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June 14, 2013



Via Electronic Mail

Mr. Rip Cunningham, Chairman
New England Fishery Management Council
50 Water Street
Newburyport MA 01950

Re: Omnibus Essential Fish Habitat Amendment 2

Dear Chairman Cunningham:

As you know, we represent the Fisheries Survival Fund ("FSF"), participants of which include a significant majority of the full-time Atlantic scallop limited access permit holders. FSF respectfully submits this letter regarding alternatives the Council is considering at its upcoming meeting on June 19, 2013, for inclusion in the public hearing version of its Omnibus Essential Fish Habitat ("EFH") Amendment 2 ("OA2") Draft Environmental Impact Statement.

I. Executive Summary

FSF recognizes the significant effort the Council, its committees, and staff have devoted to creating the alternatives contained in the draft public hearing document. FSF does, however, have significant concerns regarding certain of the alternatives under Council consideration for further analysis. Indeed, two of FSF's three principal concerns pertain to relatively newly-introduced alternatives that run counter to recommendations and analyses coming from the many years of Habitat Plan Development Team ("PDT") analyses of potential EFH conservation and management alternatives.

FSF, and the scallop industry more generally, have worked with the New England Council, National Marine Fisheries Service ("NMFS"), and the scallop industry's scientific and academic partners to develop and implement a sustainable, ecologically beneficial, and economically successful spatially-based scallop conservation and management program. Scallop area management also demonstrably promotes bycatch reduction and habitat conservation by reducing scallop dredge bottom time. Area management depends, however, on access to areas of historic scallop abundance.

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As explained below, certain alternatives being considered for inclusion in the OA2 public hearing document will not only fail to advance, but will actually set back, scallop rotational management by limiting access to historic scallop beds. Relevant, also, particularly as to the goals and objectives of OA2, these alternatives are likely to increase adverse impacts to EFH from the fishery. Accordingly, our letter makes the following three principal recommendations, each integral to ensuring the continued viability and growth of scallop rotational management:

- (1) The Council should delete alternatives in the draft document that would close a portion of the "Southeast Part" including most of the Closed Area II scallop access area (*i.e.*, Georges Bank Alternatives 2 & 3). The Closed Area Technical Team ("CATT") recommended consideration of such a closure to protect juvenile haddock, but Habitat PDT analyses do not support such a closure. Haddock have rebuilt to historic levels while rotational scallop fishing has periodically occurred in the proposed closure area, generating as much \$90 million ex vessel or more in some years. As such, this closure cannot be shown to pass the "practicability" test. As an alternative to a complete elimination, FSF proposes that the areas (outlined in yellow in the documents presented at the Joint Groundfish/Habitat Committee meeting on June 11) be deleted from Georges Bank Alternatives 2 & 3.
- (2) The Council should open the closed area along the Northern Edge, within Closed Area II, and not consider options to close the Georges Shoals area to the west of the Northern Edge closed area. Most critically, Georges Bank Alternatives 2 & 4 would actually extend closures across the Northern Edge and Georges Shoals, both. They should be removed from consideration. In the event the Council wishes to manage these areas to protect habitat while optimizing scallop yield, it should include in its public hearing document a new option based on the option set forth in this letter. These option would create new scallop access area(s) containing some, if not, all of the Northern Edge and Georges Shoals areas, while still providing practicable area-based habitat protections.
- (3) The scallop and groundfish industries worked together to identify an area in the shallower waters to the west of the Great South Channel ("GSC"). That alternative is set forth as Alternative 3 for the GSC/Nantucket Shoals/Southern New England region. A closure in this area would preserve access to historically highly abundant scallop beds. Likewise, Habitat PDT analyses confirmed such an alternative protected an equivalent amount of valuable habitat as proposed closed areas to the east that encompassed prime scalloping and fishing grounds. On Tuesday, June 11, the Joint Groundfish/Habitat Committee passed a motion seeking development of a new habitat area that not only included the consensus area, but active, historic scalloping grounds to the east. The Council should vote to exclude this newly-conceived alternative from further analysis and inclusion in the Omnibus EFH Amendment 2 hearing document.

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Under the Magnuson-Stevens Act, habitat management does not provide unlimited discretion to enact closures in the name of precaution and experimentation. Rather, the law imposes a “practicability” standard. Attempting to justify broad area closures of the most productive and successfully managed scallop areas simply cannot meet this standard. FSF will first discuss the information relevant to the practicability analysis and then consider each recommendation above.

II. Data Relating to Scallop Production and Revenues from Proposed Closures

To advance the practicability inquiry, the Scallop PDT reviewed recruitment data from the past thirty years and identified the historically most productive scallop areas in New England. Based on the Scallop PDT’s analysis, reproduced below, the most productive areas are the Northern Edge, within Groundfish Closed Area II, the Georges Shoals area to the west of the Northern Edge, the GSC, and the “Southeast Part” within the Georges Bank Closed Area II scallop access area. Each of these areas is slated for closure under one or more of the alternatives contained in the draft public hearing document.

Estimates of scallop recruitment in EFH related areas - based on NEFSC sea scallop dredge time series data
(Values still preliminary - Scallop PDT still working on these estimates as part of EFH Omnibus Action)

	Mean	Median	Geometric Mean	Std Dev	Size (km2)	Yrs Surv	Samples / Year
Current EFH areas							
HAPC in CAII	426.8	180.8	123.6	653.6	641	29	11.7
CAI North	57.9	12.8	14.3	136.3	1937	33	10.1
CAI South	12.5	4.0	2.0	24.1	584	25	2.5
NLCA	59.1	0.4	0.4	222.3	3387	32	8.5
EFH areas under consideration							
Cox.Ledge.1*	3.0	1.0	0.4	4.4	143	3	1.0
Georges.Shoal.East	221.8	57.4	65.7	373.0	576	28	4.4
Georges.Shoal.West	4.2	1.3	0.5	6.9	912	24	3.5
GSC.1...Chatham.Light	239.3	12.2	9.6	821.2	185	28	2.6
GSC.2...Great.Rip	391.1	24.2	33.6	1223.3	636	31	10.5
GSC.3...N.of.Fishing.Rip	365.6	58.7	56.1	823.0	303	29	6.2
GSC_A	595.3	56.4	90.9	1414.1	1320	32	15.5
GSC_B	378.6	22.9	36.1	1211.2	1335	31	11.1
GSC_C	299.7	128.2	117.8	483.7	1656	32	22.2
GSC_FSF*	5.0	2.0	2.0	7.2	1479	18	1.9

* Estimates less reliable because of limited sampling

Note: EFH areas that are not included in this list have no overlap with the standard NMFS scallop survey

Column Headings:

Mean	arithmetic mean of annual mean recruitment
Median	median of annual mean recruitment
Geometric Mean	geometric mean of annual mean recruitment
Std Dev	standard deviation of annual mean recruitment
Yrs Surv	number of years with at least one station (out of 34 years)
Size (km2)	Total polygon size in square kilometers
Samples / Year	Mean number of tows collected per year for years when the polygon was sampled

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As can be seen from the table above, the Scallop PDT reviewed both the larger areas within the GSC designed by the Habitat PDT to have similar habitat benefits to those of four smaller areas formerly contained in the amendment, plus one suggested by FSF explicitly designed to minimize lost scallop yield.¹ In addition to the "OA Revenue Mapping" prepared by Geret DePiper and presented at this week's Joint Groundfish/Habitat Committee meeting, this information provides the best scientific information available for identifying practicable closure options from among those presented in the document.

The Scallop PDT's table presents values in terms of recruitment (mean, median, and geometric mean), displayed in terms relative to average recruitment over 30 years (which has been set equal to 100). As such, if an area proposed for closure had average recruitment over the timeframe, its value would be equal to 100. Larger numbers indicate areas of higher recruitment (e.g., an area with a value of 400 has four times the average recruitment over the time series), and those less than 100 have below average recruitment. These numbers can be translated into relative adult biomass among the areas as recruits grow to harvestable size over time.

Even a casual glance at the above table shows the wide range of scallop productivity within the proposed habitat closures. These range from mean recruitment of 3.0 in Cox Ledge 1, at one end of the spectrum, to 426 in the current Closed Area II Habitat Area of Particular Concern ("HAPC") and nearly 6 times mean recruitment in the area designated by the Habitat PDT as GSC A, at the other.² Areas of higher than average recruitment add significantly to total scallop yield over the long run,³ making this analysis critical to decisions the Habitat Committee and Council will be required to make as Amendment 2 moves forward. For example, the proposal FSF collaborated to create (GSC Alternative 3), encompassing nearly 1,500 square kilometers of EFH, entails by far the lowest lost recruitment on an per kilometer basis while achieving benefits comparable to other alternatives for the Western GSC. This is the essence of practicability analysis.

Likewise, the DePiper analysis shows the following gross revenues generated by scallop landings, based on 2012 Vessel Trip Report data, from each of the following proposed habitat closure areas:

- Georges Shoal East: \$ 13,805,114
- Georges Shoal West: \$ 202,170

¹ These alternatives are referred to as Great South Channel ("GSC") A, GSC B, GSC C, and GSC FSF.

² GSC A encompasses most of GSC 1, all of GSC 2, and part of GSC 4.

³ Notably, as the Scallop PDT's analysis of the GSC shows, scallop productivity in an area does not decline over time when it is open to fishing. One theory is that scallop dredging exposes hard surfaces upon which spat can attach, thus enhancing scallop EFH.

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- Modified Georges Shoal: \$ 2,149,438
- Great South Channel: \$ 15,051,408
- Nantucket Shoals: \$ 7,796,856

These numbers may well be underestimates. While scallop revenues from Closed Areas I and II were not included because they were not open in 2012, gross revenues from these areas when open, as mentioned above, can be enormous. Collectively, these data point the way towards the more practicable areas to consider for area closures.

III. FSF's Proposal for OA2 Public Hearing Document Alternatives

1. Georges Bank Alternatives 2 & 3

The CATT recommended these area closure alternatives to protect habitat for juvenile haddock. Each includes the area referred to as the "Southeast Part," which encompasses most of the current Closed Area II access area. Neither of these alternatives is practicable nor are they supported by data relevant to potential adverse impacts of scallop fishing.

First, according to NMFS' EFH guidelines, there are four levels of information relating to EFH, the fourth being habitat that leads to increased productivity of a species. The CATT has stated on the record that no such "level four" information exists for any proposed habitat area. Yet, the CATT justifies these closure alternatives under the assumption that they will increase haddock productivity by protecting habitat for juveniles. Obviously, such an assumption is not supported by the available scientific information because there simply is no such information. Second, the CATT has concluded, based upon the available scientific information, that juvenile haddock are closely associated with "hard" bottom, consisting of pebbles and boulders. The proposed Southeast Part closure does not include any hard bottom; rather, it is soft sand. Protecting soft bottom for a species that the CATT says is associated with hard bottom is logically inconsistent, making this an arbitrary recommendation. Finally, the habitat encompassed in the Southeast Part scores very low for habitat vulnerability. Indeed, at no point in the extensive review of habitat has this area been highlighted for protection.

Nor are the proposed alternatives supported by common observations of the haddock stock. The Georges Bank haddock stock is at an all-time high and currently experiencing high recruitment. These positive results have occurred while the very area to be protected has experienced significant scallop fishing since 1998.

In light of the lack of a solid, non-arbitrary scientific justification, it is clear that these proposed Southeast Part closures are not practicable. They would negate a current scallop access area that has sustainably produced millions of pounds of scallops that have generated hundreds of millions of dollars in revenue over the past decade. The fishery in this area is a success for fisheries management and should not be closed.

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2. Georges Bank Alternative 4

Georges Bank Alternative 4 (and 2, which would also eliminate the Closed Area II access area) would not only preserve the existing Northern Edge closed area, but extend it to highly productive scallop fishing grounds to the Georges Shoals to the west. That proposal suffers from the same lack of scientific support as the proposed Southeast Part closure, discussed above. More generally, the entire closed area is inconsistent with the findings of the SASI model which serves as this amendment's scientific underpinning. *See* September 2012 Draft OA2 at 26. SASI modeling demonstrates the best way to protect habitat, by far, is to reduce the frequency and intensity of fishing. The proposed combined areas on the Northern Edge contain the most abundant scallop beds on the entire East Coast. Prohibiting access to these scallop beds will reduce the scallop fishery's CPUE, directly contrary to the SASI model findings.

The proposed closure is also highly impracticable. The Northern Edge area alone contains over 30 million pounds of scallops, worth over \$300 million in ex vessel value. The Georges Shoals area also contains abundant concentrations of the kind of large scallops for which the U.S. scallop fishery has created a valuable world-wide market. Together, this closure would have over a billion dollar negative impact on the U.S. economy, when the loss of both areas, and downstream effects, are considered.

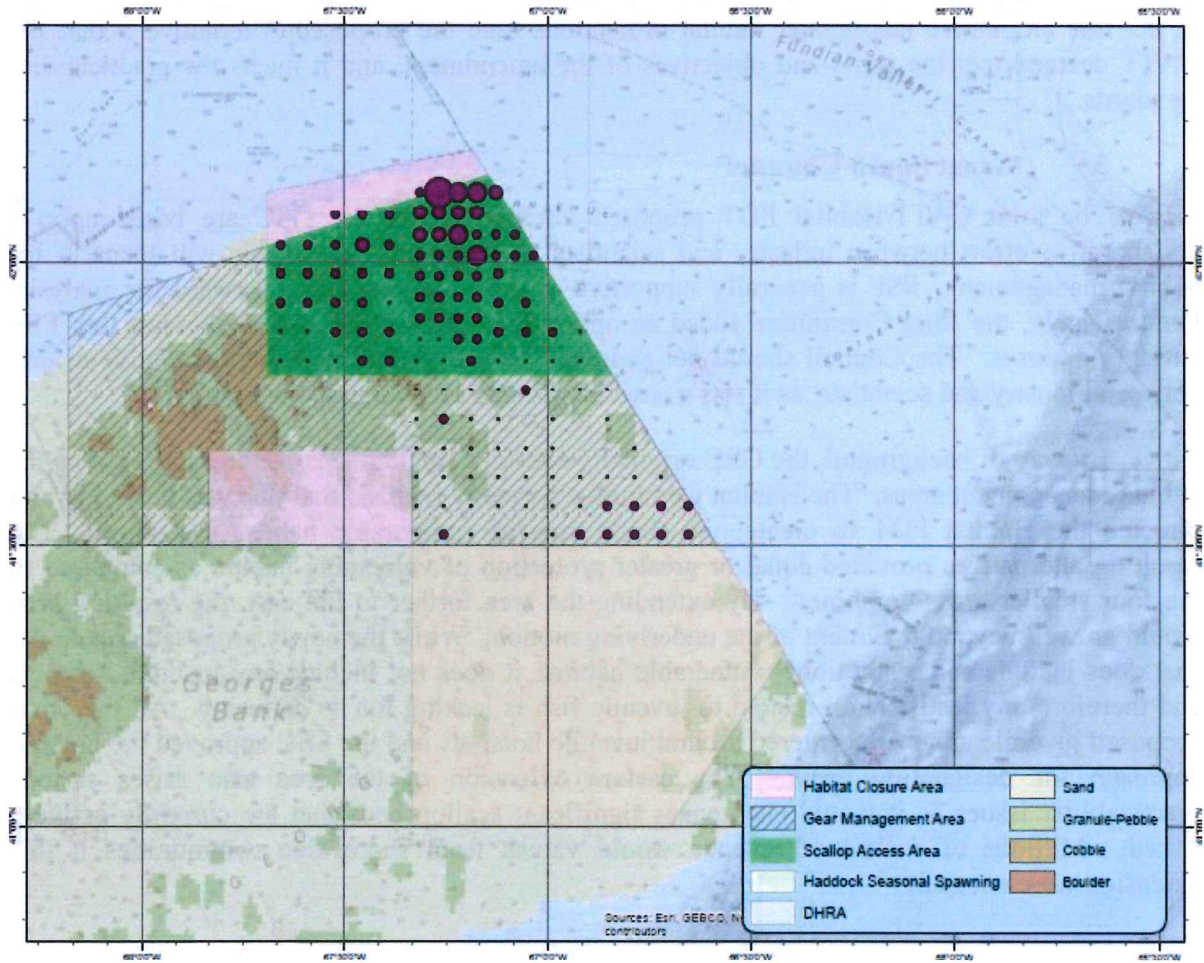
Proposed New Georges Bank Alternative

In the event the Council wishes to evaluate additional options for this area, we set forth the following option as an alternative for analysis. More specifically, at its March 19th meeting in Salem, Massachusetts, the Habitat Committee passed a motion directing the Habitat PDT to create a new alternative on the Northern Edge that protects habitat while increasing CPUE in the groundfish and scallop fisheries. The PDT has not presented an alternative that meets the criteria in the motion at a subsequent Joint Groundfish/Habitat Committee meeting or otherwise.

FSF's alternative would meet this objective. This alternative consists of three elements. First, it would create a scallop access area in the Northern Edge closed area and adjacent parts of Georges Shoal. Not all the area need be an access area; indeed, the Habitat Committee's goal could be fulfilled by creating an access area in the Northern Edge closed area (or else the area identified in Georges Bank Alternative 5), and maintaining the Georges Shoals area as generally open to scallop fishing. Given historic levels of abundance there, CPUE would remain relatively high. Second, the area identified would contain a gear management area for trawl gear, whereby ground cables would be reduced or eliminated. Third, the option would create a closure on the relatively shallow "top" of Georges Bank of a size nearly equivalent to the existing closed area. It could create another, more discrete closed area to the north of the proposed Northern Edge access area.

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FSF Alternative



This alternative is also consistent with the scientific rationales supporting the amendment. The proposed scallop access area will allow access to abundant scallop beds, which will increase CPUE, while protecting habitat according to SASI model analyses, and reduce Georges Bank yellowtail flounder bycatch in the scallop fishery. By creating an access area, scallop fishing will be controlled and allowed on a rotational basis when scallop abundance is high, providing habitat protection. The trawl gear modification area, which is significantly larger than the area proposed in Alternative 5, will provide more protection of habitat by reducing the swept area of groundfish trawl gear, by significantly reducing the footprint of trawl gear.

The northern closed area is based upon the CATT recommendation for a juvenile haddock closure. While we still note the lack of level four science supporting this closure, this area is showing as a “hot spot” for juvenile haddock and contains the associated hard bottom.

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The southern closed area will allow for a comparison between the effects of a closure to bottom tending mobile gear and ground cable restrictions that will inform future management decisions. In all, this alternative has greater habitat protections than the proposed Alternative 5 that the CATT deemed met the goals and objectives of the amendment, and it meets the practicability standards.

3. Great South Channel

The joint CATT/Habitat PDT proposed alternatives for the GSC are based upon a collaborative effort between industry and scientists to create an optimal win-win scenario for habitat management. FSF is generally supportive of those options going forward for analysis. Unfortunately, the Joint Committee added an option that extends the area to the east that FSF strongly opposes. The Council should not endorse alternatives that un-do collaborative efforts between industry and scientists, as it sets a terrible precedent for future collaboration.

By way of background, the GSC originally had four smaller separate areas as options for habitat management areas. The Habitat Committee correctly realized that this was unwieldy and directed the Habitat PDT to create one single area of comparable habitat protection. The resulting alternatives provided equal or greater protection of vulnerable habitat as compared to the four smaller areas combined. By extending the area further to the east, the resulting area would go well beyond the intent of the underlying motion. While the newly proposed area to the east does include some additional vulnerable habitat, it does not include any juvenile hotspots and therefore any justification related to juvenile fish is lacking for its inclusion. All the other proposed juvenile areas are centered around juvenile hotspots and the SSC approved the hotspot approach for designating areas. The eastern extension of the area also raises serious practicability issues as it would encompass significant scallop beds that are currently actively fished. Millions of dollars of revenue would vanish from shore side communities if this extension were enacted.

* * *

We appreciate your attention to this letter. FSF representatives will be available in Portland next week to answer any questions the Council may have.

Respectfully Submitted,

/s/ David E. Frulla

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Andrew E. Minkiewicz
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