



New England Fishery Management Council

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MEMORANDUM

DATE: June 12, 2012
TO: NEFMC members
FROM: David Preble, Habitat Committee Chairman
SUBJECT: Deep Sea Coral alternatives in separate omnibus action

The possibility of removing the deep-sea coral alternatives from EFH Omnibus Amendment 2 into a separate omnibus coral action was raised during the June 7 Executive Committee and June 8 Habitat Committee meetings. The likely costs and benefits of this change were presented to both Committees, whose members received an earlier draft of this document. The memorandum has been revised for to incorporate Habitat Committee comments and address specific questions raised at their meeting. **Committee recommendations, including a request for Council action, are summarized at the conclusion of this memorandum.**

General considerations

If split, the coral action would be an omnibus amendment to all the NEFMC fishery management plans, similar to the EFH amendment. It would not represent the initiation of a New England coral FMP. Other Councils that have taken this approach in part because the corals in their regions are harvested directly, but a coral FMP has not been discussed for New England, at least not publicly. The point is provided for clarification as there appeared to be some confusion at the Habitat Committee meeting.

Given that a single Council staff member and various Habitat PDT members are working on both coral and EFH issues, this conversation affords an opportunity for the Committee and Council to provide feedback to the PDT on how to internally prioritize tasks. On June 8, the Habitat Committee was very clear that their priority is completion of the EFH amendment. Splitting the two actions could actually facilitate this, if analysis and action on the coral discretionary authority alternatives becomes a rate limiting step on completion of the EFH action. The PDT's take away from the June 8 meeting was that development and analysis of the two sets of alternatives (discretionary coral and alternatives to minimize the effects of fishing on EFH) will continue in parallel, with a primary focus on the EFH measures.

Overlap between Habitat Area of Particular Concern and coral alternatives

A Committee member asked about the relationship between the coral alternatives and the Habitat Area of Particular Concern alternatives.

The Council first directed the Habitat PDT to evaluate information related to deep-sea corals and develop alternatives for their protection in February 2008. At the time, the coral measures were added to Omnibus EFH Amendment 2, mainly as a matter of convenience because it was an ongoing habitat-related action. However, there is a linkage to other alternatives in the EFH amendment because submarine canyons and seamounts harboring deep-sea corals and other associated ecosystem components were recommended as HAPCs during Phase 1 of EFH Amendment development.

Because HAPCs are a subset of designated EFH, HAPC designations would remain as part of the EFH Omnibus Amendment, and would not be split off into a separate coral omnibus amendment, even though some of the HAPCs were developed with corals in mind. Note that each of the HAPC alternatives (and EFH alternatives) developed during Phase 1 are pending implementation and subject to change until final action is taken by the Council on Omnibus EFH Amendment 2. Thus, there remains an opportunity to rectify any inconsistencies between the coral zones developed under the discretionary authority and the HAPCs developed under the EFH authority, bearing in mind that objectives for the two sets of areas may be different. A comparison of the two sets of areas can be undertaken whether they are developed via one action or two separate actions.

Potential benefits of splitting

- **Separating the actions would create flexibility.** There are uncertainties in timing associated with groundfish-related aspects of alternatives development for the EFH action. Thus, splitting could allow the coral measures to be implemented before the EFH Omnibus Amendment if there is time in the coming months to complete and approve a coral EIS or EA. However, if resource conflicts with the EFH action arise and completion of the coral action is delaying the EFH action, the coral action can be temporarily put on hold.
- The deep-sea coral alternatives have been developed under the Magnuson Stevens Act Section 303(b) discretionary authority. The adverse effects minimization alternatives in the EFH amendment are being developed under the non-discretionary Section 305(b) EFH authority. This distinction is important and would likely be clearer in two separate actions, as all information in each would be focused towards a narrower set of goals and objectives. Detailed information about these two authorities is provided in
- There is no spatial overlap between potential deep-sea coral protection zones and potential and existing habitat areas designed to minimize the adverse effects of fishing on EFH, with the exception of the two habitat areas in Lydonia and Oceanographer Canyons in the monkfish FMP. The fisheries that occur within and adjacent to the deep-water canyon/slope coral zones are generally distinct from those that occur within the existing/potential adverse effects management areas in shallower continental shelf depths. Thus, for analysis, discussion, and public participation purposes, the coral alternatives are easily separable.

- Two separate actions and sets of documents would be clearer and easier to understand than a single combined action. In particular, development of a separate coral action would simplify the EFH action, which is already complex and lengthy. In addition to coral measures, the EFH action contains EFH designations, HAPC designations (discussed separately below), adverse effects minimization/groundfish area alternatives, and dedicated habitat research area alternatives.
- Consultation with the MAFMC may be facilitated by splitting the actions. The coral alternatives as currently drafted are gear-based, not fishery or FMP based, and would apply to vessels operating in fisheries managed by both Councils. The potential adverse effects areas do not extend very far south or overlap with much MAFMC-managed fishing activity, but there is MAFMC-managed fishing activity (e.g. tilefish, squid) in the vicinity of the coral areas. Thus, there are likely to be Mid-Atlantic fishing interests who are only concerned with the coral alternatives, not the other elements of the EFH amendment. Based on Committee meetings where both EFH and coral issues have been discussed, there is only partial overlap between NEFMC stakeholders interested in coral measures and those interested in adverse effects/groundfish measures. If delays in the coral process are necessary to ensure that management actions are consistent throughout the region, these delays would not impact completion of the EFH portion of the amendment if the coral measures are separated out. Assuming that NEFMC implements coral-related measures north of the inter-council boundary, and MAFMC does so south of the boundary, such consistency in management approaches will be critically important, because many fisheries operate near or within the proposed coral zones on both sides of the line.

Potential costs of splitting

- The range of alternatives under consideration in the EFH amendment, as well as the process for developing the amendment, have been modified previously, and this would represent another change.
- Because separate amendments to all New England Council FMPs would be initiated if the coral measures are separated out of the Omnibus EFH Amendment, it would not be possible to reverse course and recombine the two actions later.
- It is possible that some of the impacts analyses (economic in particular) would be streamlined if corals, adverse effects, and groundfish alternatives continue to be developed in a single amendment, because restrictions in one area could increase fishing activity in other areas. As noted above, there are few overlaps between coral and adverse effects minimization areas and the fisheries associated with them, so this may not be a major issue. However, this could be a more important consideration for the two coral areas proposed in the Gulf of Maine near Mt Desert Rock and in western Jordan Basin. With this possible exception, splitting could actually simplify the analysis required because the combined effect of the two sets of alternatives (corals, adverse effects) would be limited to the cumulative effects analysis.

- There is likely to be some amount of duplication between the coral and EFH-related NEPA documents, especially background/affected environment type information for the slope and seamount areas (at a minimum, the EFH action will designate EFH along the slope and on the seamounts, so these areas will need to be discussed in that amendment even if the coral alternatives are removed). If the actions are being developed and implemented in parallel, which seems most likely, it is difficult to incorporate this material by reference.

Habitat Committee recommendations

At this time, the Habitat Committee makes no specific recommendation as to whether to split the coral alternatives from the Omnibus EFH Amendment. However, the Committee discussed that such a decision may be warranted at a later date. **The Committee agreed via motion that development of a memorandum of understanding between the New England, Mid-Atlantic, and South Atlantic Councils is a priority issue for the short term.** This MOU will identify areas of consensus and common strategy related to conservation of corals and mitigation of the negative impacts of fishery/coral interactions. It will also identify geographic areas of responsibility within the northeast shelf/slope region that is the shared responsibility of the NEFMC and MAFMC, and includes fishing activities managed by both Councils.

The Committee also agreed via motion to ask the full Council to request preparation of a Notice of Intent for publication in the Federal Register, indicating that the Council is considering the possibility of separating the coral and EFH aspects of the Omnibus EFH Amendment. This publication would serve notice to the public that the Council is considering the issue, and solicit public comments. The NOI would be prepared by Council and NERO staff. Publication of the NOI would not bind the Council in any way. A follow up notice would be required if the Council did take action at a later date to split the two amendments.