary of SASI and LISA available at: [www.nefmc.org/habitat/sasi\\_info/110624\\_SASI\\_Summary\\_v2.pdf](http://www.nefmc.org/habitat/sasi_info/110624_SASI_Summary_v2.pdf); DEIS, Vol. 5, App. D

<sup>17</sup> Anselin L (1995) Local Indicators of Spatial Association – LISA. *Geographical Analysis* 27(2):93-115.

principal goal of increased productivity is to be achieved, habitat for critical life stages must be protected through this Amendment.

The DEIS includes discussion of the importance of spawning areas and presents alternatives intended to meet the Amendment's Objective K pertaining to spawning protection. However, these provisions essentially call for a continuation of the *status quo* system of rolling or short-term seasonal closures to protect spawning aggregations. Moreover, the DEIS contains an alternative that would allow measures to protect spawning fish to be implemented outside of the EFH amendment through a future action. In the final analysis, the DEIS fails to develop serious spawning alternatives that could improve over *status quo* and defers action to a future policy decision.

The DEIS fails to provide EFH management alternatives for, or to otherwise even address, areas of the water column vital for spawning, breeding, feeding, or growth to maturity. Despite the definition of EFH in the MSA and Federal regulations, the Council and NOAA Fisheries have adopted an overly narrow interpretation of habitat in developing this DEIS – one that includes the seafloor substrates but neither the water column nor other marine life (e.g., forage fish, sponges or other epibenthic fauna are not addressed directly) that are essential for spawning, feeding and growth to maturity. There are no alternatives that specifically define areas of the water column as EFH (e.g., for spawning, or areas where larvae or juveniles may aggregate in the water column). Thus important portions of the MSA's definition of EFH are neglected entirely.

### C. Discussion of alternatives for specific sub-regions

There are deficiencies in the alternatives that the Council has included in the DEIS, most conspicuously in the Georges Banks and Southern New England sub-regions. The overall extent of EFH protection will likely be substantially reduced if the current alternatives remain the only ones from which the Amendment is ultimately crafted. The Council has signaled its interest in opening some areas that have been closed for decades. Additionally, much of what the Council's technical teams (i.e., CATT and Habitat PDT) have identified as candidate EFH areas is likely not to be protected as they are not even included among the alternatives. We strongly urge that the Council and NOAA Fisheries use the public comment period as an opportunity to improve the range and quality of the alternatives in the DEIS, relying upon new information and analysis developed through the comment process as intended by NEPA. The Amendment has been a decade in the making and in that context the additional work needed will not impose a significant delay.

**All sub-regions: no closure alternatives.** For every sub-region identified in the DEIS, an alternative is proposed that would eliminate all existing groundfish and habitat closures. These alternatives would not implement any future closures or other management measures to protect EFH. These alternatives do not meet any of the goals or objectives of the amendment nor do they comport with the MSA.

The theory behind these alternatives is that reductions in fishing effort and associated "swept area" from fishing gear over the past years has reduced the impact on EFH. Thus, it is suggested that the reduced effort itself can be considered a measure undertaken by the Council and NOAA Fisheries to mitigate the effects of fishing gear on EFH as required by the MSA.

We believe this theory to be flawed for two reasons. First and foremost, there are no data demonstrating that reductions in fishing effort have resulted, or could result, in any benefit or protection to EFH in New England. Less fishing may reduce the statistical likelihood of interactions between gear and habitats, but that does not necessarily equate with meaningful habitat protection. Habitat damage does not necessarily scale linearly with

fishing effort, as initial impacts sometimes cause the most harm.<sup>18</sup> To the extent that closed areas are opened to fishing, even under a reduced effort scenario, they are still susceptible to the impacts of fishing, whether that amounts to a single pass from a trawl, dredge, or mid-water net or to repeated gear impacts in a given area. Second, reductions in fishing have occurred due to efforts to rebuild overfished and diminished stocks, not as a result of any habitat-related action of the Council. Considering that the Council is legally required to rebuild overfished stocks, allowable catch will increase as a stock rebuilds along with fishing effort. As this occurs, any of this postulated habitat protection by way of effort reduction will be reduced.

**Gulf of Maine.** The existing Western Gulf of Maine Groundfish Closed Area (WGOMCA), Cashes Ledge Groundfish Closed Area and Jeffrey's Bank Habitat Closed Area are longstanding closures that comprise a network of protected EFH spanning the Gulf of Maine. These areas are known to benefit juvenile fish of various species and to harbor productive female fish.<sup>19</sup> Protection of Gulf of Maine cod EFH in these areas, particularly the WGOMCA and Cashes Ledge, will benefit the spawning, larval and juvenile fish and will help to restore resilience to struggling cod populations.<sup>20</sup> These areas represent EFH for a wide range of commercial species including cod, haddock, pollock, American plaice and others. Both Cashes Ledge and the WGOMCA comprise spawning areas, and all three provide protection for critical groundfish habitat and refugia for critical life history stages, consistent with the goals and objectives of the Amendment. Edge fishing along the perimeter of these areas suggests that these existing closures are contributing to the productivity of commercial species today.<sup>21</sup>

The DEIS, and the SASI model documentation itself, note the relative paucity of data pertaining to geological and biological features in the Gulf of Maine. Despite the sparse data for this sub-region, each of these areas was identified as supporting vulnerable habitat through SASI and LISA analyses. Though data-limited, Cashes Ledge is nonetheless an area well known for its ability to support a uniquely abundant variety of species, a diverse selection of habitats including steep, kelp-covered ledges, muddy basins and boulder and cobble areas. Any action to remove protections from these areas that have benefitted from nearly twenty years of limited benthic disturbance from fishing would be irresponsible and inconsistent with the goals and objectives of the Amendment.

In Downeast Maine, new EFH areas are contemplated in the waters of Penobscot Bay and off of Machias. These are important and distinct ecological area as shown by SASI/LISA, data showing presence of juvenile groundfish, and documented important spawning areas for herring (Appendix II) and other fish. The Council and NOAA Fisheries should add this area to the portfolio of protected EFH in the Gulf of Maine.

**Georges Bank.** Absent new alternatives for the northeastern end of Georges Bank, the existing Closed Area II Groundfish Closure (CAII) must be selected as a preferred alternative so that it will continue to protect EFH on Georges Bank. It is currently the only alternative identified in the DEIS for this part of Georges Bank that meets the goals and objectives of the Amendment and will not drastically reduce the quantity of EFH protected.

<sup>18</sup> See, DEIS, Vol. 5, App. D: The Swept Area Seabed Approach (SASI), p.190, conceding the possibility of a "first pass" impact and the SASI model's failure to account for this possibility; Effects of Bottom Trawling on Seafloor Habitats, National Research Council 2002; Watling L, Norse EA (1998) Disturbance of the seabed by mobile fishing gear: A comparison to forest clearcutting. *Conservation Biology* 12(6):1180-1197; Rieser A, Watling L, Guinotte J (2013). Trawl fisheries, catch shares and the protection of benthic marine ecosystems: has ownership generated incentives for seafloor stewardship? *Marine Policy* 40:75-83.

<sup>19</sup> See, DEIS, Vol 3, pp. 217, 228.

<sup>20</sup> See e.g., Pershing A et. al., (2013) The future of cod in the Gulf of Maine. Gulf of Maine Research Institute, pp 11-12; Moland E et. al., (2013) Lobster and cod benefit from small-scale northern marine protected areas: inference from an empirical before-after control-impact study. *Proc R Soc B* 280: 20122679.

<sup>21</sup> Murawski S et al (2005) Effort distribution and catch patterns adjacent to temperate MPAs. *ICES J. Mar. Sci.* 62(6):1150-1167.



The Council's own analyses clearly point to the development of an alternative to the *status quo* which would encompass an area along the Northern edge extending from the existing Habitat Area of Particular Concern (HAPC) West through the area known as "The Fingers." No such alternative, however, is included in the DEIS. Although this deficiency has been noted in NOAA Fisheries correspondence and debated at the Council, proposals for new alternatives to address this deficiency have been rejected.<sup>22</sup> The justification for such an alternative is overwhelming, including results from the SASI and LISA analysis, as well as herring spawning and larval aggregations (see part II E below, and Appendix II). Despite this, and without having completed any analysis of the practicability of such an alternative, the Council has favored alternatives that either shrink the area of protected EFH to a fraction of the existing CAII, or that provide somewhat more area but with management measures that are unlikely to protect EFH (i.e., protections limited to gear modifications that the Council's technical advisors have recommended against). We request that one or more new alternatives consistent with the analysis referenced here be introduced for the Northeastern part of the bank. In the absence of such an alternative, the Council should select CAII as the preferred alternative. The other alternatives for this sub-region fail to meet the goals and objectives of the Amendment.

**Great South Channel and Southern New England.** Sitting at the intersection of three ecological regions, the Great South Channel is an ecologically important area for many species, including fish, marine mammals, and other species. Together with Nantucket Shoals, this area is important for spawning of Atlantic herring (see Appendix II) and serves as a migration route for river herring, shad, and other species moving in and out of the Gulf of Maine and Georges Bank. Although considerable vulnerable habitat has been identified here through the Council's SASI/LISA analysis, only a portion of the area is included among the EFH alternatives contemplated by the Council. All indications are that the Council will eliminate Closed Area I. Thus, we request that the Council and NOAA Fisheries review the available scientific information together with new information provided by the public and develop one or more alternatives for this area that encompass herring spawning grounds and the vulnerable habitat areas identified through SASI/LISA. Special consideration should also be given to EFH protection for the biologically rich shallows of Nantucket Shoals.

**Preferred alternatives.** Based upon the information that is available now, we recommend the following as preferred habitat alternatives for the purposes of public comment and further analysis (see map, Appendix III at the end of this letter). We believe these areas will bring the Council closer to meeting the Amendment's goals and objectives than other combinations of areas now contemplated, except for *status quo*. With further analysis addressing the issues raised in this letter, and through the public comment period, additional alternatives should be put forward that better meet the EFH requirements of the MSA.

- **Gulf of Maine:** *status quo areas* (groundfish and habitat areas) together with two new Downeast areas (Machias, Large Eastern Maine), and an eastern extension of WGOMCA to encompass all of Jeffrey's Ledge and Lower Jeffrey's and to include Tillie's Bank.
- **Georges Bank:** an area extending from the current HAPC along the Northern Edge to the west capturing the LISA trawl clusters as well as herring spawning areas to the north and providing a buffer to the north and south sides of the area.
- **Great South Channel/Southern New England:** Great South Channel East alternative expanded to include the northern part of the Nantucket Lightship Habitat Area, and Cox Ledge 1 and 2 combined. This area is comprised of a combination of proposed Great South Channel Alternatives 3 and 6 and a more comprehensive protected area around Cox Ledge including a buffer area.

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<sup>22</sup> Letter from NOAA Fisheries Regional Administrator John Bullard to NEFMC Chairman Ernest F. Stockwell, III, dated August 30, 2013; Motions to introduce new alternatives for Georges Bank (6 a-c), NEFMC meeting, Hyannis, MA, Tuesday, September 24, 2013.  
 Conservation Law Foundation    Earthjustice    Natural Resources Defense Council    Pew Charitable Trusts

**D. The Council must choose management measures that will not undermine the intended purpose of EFH designations.**

The benefits to the region of a well-designed EFH program can be substantial but will only accrue if there is effective management of the EFH areas.<sup>23</sup> Designation of EFH alone is not enough. The Council and NOAA Fisheries cannot expect great returns on habitat areas where there are limitations on the use of certain kinds of fishing gear, but other gear such as clam and scallop dredges are allowed, or where the fish themselves or their prey are intensely impacted by gear that may not appear to damage bottom structure (e.g., mid-water herring trawls or other gear not typically considered to be bottom tending).

**Clam Dredge Exemption.** The suite of proposed management measures that the Council can choose to implement in any given habitat protected area includes, in every instance, an option to allow hydraulic clam dredging within the protected area from which all other bottom tending mobile gear would be prohibited. The clam dredge exemptions must not be chosen as preferred alternatives.

This singular exemption for hydraulic dredges is inconsistent with the findings of the Council's technical and science advisors and the outputs of the relevant models utilized to develop this Amendment, as reflected by data contained within the DEIS. These data reflect that hydraulic clam dredges are among the fishing gears with the greatest impacts of those analyzed by the Habitat PDT.<sup>24</sup> Moreover, the analysis assumes that hydraulic clam dredges will not be operated in muddy or rocky habitats.<sup>25</sup> The technical and science staff specifically found that these dredges "have a more severe immediate impact on surface and sub-surface habitat features than other fishing gears used in the Northeast region."<sup>26</sup> Based upon this substantial evidence in the record that hydraulic clam dredges have greater impacts than any other gear used in New England, the inclusion of an exemption in the DEIS that would allow them within any and all proposed habitat protected areas is inconsistent with the goals for these areas.

**Gear Modification Areas.** Because there is no scientific evidence supporting the use of gear modification strategies as a means of protecting EFH, any alternative that proposes such an approach fails to comply with National Standard 2 and thus should not be selected as a preferred alternative by the Council.

The DEIS contains habitat protection alternatives with management based only upon modifications to trawl fishing gear (i.e., gear modification). Such modifications are designed to reduce impacts on benthic habitat but would continue to allow harmful dragging in areas that have been identified as vulnerable habitat. The DEIS includes two gear modification management measures, each of which could be applied to proposed habitat alternatives. Each allows for fishing within a habitat protected area, one using trawls with ground cables modified with elevating disks and a length per side capped at 45 fathoms, the other requiring that ground cables be eliminated entirely and cap bridle lengths limited to 30 fathoms per side. Additionally, in certain of the proposed habitat alternatives, a gear modification is the only proposed management measure. These include WGOM Alternative 7 (roller gear size restrictions), Georges Bank Alternative 4 (no ground cable or raised ground cable restrictions), Georges Bank Alternative 5 (no ground cable or raised ground cable restrictions, elevated disks and bridle length caps), and Great South Channel Alternative 6 (ground cable modifications).

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<sup>23</sup> Edgar GJ et. al., (2014) Global conservation outcomes depend on marine protected areas with five key features. *Nature* 506:216-220.

<sup>24</sup> DEIS, Appendix D, pp.107-109, 126, 130, 182.

<sup>25</sup> Id. at p. 107.

<sup>26</sup> Id.

These gear modification management measures were selected by the Council for inclusion in the DEIS against the repeated recommendations of its science advisors who found that these approaches were not known to be protective of habitat. Council staff and the Habitat PDT recommended against the use of gear modification options because available information was inconclusive as to whether such gear modifications would reduce the adverse effects of fishing on EFH.<sup>27</sup> The Habitat PDT has also specifically questioned whether reductions in linear effective gear width would lead to increases in number or duration of trawls and identified information gaps that need to be satisfied before a determination can be made whether there would be a net benefit from use of gear modifications to reduce total area swept.<sup>28</sup>

National Standard 2 of the Magnuson-Stevens Act requires that fisheries management measures be based upon the “best scientific information available.”<sup>29</sup> While the information upon which management decisions are based need not be perfect or based entirely upon consistent data, it must have *some* support in the data.<sup>30</sup> Where there is “no discernible, substantive scientific evidence” supporting gear regulations, courts have found that the regulations violate National Standard 2.<sup>31</sup>

### E. The Council must protect prey species.

The MSA clearly identifies feeding and growth as essential elements of EFH. This is not surprising as the essential goals of the MSA, and fisheries management broadly, cannot be met if the food sources of the target stocks are themselves depleted. With few exceptions, the relevant food sources are animal populations such as small fish, crustaceans, mollusks and other benthic invertebrates. These populations occupy places in the water column and on the bottom that must be protected as part of the EFH for the managed species. As explained in the DEIS Appendix B, the presence of these species “makes the waters and substrate function as feeding habitat.”<sup>32</sup>

To date NOAA Fisheries and the New England Fisheries Management Council have largely ignored this requirement of the MSA. The DEIS does include a compendium of prey-species but maps are not included and no alternatives are advanced in the DEIS to address the specific food needs of the managed species.<sup>33</sup> This deficiency can be addressed by taking several common sense steps, following examples from other regions (e.g., North Pacific, Pacific, and Mid-Atlantic), and utilizing data that NOAA Fisheries and the Council already have before them.

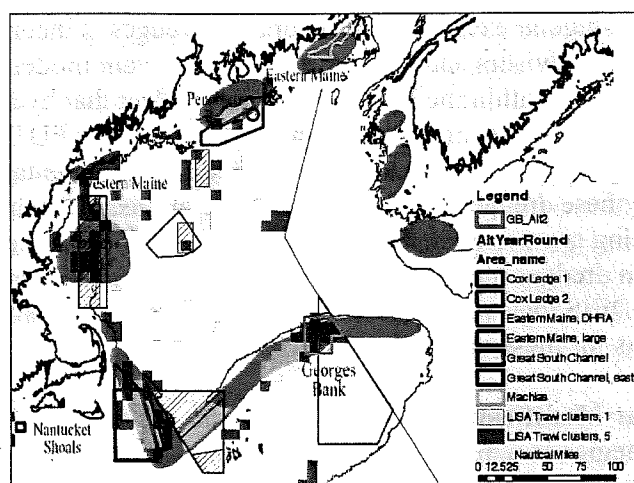


Figure 1. Spawning areas of Atlantic herring (green) shown together with SASI/LISA areas, existing EFH areas, and some of the DEIS alternatives. Spawning areas reproduced from the most recent stock assessment (SAW/SARC 54, 2012).

<sup>27</sup> See, Notes of Habitat Committee August 2012 meeting. See also, New England Fishery Management Council, *DRAFT: 03 October 2012: Gear modification options – ground cable length limits discussion/working document*, p. 8-9.

<sup>28</sup> *Id.*

<sup>29</sup> 16 USC § 1851(a)(1).

<sup>30</sup> *Ocean Conservancy v. Gutierrez*, 394 F. Supp.2d 147, 157.

<sup>31</sup> See *Hall v. Evans*, 165 F. Supp. 2d 114, 134; *Parravano* at 1046.

<sup>32</sup> 50 CFR 600.815(a)(7): Prey species. Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding.

<sup>33</sup> DEIS Appendix B: *EFH supplementary tables, prey species information, and spawning information*. November 25, 2013.

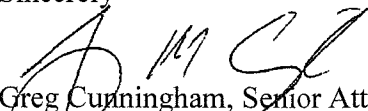
In brief, NOAA Fisheries and the Council should take the following steps to address these legal defects (for additional details see Appendix II: Forage Fish at the end of this letter):


- Prohibit fishing with mobile gear, and any gear capable of catching Atlantic herring, in areas where herring aggregate for spawning and where egg mats develop on the seabed (e.g., Northern Edge and Fingers region of Georges Bank, Nantucket Shoals, Great South Channel, Jeffrey's Ledge, and Penobscot Bay and other areas in Downeast Maine):
- Prohibit fishing with mobile gear, and any gear capable of catching sand lance, in areas densely populated by sand lance (e.g., portions of Stellwagen Bank);
- Prohibit new fisheries for forage species not currently supporting fisheries (e.g., sand lance, river herrings, shads, krill, and copepods).

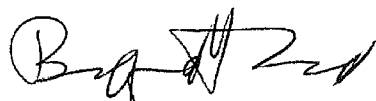
### III. Closing comment

Habitat conservation is a vital part of maintaining productive and resilient marine ecosystems, allowing these systems to be capable of providing abundant fish to support fisheries and coastal communities. It is the intent of the EFH provisions of the MSA to ensure that this goal is met as part of the mission of sustaining fisheries for the United States. This EFH amendment offers New England an opportunity to improve its habitat protection program and in so doing increase future opportunities for fisheries and other uses of marine resources. The Council and NOAA Fisheries, as responsible stewards of public resources, must identify the best EFH alternatives available now in order to facilitate public comment. The Council and NOAA Fisheries must also carefully consider the new information brought forward through the public comment process, consistent with the requirements of the MSA and the goals and objectives of the amendment, and improve the range and quality of the current alternatives for final decision-making and approval of this amendment.

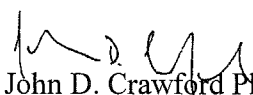
Sincerely

  
Greg Cunningham, Senior Attorney  
Conservation Law Foundation

  
Roger Fleming, Attorney  
Earthjustice

  
Bradford H. Sewell, Senior Attorney  
Natural Resources Defense Council

  
Gib Brogan, Northeast Representative  
Oceana

  
John D. Crawford PhD  
The Pew Charitable Trusts

## APPENDICES

### Appendix I: Goals and Objectives

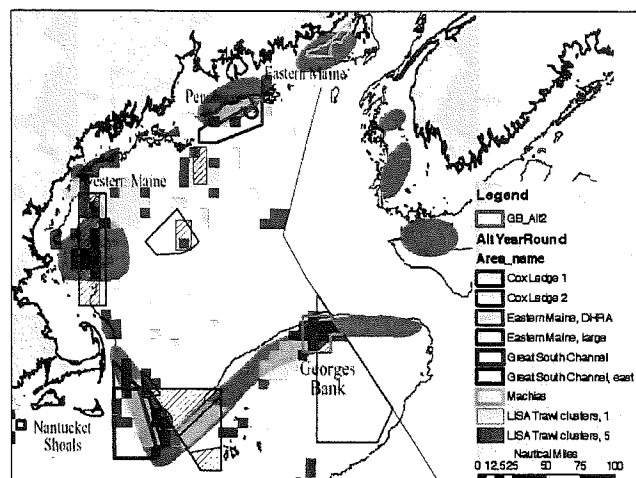
#### Goals and Objectives for EFH Amendment (from DEIS Volume I)

The goals and objective of the amendment must be met based on best available scientific information. The majority of the Goals (8 of 10) and Objectives (10 of 14) for the current EFH amendment were adopted by the Council in 2004, with several additions adopted in 2012 in response to the Council's wise decision to evaluate the existing groundfish closed areas through this amendment within the context of the EFH program. These goals and objectives clearly signal the Council's intent for the amendment and closely follow the EFH requirements specified in the MSA. Several of the key goals and objectives focused on what to do about EFH include the following:

- Identify and implement mechanisms to protect, conserve, and enhance the EFH of those species managed by the Council to the extent practicable (Goal 4);
  - Support restoration and rehabilitation of fish habitat which have already been degraded (by fishing and non-fishing activities) (Objective F);
- Enhance groundfish fishery productivity (Goal 9);
  - Improved groundfish spawning protection; including protection of localized spawning contingents or sub-populations of stocks (Objective K);
  - Improved protection of critical groundfish habitats (Objective L);
  - Improved refuge for critical life history stages (Objective M);
  - Improved access to both the use and non-use benefits arising from closed area management across gear types, fisheries, and groups. These benefits may arise from areas designed to address the other three groundfish closed area objectives (Objective N);
  - Design a system for monitoring and evaluating the benefits of EFH management actions including dedicated habitat research areas (Objective J);

## Appendix II: Forage Fish

**Food: Atlantic herring EFH.** Atlantic herring, their spawning grounds and other critical areas, must be protected as EFH. Herring is a keystone species within the Northeast U.S. Continental Shelf large marine ecosystem,<sup>34</sup> serving a vital role as food for many of the region's most prized fish including Atlantic cod, haddock, and bluefin tuna. Herring also provide essential sustenance for other species under the stewardship of NOAA Fisheries, including whales and other mammals protected by both the ESA and the Marine Mammal Protection Act (MMPA). The influence of herring and a second major food source, sand lance, on the spatial distribution of cod was a focal point for a new analysis during the recent cod stock assessment. These two forage fish can represent over half of the adult cod diet and thus the places where these two forage species occur drive the spatial and temporal distributions of cod and other predators. When sand lance is in high abundance on Stellwagen Bank, cod concentrate there in places referred to as *forage hotspots* in the Gulf of Maine cod stock assessment.<sup>35</sup> At other times, cod redistribute themselves in the Western Gulf of Maine when feeding on herring. A recent peer reviewed study in the Proceedings of the National Academy of Sciences showed that not only are adult herring vital as food for cod and other groundfish, but their eggs and larvae are a major source of food for haddock.<sup>36</sup>

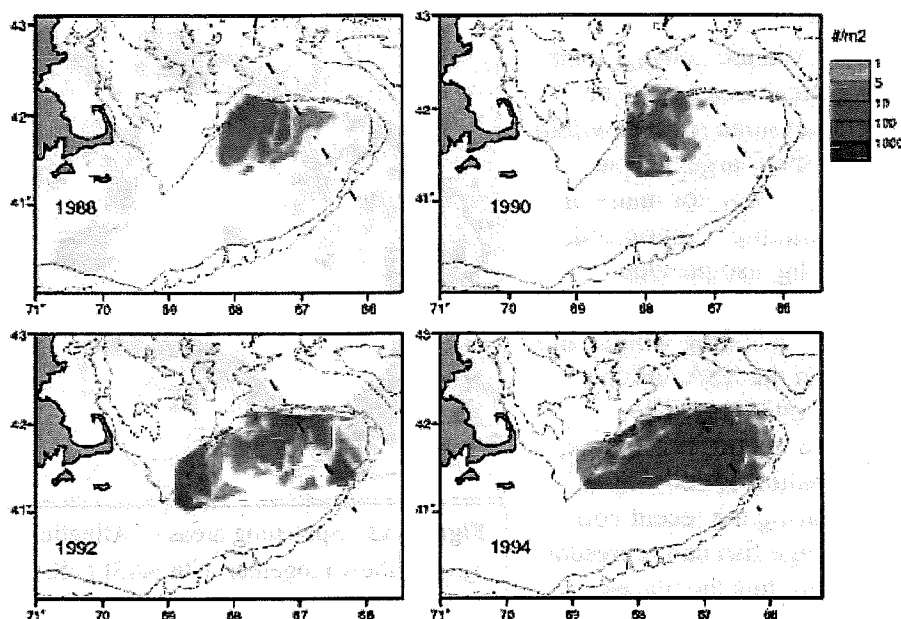


**Figure A1.** Spawning areas of Atlantic herring (green) shown together with SASI/LISA areas, existing EFH areas, and some of the DEIS alternatives. Spawning areas reproduced from the most recent stock assessment (SAW/SARC 54, 2012).

<sup>34</sup> Overholtz; Richardson DE et al (2010) ICES; Read and Brownstein, 2003; Brandt and McEvoy, 2006; Overholtz and Link, 2007.

<sup>35</sup> Gulf of Maine Atlantic Cod (*Gadus Morhua*) Stock Assessment For 2012, Updated Through 2011. 55th SAW Assessment Report. Northeast Fisheries Science Center Reference Document 13-11

<sup>36</sup> Richardson DE et al (2011) Role of egg predation by haddock in the decline of an Atlantic herring population. Proceedings of the National Academy of Sciences, 108 (33):13606–13611



**Figure A2.** Distribution of recently hatched Atlantic herring on Georges Bank. Reproduced from EFH source document, NOAA Technical Memorandum NMFS-NE-192 (2005)

Atlantic herring form shoals during site-specific spawning behavior. In some cases, these shoals are vast (e.g., 250 million herring on the Northern Edge of Georges Bank at one time),<sup>37</sup> making the fish especially vulnerable to fishing at this critical life stage. Herring eggs are adhesive, sinking to the bottom where they adhere to rocks, pebbles, gravel, or shell beds selected for spawning, and form dense egg-mats.<sup>38</sup> Thus, not only are aggregated adults vulnerable to fishing during spawning but so too are the eggs on the bottom. Any gear contacting the bottom will disturb the eggs, particularly mobile gears such as otter trawls, clam dredges, and mid-water herring trawls. Herring spawning in a given locality may have a dominant time in the year, but spawning can occur at many different times year, from early spring through late fall in the Northeast. Management should be designed to ensure that even small spawning contingents are not inadvertently extirpated by fishing, which makes the population as a whole more vulnerable, and reduces the availability of herring as food (i.e., eggs, larvae, juveniles and adults) in space and time.

Distinct spawning groups of Atlantic herring have been documented over the past century as illustrated in the map above, reproduced from the most recent herring stock assessment (Figure A1).<sup>39</sup> This map does not capture

<sup>37</sup> Makris NC et al (2009) Critical Population Density Triggers Rapid Formation of Vast Oceanic Fish Shoals. *Science* **323**: 1734-1737.

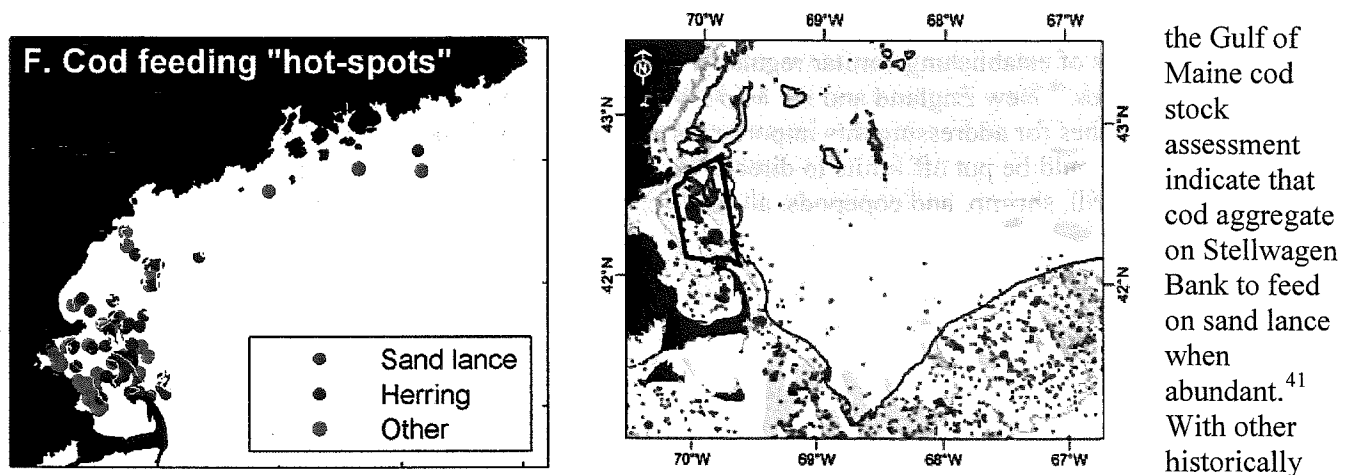
<sup>38</sup> Reviewed in Collette and Klein-MacPhee 2002

<sup>39</sup> Figure A4- 3 reproduced from SAW/SARC 54 Stock Assessment of Atlantic Herring – Gulf of Maine/Georges Bank For 2012, Updated through 2011: *Generalized view of the current major herring spawning areas in the Gulf of Maine and on George Bank*; an identical map is included as Figure 3 of the Essential Fish Habitat Source Document: Atlantic Herring, *Clupea harengus*, Life History and Habitat Characteristics. Second Edition, 2005. NOAA Technical Memorandum NMFS-NE-192.

a number of small near shore spawning localities, some of which may no longer exist, nor the spawning areas documented along the southern edge of Georges Bank.<sup>40</sup>

Both the EFH management areas and the measures adopted for them must ensure that the spawning grounds for Atlantic herring are afforded sufficient protection to ensure spawning success for herring throughout the year. Herring spawning is driven by specific conditions of the substrate and water flow and use of particular places has waxed and waned throughout recent history. Management should allow for reestablishing spawning in areas where spawning may be minimal today.

**Food: Sand lance as EFH.** Sand lance is widely recognized as another vital forage species in the region, supporting marine mammals, seabirds, cod and other fish important to commercial and recreational fisheries. As noted in the discussion of Atlantic herring above, studies done for



**Figure A3.** The left panel shows data on cod feeding based on stomach contents and the right panel depicts the distribution of sand lance, an important forage fish; abundance is proportional to the diameter of each red point (1975-2000).

important forage fishes diminished in the region (e.g., river herring and shad), the role of Atlantic herring and sand lance are particularly important. Analysis of the stomachs of cod has revealed that Stellwagen Bank is a foraging hotspot for sand lance consumption (Figure A3 left).<sup>42</sup> The map above (Figure A3 right) shows the distribution of sand lance in Southern New England including Massachusetts Bay, Stellwagen and Georges Banks and the Nantucket Shoals area.<sup>43</sup> Areas within Massachusetts and Cape Cod Bays, Georges Bank and points south which support high abundances of sand lance should be integral to an effective EFH management plan, including protection from mobile bottom tending gear, and any gear capable of catching sand lance.

<sup>40</sup> See Overholtz et al (2004) Stock Assessment of the Gulf of Maine - Georges Bank Atlantic Herring Complex, 2003. Northeast Fisheries Science Center Reference Document 04-06.

<sup>41</sup> Gulf of Maine Atlantic Cod (*Gadus Morhua*) Stock Assessment For 2012, Updated Through 2011. 55th SAW Assessment Report. Northeast Fisheries Science Center Reference Document 13-11; Richardson, DE, Palmer MC, Smith B. 2012. The relationship of forage fish abundance to aggregations of Gulf of Maine Atlantic cod (*Gadus morhua*) and possible implications for catch-per-unit-effort indices. SAW 55 Data Meeting. August 27-31, 2012. Working Paper 4. 41 p.

<sup>42</sup> Slide from Presentation by Michael Palmer, March 4, 2013. *Gulf of Maine Cod: From Bankers' Hours to Bankruptcy and the Role of Fine Scale Spatial Dynamics on Stellwagen Bank*

<sup>43</sup> Figure 50, page 102, Stellwagen Bank National Marine Sanctuary Final Management Plan and Environmental Assessment (2010).



**Food: River herring and shad as EFH.** The fate of the once abundant river herring and shad species (alosines) has received considerable attention at all the East Coast management bodies including Atlantic States Marine Fisheries Commission (ASMFC), Mid-Atlantic Fishery Management Council (MAFMC) and the NEFMC, and in a recent ESA listing decision by NOAA. Extensive work has been carried out examining the incidental catch of these forage species in ocean fisheries, including examination of places and times when at-sea mortality is highest.<sup>44</sup> Although this work has revealed discrete areas where large incidental catch events occur, there is no consideration of these alosine fishes within the context of the regional forage mosaic and the EFH DEIS. With adequate protection, alosines could again become a more important part of the regional forage base.

**Food: Protecting forage species for which directed fisheries do not yet exist.** Recognizing the keystone role of forage species in ocean ecosystems, the North Pacific Fishery Management Council began establishing policies regulating the development of new fisheries for forage species in 1998 with additional amendments in 2010.<sup>45</sup> The Pacific Council is following this example with its *Unmanaged Forage Fish Protection Initiative* and is in the process of establishing similar regulations, which represents a forward looking step to ensure a future for its fisheries.<sup>46</sup> New England and the Mid-Atlantic managers must follow suit. The MAFMC is already developing approaches for addressing this important issue.<sup>47</sup> Along with sand lance discussed above, there are other species that should be put off limits to directed fishing through the EFH amendment. These include river herring and shad, krill, shrimp, and copepods, all vital food sources in the regional ecosystems.

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<sup>44</sup> Cournane JM et al (2013) Spatial and temporal patterns of anadromous alosine bycatch in the US Atlantic herring fishery. *Fisheries Research* 141:88– 94.

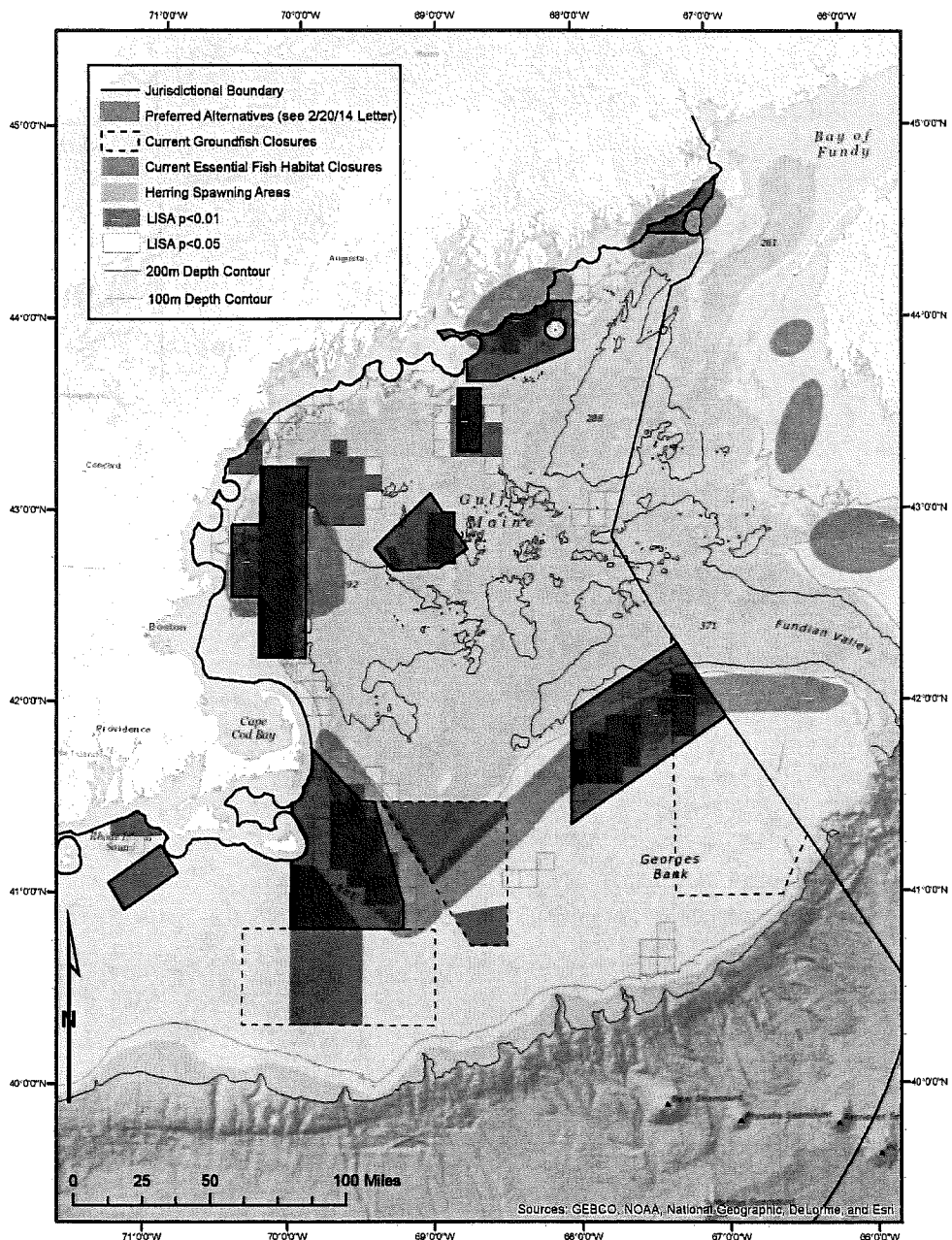
<sup>45</sup> See Final Rule implementing Amendments 36/39 to the NPFMC Groundfish FMP's at [www.fakr.noaa.gov/frules/3639fr.pdf](http://www.fakr.noaa.gov/frules/3639fr.pdf). This action identified and protected over 20 important forage species in 9 scientific families by prohibiting directed fishing on those species; 30 50 CFR 679; June 2004 PFMC Meeting. Exhibit G.4.a Situation Summary; Final Environmental Assessment for Amendments 87/96 to the NPFMC Groundfish FMP's at [http://alaskafisheries.noaa.gov/sustainablefisheries/amds/95-96-87/final\\_ea\\_amd96-87\\_0910.pdf](http://alaskafisheries.noaa.gov/sustainablefisheries/amds/95-96-87/final_ea_amd96-87_0910.pdf); Final Rule implementing the Arctic FMP at [www.fakr.noaa.gov/frules/74fr56734.pdf](http://www.fakr.noaa.gov/frules/74fr56734.pdf)

<sup>46</sup> Ecosystem Plan Development Team Report on Authorities to Protect Unfished Species from Future Directed Fisheries. EPDT Report, June 2012 (Agenda Item G.1.b); Situation summary: Unmanaged Forage Fish Protection Initiative (I2\_SITSUM\_SEPT2013BB); Decision Summary Document Pacific Fishery Management Council September 12-17, 2013: *Unmanaged Forage Fish Protection Initiative*, available at [www.pcouncil.org/wp-content/uploads/0913decisions.pdf](http://www.pcouncil.org/wp-content/uploads/0913decisions.pdf); Supplemental Ecosystem Workgroup Report: Ecosystem Workgroup Report on Unmanaged Forage Fish Protection Initiative (Agenda Item I. 2.b), PFMC, September 2013 (I2b\_SUP\_EWG\_SEPT2013BB);

<sup>47</sup> Approaches for Unmanaged Forage Species. Staff Memorandum to Executive Director Moore, MAFMC, February 3, 2014, Executive Director's Report, MAFMC Meeting, Briefing Materials (Tab 10), New Bern, NC February 11-14.

### Appendix III: Preferred Habitat Alternatives

Based upon the information that is available now, the eight areas shown in purple on the map below are recommended as preferred habitat alternatives for the purposes of public comment and further analysis.







Mr. Terry Stockwell, Chair  
Mr. Tom Nies, Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

February 20, 2014

Dear Mr. Stockwell and Mr. Nies,

Thank you for the opportunity to comment on the continued development of the Omnibus Habitat Amendment (OHA), in particular the reconfiguration of New England's network of fishery closed areas. Closed areas are an important tool for fisheries management, and can provide a number of biological and ecological benefits to the fishery, including protection of spawning activity and juvenile fish, rebuilding age structure, protection of old, large and highly fecund females, and conservation of biodiversity and intact food webs. Through these outcomes, closed areas can play an important role in rebuilding New England groundfish stocks. As the emerging effects of climate change become more apparent and immediate, closed areas take on an even greater importance as a means of buffering against these impacts.

In order to be most effective, design and evaluation of closed areas should consider and strive to balance a broad range of biological, ecological and socio-economic objectives. The Council charted such a course when it defined specific goals and objectives for both the EFH and groundfish management aspects of the OHA. Of the nine goals approved to meet EFH requirements, the fourth is most relevant for closed area design:

4. Identify and implement mechanisms to protect, conserve, and enhance the EFH of those species managed by the Council to the extent practicable,

To this, the Council added the following goals specific to groundfish management:

- Enhance groundfish fishery productivity,
- Maximize societal net benefits from the groundfish stocks while addressing current management needs,

And the following objectives:

1. Improved spawning protection; including protection of localized spawning contingents or sub-populations of stocks.
2. Improved protection of critical groundfish habitats.
3. Improved refuge for critical life history stages.
4. Improved access to both the use and non-use benefits arising from closed area management across gear types, fisheries, and groups. These benefits may arise from areas designed to address other three groundfish closed area objectives.

This is a good set of goals and objectives addressing many key attributes that are not addressed well by quotas alone, namely habitat, behavior, spatial structure and key life stages, particularly juveniles and old, large 'megaspawners'.

The Council later decided to defer part of objective #1 above, and consider protection of spawning behavior in a separate action. The rationale for this decision was that protection of spawning behavior requires more spatially precise and temporally restricted closures, and because more information and analysis was needed of contemporary spawning patterns. That was an appropriate decision. However, the other elements of objective #1 should be considered as part of the current closed area decisions. **Spatially targeted seasonal closures can effectively protect spawning behavior, but protection of spawning contingents and subpopulations requires management measures at larger spatial and temporal scales.** Protection of spawning behavior aims to allow the act of spawning to take place in an uninterrupted fashion, thereby maximizing fertilization success. That means it considers the fish that are not harvested as much or more than those that are harvested. Protection of contingents and subpopulations, on the other hand, aims to ensure adequate numbers and spatial distribution of those spawners. Therefore, the focus is on fishing mortality, and especially how fishing mortality is distributed across a stock area to preserve spatial structure. Closed areas are the most effective means of achieving that outcome, and it therefore informs our positions.

The objective related to protection of localized spawning contingents and subpopulations therefore calls for larger scale perspective beyond individual areas in isolation. The set of closed areas being developed, if designed properly, will work as a network, providing sources and sinks for larvae, and buffering against unforeseen localized depletion in part of a stock area. Furthermore, ongoing changes in the distribution and productivity of fish stocks resulting from climate change compelled the Council to select ecosystem-based management as a priority for 2014. Building on this awareness, **the Council should also consider the impacts of climate change and potential short- and long-term changes in the ecosystem when selecting preferred alternatives.** Such considerations have been largely absent from deliberations to date, an omission that needs to be rectified.

The Council is wrestling with decisions that weigh a long-term strategy aimed at protecting and rebuilding fisheries with near-term socio-economic relief for the fishing industry. In all likelihood, the final outcome of the OHA will be a net reduction in the total area within closed areas. Some might argue that this would be an indefensible outcome in light of the poor status of too many stocks, scientific uncertainties, and rapid ecosystem change, and one that prioritizes modest short-term gains over the more significant long-term improvements to be realized by a meaningful investment in the future. However, the more important consideration is not the total area within closed areas, but rather the potential biological, ecological and socio-economic value reflected in the merits of each alternative relative to the goals and objectives. In other words, **a reduction in total area can be defensible if the change is not excessive and the value provided by those areas included in the final network is high.**

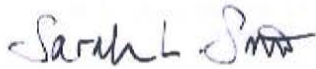
In addition to our support for specific areas, we strongly encourage the Council to select Option 1 for each area: complete restrictions on use of bottom-tending mobile gears. The Habitat PDT's work on habitat vulnerability found clam dredges to have the greatest magnitude of effect on benthic habitat, so that gear should be included among those restricted in closed areas. The two options for gear modification, eliminating ground cables or shortening ground cables and requiring elevated discs, are to date largely untested methods in New England for reducing habitat impacts, so we recommend the Council follow the PDT's advice in foregoing gear modification options until such time as better data are available.

However, we note that, although the habitat impacts of mobile gears are generally greater, all gears can compromise behavior, age structure and spatial structure, all of which are key drivers of stock dynamics and objectives of the OHA and subsequent Council actions. Indeed, although the existing closed areas have delivered important benefits, it is likely that their effectiveness has not been maximized by allowing too much fishing mortality to continue within their borders. Therefore, **we urge the Council to begin careful evaluation of the non-habitat (i.e., demographic and behavioral) impacts of all gears to determine whether objectives are being met or additional measures are needed.**

**We recognize that this is a complex action, and we ask that the Council treat it as such, weighing the data rigorously, considering first principles where data are absent or incomplete, balancing the burden of proof, and ultimately selecting areas based on science and a long-term vision for the fishery.**

In the following pages we highlight our positions on closed areas in each sub-region. We appreciate this opportunity to comment on the development of the Omnibus Habitat Amendment at this critical stage.

Sincerely,



Sarah Smith, Ph.D.  
Spatial Policy Specialist



Jake Kritzer, Ph.D.  
Director of Spatial and Ecosystem Initiatives

## Eastern Gulf of Maine - Alternative 2

We strongly encourage the Council to select Alternative 2, including the larger Eastern Maine closed area and the Machias closed area.

### Key factors:

- These new closed areas could support rebuilding of groundfish in the Eastern Gulf of Maine, where they have been largely absent for many years. In particular, recovering historic sub-populations of spawning cod (Figure 1) would help meet the OHA objectives related to spawning contingents and subpopulations, as well as overall stock rebuilding.
- Habitat protection and refuges from fishing mortality in this region can build upon the increased forage base to be provided by re-opening of dams on the Penobscot River and St. Croix River, enhancing the overall biological response. This combined strategy is consistent with the Council's commitment to ecosystem-based management.
- Larval transport modeling suggests that rebuilt spawning populations in Eastern Maine could supplement larval supply to the primary fishing grounds in the Western Gulf of Maine, as well as the Cashes Ledge closed area<sup>1</sup>.
- The closed areas represent an important strategy for building resilience in the face of climate change, as fish continue to move north and east in response to warming waters<sup>2</sup>.
- Economic impacts of the closed areas would be minimal given the limited groundfish fishing activity currently taking place in the region. If the closed areas are effective and groundfish recover in Eastern Maine, the economic benefits not only for that region but for the whole of the Gulf of Maine (i.e., via improved overall stock status) will far outweigh the costs.
- Alternative 2 is superior to Alternative 3 because the Eastern Maine area is larger, encompasses more juvenile habitat hotspots (Figure 2), and has greater potential for positive demographic outcomes.
- Alternative 2 is also superior because the proposed Toothaker Ridge area is too close to the existing Jeffrey's Bank closed area, a valuable longstanding area that should remain intact (see below).

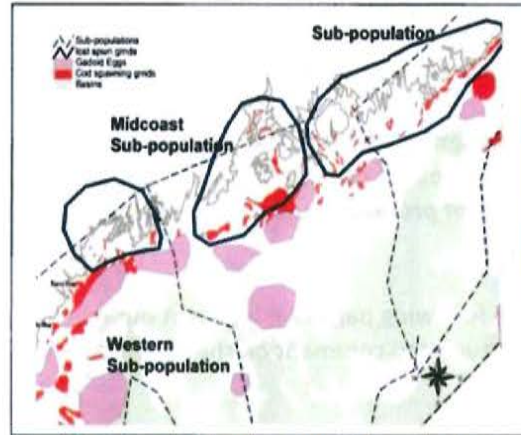


Figure 1. Historic spawning sub-populations of cod along the Maine coast (Ames 2008).

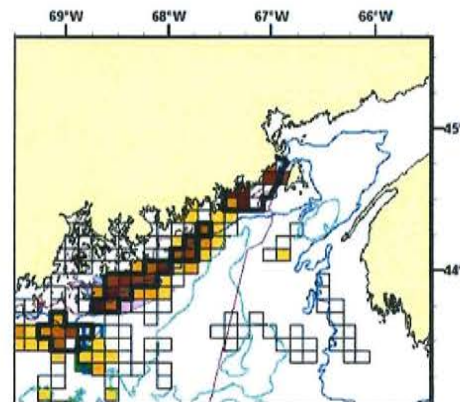


Figure 2. Juvenile hotspots in the Eastern Gulf of Maine (CATT analysis).

<sup>1</sup> Churchill J, Kritzer J. 2013. Modeling dispersal of Atlantic cod larvae in coastal waters of the Gulf of Maine. Progress reported submitted to NEMFC May 2013; update forthcoming.

<sup>2</sup> Nye JA, Link JS, Hare JA, Overholtz WJ. 2009. Changing spatial distribution of fish stocks in relation to climate and population size on the Northeast United States continental shelf. *Marine Ecology Progress Series* 393: 111–129.

## Central Gulf of Maine - Alternative 1 (No Action)

We support Alternative 1 (No Action), which maintains the existing Cashes Ledge and Jeffrey's Bank closed areas. While there are proposed closed areas that include smaller subsets of the existing Cashes Ledge Closed Area, the biodiversity and fishery production value of the full Cashes Ledge Closed Area make this area is too important not to retain.

### Key factors:

- Cashes Ledge contains rich kelp forests unique in the Central Gulf of Maine, which support a variety of species, intact food webs, and significant biodiversity. The existing closed area not only includes the kelp beds of Cashes Ledge, but also Fippennies Ledge and a variety of habitat types surrounding these areas among which fish move on different time scales (Figure 3)<sup>3</sup>. This creates a more complex habitat mosaic that supports feeding, spawning, and sheltering for a number of species.

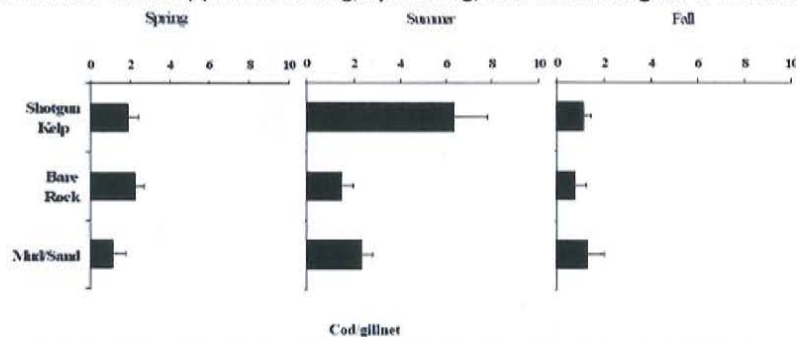


Figure 3. Habitat utilization by cod sampled in gillnets in the vicinity of Cashes Ledge, illustrating the seasonal importance of multiple habitats. Notably, bare rock and sand were used as much or more than kelp at certain times of years, illustrating the importance of habitat diversity. (from Grabowski 2010)

- The Cashes Ledge closed area provides suitable habitat for every life stage of cod<sup>4</sup>, especially nursery habitat for young-of-year cod in the kelp beds, as well as many other groundfish species.
- This area contains higher overall densities of cod than any other area of the central Gulf of Maine<sup>5</sup>, where overall depletion of cod has been severe.
- Cashes Ledge is also home to a unique and highly localized resident population of red cod<sup>4</sup>.
- As the CATT has emphasized, the NMFS trawl survey does not survey shallow areas of Cashes Ledge, and therefore the hotspot analysis likely underrepresents the abundance of groundfish in this area.
- Alternative 1 will have greater conservation benefits than Alternatives 3 or 4 based on the number and distribution of juvenile groundfish hotspots (DEIS, Volume 3).
- Jeffrey's Bank is similarly a complex, high-value habitat feature with a history of protection worth preserving.

<sup>3</sup> Grabowski J. 2010. Evaluation of closed areas: Cashes Ledge as juvenile cod habitat. Final Report Submitted to the Northeast Consortium.

<sup>4</sup> Sherwood, G. D., and Grabowski, J. H. 2010. Exploring the life-history implications of colour variation in offshore Gulf of Maine cod (*Gadus morhua*). *ICES Journal of Marine Science*, 67: 1640–1649.

<sup>5</sup> Steneck, R.S. 1997. Fisheries-induced biological changes to the structure and function of the Gulf of Maine Ecosystem. Plenary Paper. Pages 151 - 165 in Wallace, G. T., and Braasch, E. F. (eds). *Proceedings of the Gulf of Maine Ecosystem Dynamics Scientific Symposium and Workshop*. RARGOM Report, 97 - 1. Regional Association for Research on the Gulf of Maine. Hanover, NH.



## Western Gulf of Maine - Alternative 1 (No Action)

We support Alternative 1 (No Action), which maintains the existing Western Gulf of Maine closed area.

### Key factors:

- The Western Gulf of Maine closed area contains hotspots of cod, haddock, American plaice, redfish, winter flounder, winter flounder, and white hake.
- The CATT analysis also found spawning hotspots within the current closed area for cod, haddock, pollock, yellowtail flounder, white hake, plaice and witch flounder.

- CATT analyses for Framework 48 shows concentrations of large (Age 8+) female cod in the Western Gulf of Maine closed area (Figure 4), a key consideration in meeting objective 3. Preserving some of these megaspawners can enhance reproductive potential in the region.

- The CATT's analysis of juvenile groundfish hotspots identified the inshore Bigelow Bight areas as having high densities of many groundfish species. While this analysis highlights the importance of this inshore habitat to groundfish, the socioeconomic consequences of these alternatives would be

devastating to the inshore fleet. **Retaining the existing WGOM closed area provides different but comparable ecological value to the Bigelow Bight at far lower socio-economic cost.**

- Most of the cod that remain in the GOM are within and inshore of the WGOM closed area. Biomass increases in the WGOM began following creation of the closed area in 1998, and did not take place elsewhere (Figure 5). This is strong evidence that the closed area contributed to the localized recovery.

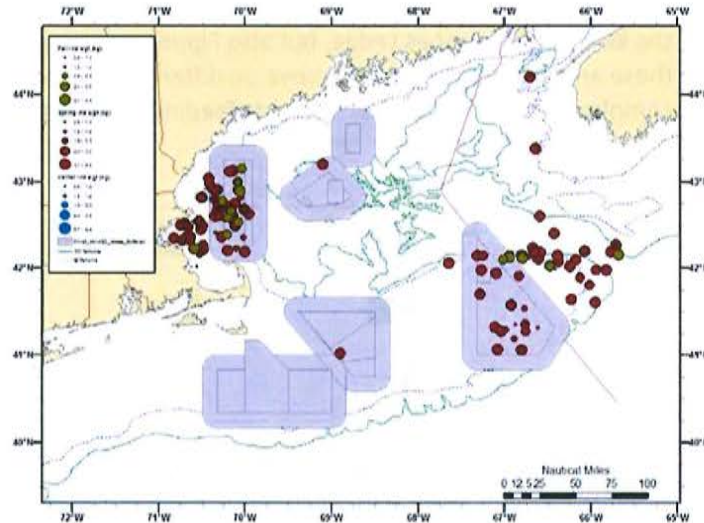


Figure 4. Distribution of age 8+ cod sampled in the NMFS spring trawl survey, 2002-2012, showing concentrations in both the WGOM closed area and Closed Area II (Framework 48 analysis).

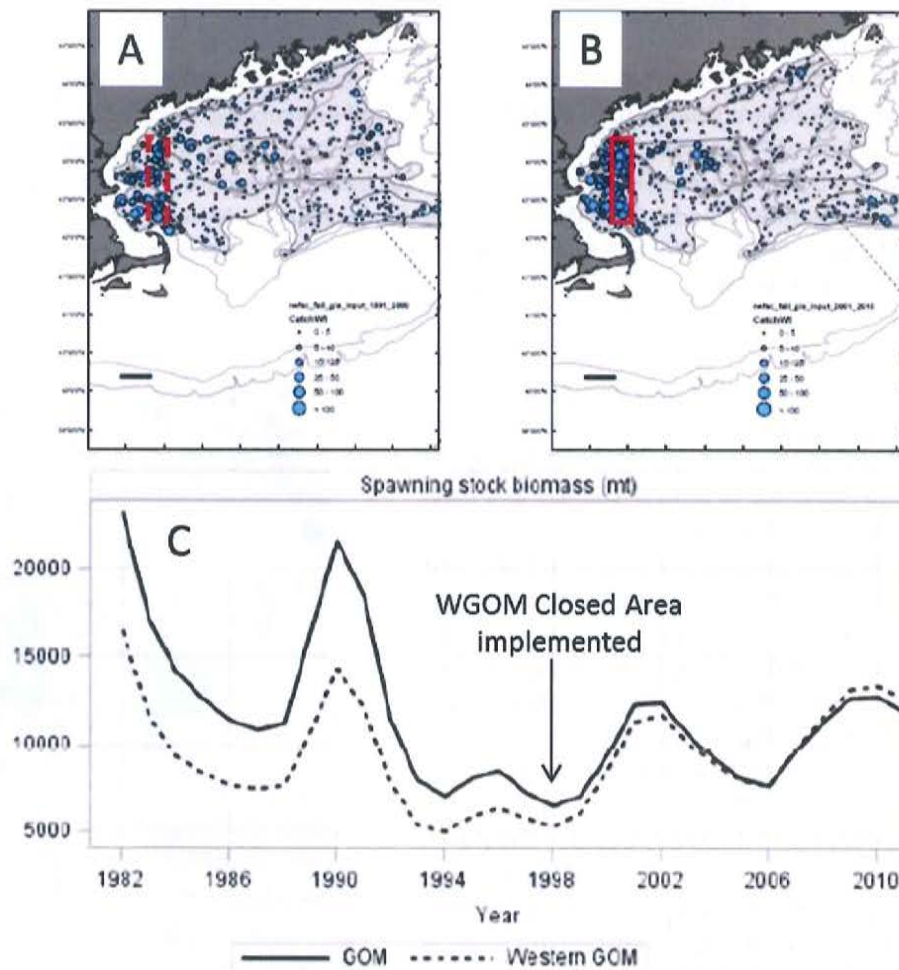


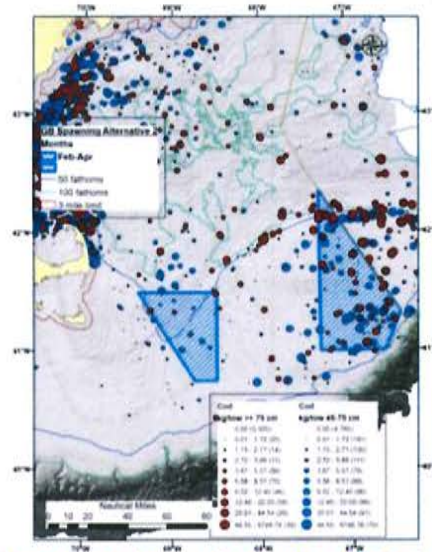
Figure 5. Distribution of cod in the Gulf of Maine sampled by the NMFS trawl survey in the 1990s (A) and 2000s (B) relative to the location of the WGOM Closed Area (in red; dashed line in A because the closed area was not created until 1998). Density recovered more strongly in the WGOM than elsewhere following creation of the closed area, as also reflected by outputs stock assessment modeling for the GOM as a whole and for only the WGOM (C). After 1998, the dynamics of the WGOM approximate those for the entire GOM. (A&B modified from SAW53 report; C modified from SAW55 report)

## Georges Bank - No suitable alternatives

We remain concerned that the alternatives currently being considered do not meet the goals and objectives of the amendment related to habitat protection and enhanced groundfish productivity, with the possible exception of Alternative 1 (No Action). However, Alternative 1 fails to optimize socio-economic outcomes by more precisely defining closed areas based on updated science, ecosystem conditions and management needs. Therefore, we urge the Council and NOAA to continue to develop alternatives that better find a balance between long-term biological, ecological and economic recovery, and near-term economic relief.

### Key factors:

- Other than Alternative 1, the new alternatives all include at best a single small closure on Georges Bank, which will fail to build spatial structure, age structure and resilience to climate change, and only offer modest habitat protection.
- Alternative 6a encompasses the Northern Edge, and goes the furthest of the new alternatives toward meeting the objectives. The area includes vulnerable epifauna, juvenile cod and haddock habitats, and is known to be an important area for cod historically, and is worth considering within a new alternative that addresses the goals and objectives more effectively.
- The SASI analysis highlighted the Georges Shoal area as vulnerable to fishing activity, and this area also has some concentrations of cod. Alternative 6A should be expanded further to the west to encompass more of the LISA clusters identified here.
- Each of the Georges Bank alternatives in the DEIS was evaluated to have negative impacts on groundfish habitat compared with Alternative 1 (No Action).
- As the DEIS notes, the current CAII is protecting critical cod habitat. Cod on Georges Bank are primarily concentrated within CAII (Figure 6) and a larger number of old (age 8+) cod are found in both the southern part of CAII and the cod HAPC (Figure 4 above).
- None of the alternatives provide support or refuge for Georges Bank yellowtail flounder, which suffer from diminished biomass and high scientific uncertainty. Protection should be considered for the southern part of Georges Bank (particularly the Southeast Parts), where, like cod, depleted yellowtail flounder are concentrated. This area was initially recommended by the CATT because of its importance for both spawning and juvenile groundfish, but later removed from the amendment despite its potential to help meet the goals and objectives.
- An additional alternative in the southern part of CAII, and others elsewhere, would help meet the objective of protecting spawning contingents and sub-populations, which is not achieved by a single closed area on the Northern Edge, or no closures at all.
- A significant proportion of large, mature haddock found on Georges Bank are found in CAII. This concentration of old haddock within the closed area suggests that this closed area has played a large role in rebuilding the Georges Bank haddock stock to its current level of abundance.



**Figure 6. Distribution of cod on Georges Bank, sampled by the NMFS trawl survey (DEIS).**

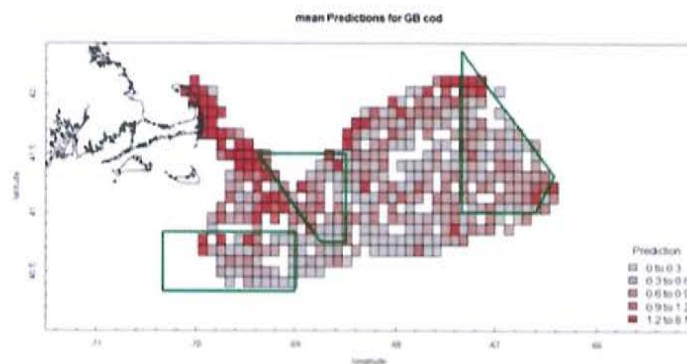
The current closed areas on Georges Bank (Closed Areas I and II) encompass roughly 3,170 nm<sup>2</sup>. The current alternatives other than No Action would reduce the area closed by more than 90%. A reduction this significant is inadvisable considering the poor state of many Georges Bank groundfish stocks, notably cod and yellowtail flounder. The Council should seek middle ground options between the status quo alternative and the much smaller new alternatives. Alternatives that represent an intermediate reduction in total area could increase fishing opportunities for the fleet, without compromising so severely spatial structure, the recovery of age structure and the remaining concentrations of severely depleted stocks.

### Great South Channel/Southern New England - Alternative 3

We support Alternative 3 for a new closed area in the Great South Channel as a higher value replacement of the existing Nantucket Lightship Closed Area. However, the Council and NOAA should consider expanding the northern area to capture some area currently within Closed Area I on Georges Bank, thereby retaining some of the accumulated benefits of CAI while improving protection on Georges Bank (see above).

#### **Key factors:**

- Alternative 3 best captures the cobble and boulder habitat extending to the east, habitats identified by the SASI model as having high vulnerability. Of the Great South Channel alternatives,
- The Great South Channel is an ecologically important area for a variety of species, and serves as a pathway for movement of fish and other species between the Gulf of Maine, Georges Bank, and Southern New England. This means it plays a key role in the ability of species and ecosystems to evolve in response to climate change.
- Survey data found concentrations of sub-legal cod in the Channel, particularly along the eastern side in an area best encompassed by Alternative 3. The alternatives for Great South Channel could be further improved by extending this alternative further to the east to include more cod habitat.
- A study commissioned by the CATT using Generalized Additive Models to predict juvenile cod habitat on Georges Bank found the Great South Channel, and particularly the eastern side, to have the highest expected abundance of juvenile cod on Georges Bank, and thus the characteristics of highly suitable juvenile cod habitat (Figure 7).



**Figure 7. Mean overall predictions for the presence of juvenile cod on Georges Bank using Generalized Additive Models (DEIS, Appendix F).**



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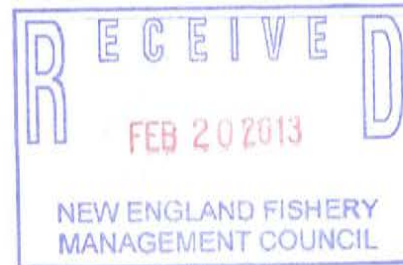
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E.F. "Terry" Stockwell III, Chairman  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950



**Re: Omnibus Habitat Amendment**

Dear Chairman Stockwell:

As you know, we represent the Fisheries Survival Fund ("FSF"). FSF's participants include a significant majority of the full-time Atlantic scallop limited access permit holders. FSF respectfully submits this letter regarding the selection of preferred alternatives in the Omnibus Essential Fish Habitat ("EFH") Amendment 2 Draft Environmental Impact Statement ("DEIS") that the Council is considering on February 25<sup>th</sup> and 26<sup>th</sup>, 2014 in Danvers, MA..

**I. SUMMARY**

FSF, together with the Associated Fisheries of Maine and the Northeast Seafood Coalition, has developed a proposal for closed areas in Georges Bank ("GB"). This proposal, that is based within the SASI analysis, represents the elusive win-win solution the Council has sought on Georges Bank for habitat management. This proposal includes areas that are similar to those that are being considered in the DEIS, but the areas are refined in a way that makes them much more suitable to the goals of the amendment and the requirements of the law. The areas proposed in this letter include the Cultivator Shoals Habitat Management Area ("HMA") and a modified Northern Edge HMA. The areas will provide protection for a diverse range of EFH at a comparable level to the alternatives considered in the DEIS. However, unlike alternatives in the DEIS, they will provide protection within a practicability standard, as required by the Magnuson-Stevens Fishery Conservation and Management Act ("MSA").

**II. DESCRIPTION OF AREA PROPOSED**

This alternative would create a new spatial management alternative in the DEIS that includes two HMAs in Georges Bank with the following coordinates:

Cultivator HMA	
41 41	68 10

41 46	67 46
41 39	67 40
41 30	67 40
41 30	68 10

Northern Edge HMA	
41 50	67 01
41 50	67 20
41 57	67 20
41 57	67 07

Figure 1 shows the proposed alternative below, with the Cultivator Shoals HMA on the bottom left in yellow and the new Northern Edge HMA on the right in purple. The green and black outlines on the map delineate the Northern Edge HMA and Georges Shoal mobile tending bottom gear closure currently included in the DEIS (alternatives 3 and 5 for Georges Bank, respectively).

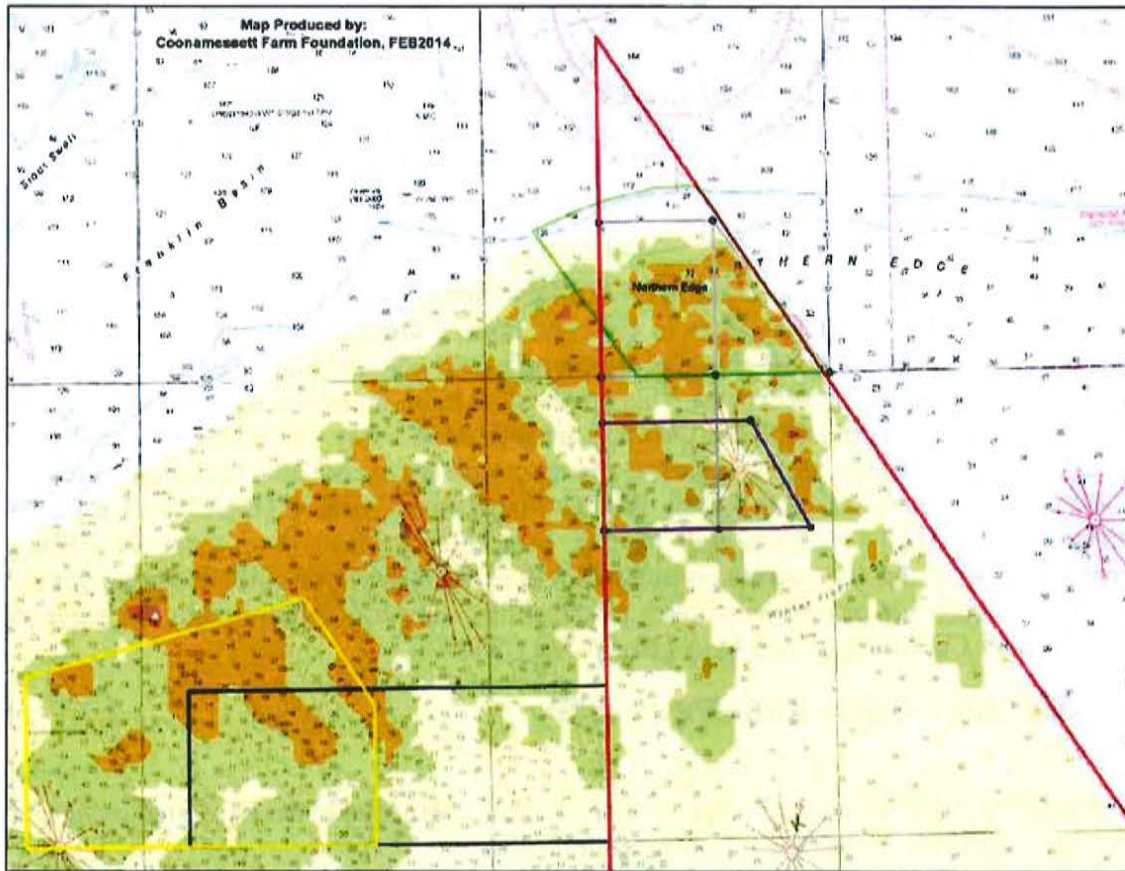


Figure 1 - Proposed Georges Bank HMAs. Cultivator Shoals in yellow and Northern Edge in purple.

FSF supports the inclusion of these HMAs as the only spatial management closures for Georges Bank. They are meant to be considered together, as a unified alternative, rather than individually, and the discussion below considers them as a unit.

### **III. RATIONALE**

#### **A. The Applicable Legal Standard Requires Consideration of Practicability**

Habitat protection is regulated under § 303(a)(7) of the MSA:

“Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall... describe and identify essential fish habitat for the fishery [], 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.”

The Council’s habitat omnibus amendment process has developed as a direct result of this statutory provision. Incorporating these principles from the MSA is, in fact, a primary purpose of the amendment, for which the DEIS states that its need is to meet requirements of the MSA.<sup>1</sup> The “practicability” standard included in the MSA is integral to the mandate for habitat protection and the Council cannot overlook it. While the Council has discretion in developing measures that are considered practicable, it is clear that such measures must take all impacts into account, including economic, social, and environmental impacts, and that the practicability standard is a limiting standard.

#### **B. Environmental Impacts of the Proposed Areas Are Comparable to Current DEIS Alternatives**

The proposed areas have high levels of topographic relief, and diverse sediment types including boulder and cobble. It is important to note that these areas are less heavily surveyed than some of the areas in the DEIS alternatives, so the habitat richness is likely to be understated. The areas are well-known to fishermen to include diverse habitat types.

Cultivator Shoal is an important area for juvenile fish. It is likely that this area, although poorly surveyed, is a major nursery area for juvenile cod because it meets the habitat criteria that have been shown to attract cod in inshore areas. The proposed HMA is shallower than the current DEIS alternatives. Young-of-the-year cod have been shown to live in shallow areas (<90’ in

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<sup>1</sup> New England Fishery Management Council, *Draft Omnibus Essential Fish Habitat Amendment* (2014).



spring and 31'-180' in autumn), and year one fish generally live at 61'-180'.<sup>2</sup> The area contains areas of shell hash, which provides important habitat for juvenile yellowtail flounder.<sup>3</sup>

The proposed Northern Edge area has been closed for approximately twenty years, and therefore provides valuable opportunities for research and data generation. If this area is open, as proposed in other alternatives, a unique chance to learn from long-term effects of closures will be lost. Furthermore, Canadian data has shown high levels of ripe cod in the proposed area, although this information is difficult to verify because the area also has limited sampling in the NMFS surveys.

The vulnerability scores for the proposed areas are presented in Table 1.

HMA	Otter Trawl			Scallop Dredge		
	Min	Max	N	Min	Max	N
Georges Shoal GMA, large	44.2	72.7	76	46.6	75.9	74
Georges Shoal GMA, small	44.7	72.7	9	46.7	75.9	9
Georges Shoal MBTG	44.2	58.3	10	46.6	61.1	10
Northern Edge	46.5	57.2	6	51.2	59.4	4
Northern Edge modified	48.0	48.3	2	50.6	50.7	2
CAII EFH modified, large	47.3	57.2	11	50.1	59.4	11
CAII EFH modified, small	47.3	54.5	7	50.1	56.8	7
Cultivator	44.2	70.6	11	46.6	73.3	11
Industry Proposal	44.2	73.3	13	46.6	73.3	13

**Table 1 - Minimum and maximum mobile bottom-tending gear vulnerability scores for each habitat management area, and the number of structured (10km x 10km) grids overlapping each area (N).<sup>4</sup>**

The combined vulnerability scores for the Northern Edge and Cultivator areas outperform all other proposed HMA's, including the large CAII modified HMA alternative that is projected to have devastating economic impacts to the scallop and groundfish fisheries.

<sup>2</sup> Arnold Howe et al., *Spatial Distribution of Ages 0 and 1 Atlantic Cod (Gadus morhua) off the Eastern Massachusetts Coast, 1978-1999, in Support of 'Habitat Area of Special Concern'*, Massachusetts Division of Marine Fisheries Technical Report TR-12 (June 2002).

<sup>3</sup> NEFMC, *Omnibus EFH Amendment 2 Groundfish Management Area Development Hotspot Analysis - Juvenile Groundfish Substrate Association Scoring*, at 11 (2013).

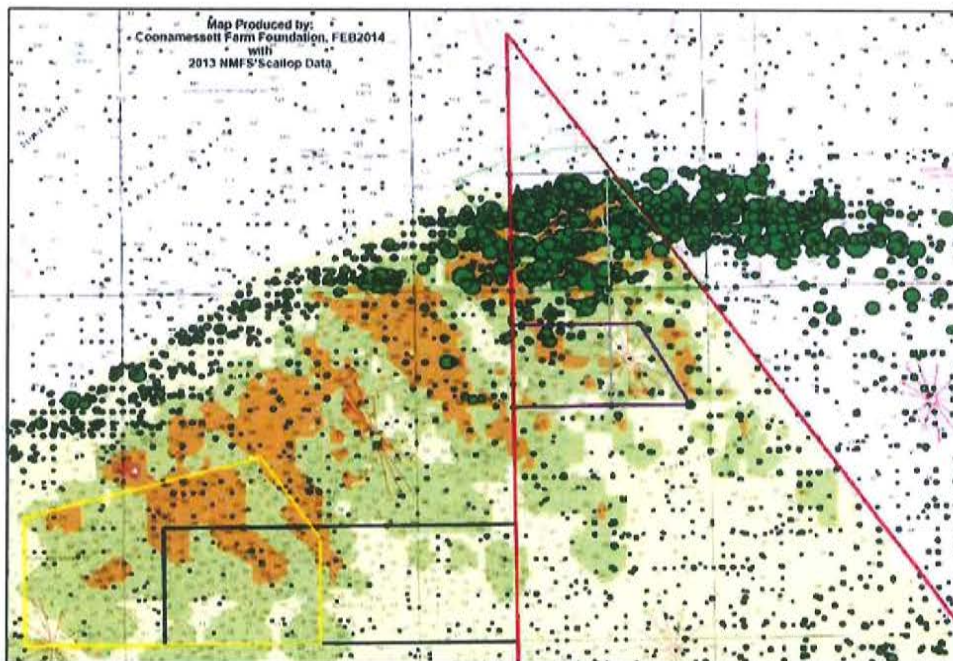
<sup>4</sup> Table values from NEFMC, *Habitat DEIS Volume 3*, at 175 (2013).

Another benefit of the proposed Northern Edge area is that, unlike some of the other Georges Bank alternatives in the DEIS, it is unlikely to lead to high levels of effort displacement. The question of what will happen to fishing effort after areas are closed has not been thoroughly addressed in the DEIS document. There are major concerns that displaced effort could lead to unintended effects on target and non-target fish stocks,<sup>5</sup> as we have stated in previous letters. Because no mobile bottom tending gear fishing activity is currently taking place in this proposed Northern Edge HMA, effort displacement will be less of a concern even though the area will protect similar habitat as the alternatives in the current DEIS.

FSF respectfully requests that these areas be analyzed for hotspots and other impacts consistent with the alternatives that are currently under consideration. These analyses will show that the area has higher EFH diversity and importance to juvenile groundfish than the other Georges Bank alternatives.

### **C. The Economic Impacts of the Proposed Areas Are Much Smaller Than Other DEIS Alternatives, Making Them More Practicable**

While a full economic analysis of this proposal for Georges Bank has not been conducted, we are confident that designation of these areas as HMAs will have significantly fewer economic impacts than the other proposed alternatives (with the exception of the alternative with no closures). Scallop yield in these areas is typically lower than in surrounding areas, as shown in Figure 2, which shows 1983-2013 NMFS survey data.



**Figure 2 – Proposed Georges Bank HMAs with scallop catch (1983-2013, NMFS survey data).**

<sup>5</sup> See, e.g., Michel Kaiser, *Are marine protected areas a red herring or a fisheries panacea?*, 62 *Canadian Journal of Fisheries and Aquatic Sciences* 1194-1199 (2005).

#### IV. CONCLUSION

The designation of closures will have significant adverse economic effects on the region's fisheries. This proposal offers an opportunity to meet the goals of the amendment by providing habitat benefits at a higher level than anticipated by other alternatives. Notably, unlike the other alternatives under consideration, it does so within the practicability standard that is required by law and it will allow fisheries to remain operational. This is the win-win solution the Council has sought on Georges Bank.

We appreciate your consideration of this proposal. FSF representatives will be at the Council meeting next week to discuss them in more detail. In the meantime, please do not hesitate to contact us if you have any questions or need additional information.

Sincerely,



David Frulla

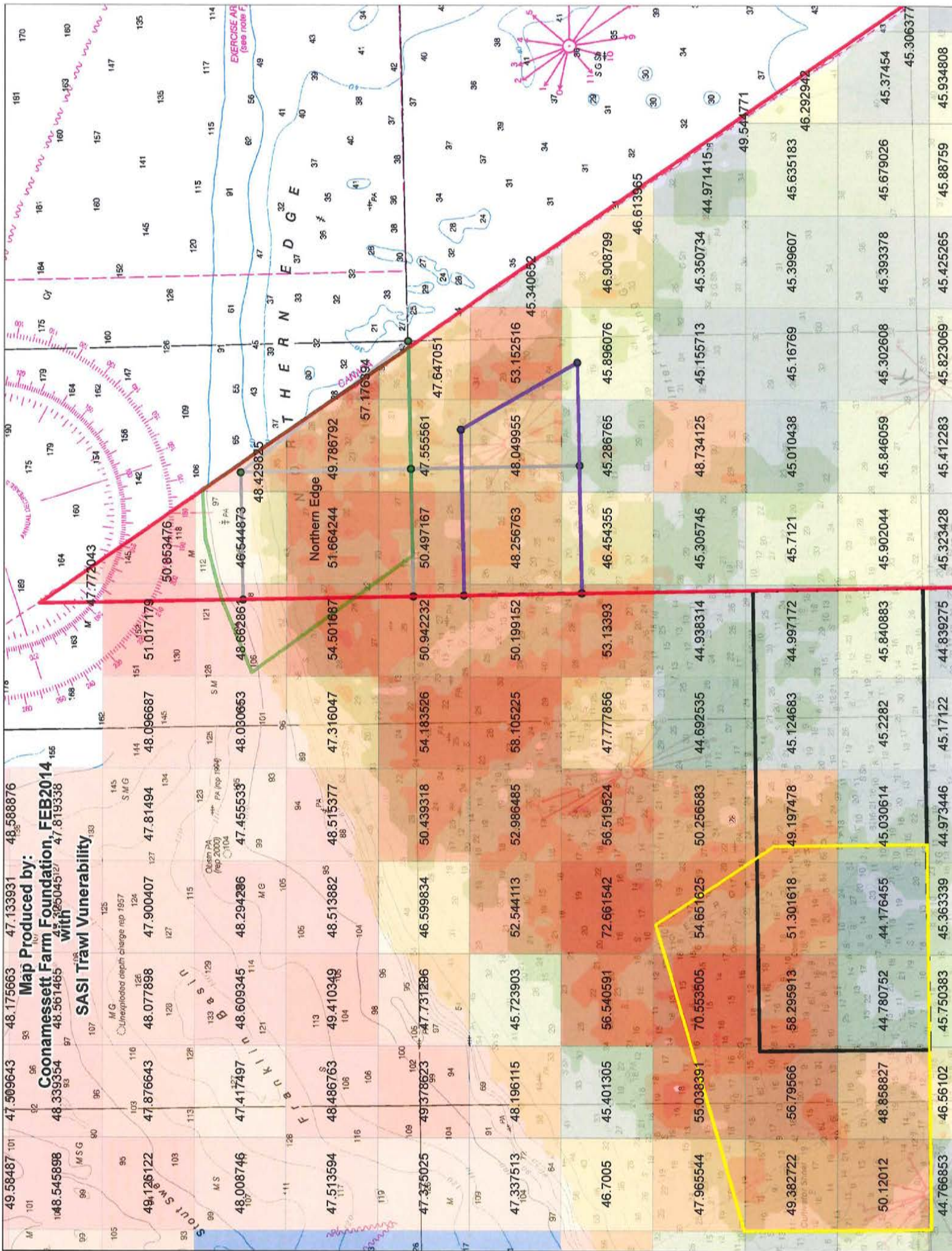
Andrew Minkiewicz

Anne Hawkins

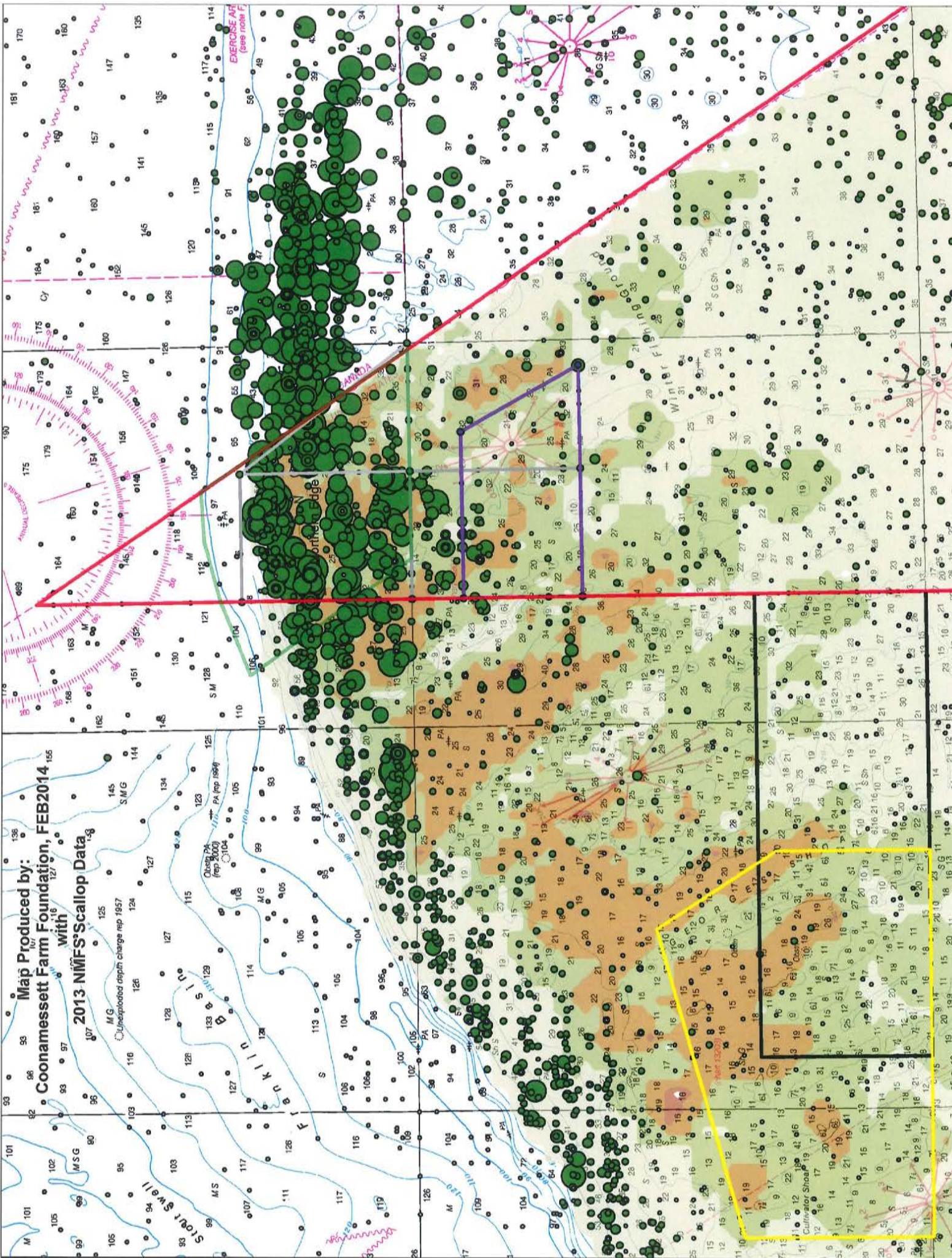
Counsel for FSF











Map Produced by:  
Coonamessett Farm Foundation, FEB2014  
with  
2013 NMFS Scallop Data

EXERCISE AREA  
(see note F)

Street Swell

Kinkin

Map Produced by:  
Coonamessett Farm Foundation, FEB2014  
with  
2013 NMFS Scallop Data

EXERCISE AREA  
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