

Splitting coral alternatives from OA2

New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
 C.M. 'Rip' Cunningham, Jr., *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: September 7, 2012
TO: NEFMC members
FROM: Dave Preble, Habitat Committee Chairman
SUBJECT: Deep Sea Coral alternatives in separate omnibus action

The Council approved a range of alternatives related to deep-sea corals for analysis in Omnibus EFH Amendment 2 (OA2) at their April 2012 meeting¹. The possibility of removing the deep-sea coral alternatives from OA2 and placing them into a separate coral action was discussed during the June Executive Committee, Habitat Committee, and Council meetings. At the Council's request, a Notice of Intent was published to indicate that the Council is considering the split and to request stakeholder comments.

The Habitat Committee revisited the issue on August 23 and recommended splitting the coral alternatives from OA2. Comments from that meeting are outlined below.

Facilitate completion of EFH action: A Committee member thought that removing the coral alternatives would enable OA2 to progress more quickly. Another noted that if the corals are split, he would recommend tabling completion of the coral amendment until after OA2 has been completed.

Coordination with MAFMC: Another Committee member was reluctant to split the coral alternatives, citing concerns over falling behind MAFMC's recently initiated coral amendment. It was noted that MAFMC's intention at this point is to develop measures similar to those already drafted by NEFMC.

Coral actions likely to be less contentious: On behalf of the advisors, the AP chairman noted that the coral measures are likely to be relatively uncontroversial in comparison with the EFH measures, which will be contentious. He argued that leaving the two groups of alternatives together will likely slow the process down.

Overlap between Habitat Area of Particular Concern and coral alternatives: A Committee member questioned what would be done with the draft HAPC designations that have already been approved by the Council during OA2 Phase 1. The consensus of the Committee was to keep these designations within OA2 and figure out a way to adjust boundaries later via framework action as appropriate.

¹ http://www.nefmc.org/habitat/planamen/efh_amend_2/June_2012_Coral_Alternatives.pdf

Written public comments submitted in response to the Notice of Intent

Oceana supports “moving the coral alternatives forward without connection to the complex and convoluted EFH assessment and management process”. They feel that this action will “clarify the work of the Council, simplify the public comment process, and allow the Council to make the best use of staff and PDT resources”. They also feel that given the two separate management authorities for coral and EFH, the alternatives related to these objectives are better separated. They would like to see the coral action completed by the end of 2012 or early 2013.

The Natural Resources Defense Council also supports “removal of proposed deep-sea coral protection measures from [OA2] and the further development of these proposals as a separate omnibus amendment. They note that their “support for separating out the deep-sea coral protection measures is predicated on the NEFMC continuing to commit adequate resources to expeditiously finalizing deep-sea coral protection measures for public comment and subsequent submission to the National Marine Fisheries Service.” They “generally support the range of alternatives ...with the exception of the range of boundary alternatives for a broad deep-sea coral protection zone, which [they] believe should include at least one alternative with a landward boundary shallower than 300 meters.”

Additional considerations

Different authorities: 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.

Clarity: Two separate actions and sets of documents would be clearer and easier to understand than a single combined action. The EFH action is already complex and lengthy. In addition to coral measures, it contains EFH designations, HAPC designations, adverse effects minimization/groundfish area alternatives, and dedicated habitat research area alternatives.

Consultation with the MAFMC: 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.

Action type: The assumption has been that the coral action would be an omnibus amendment to all the NEFMC fishery management plans, similar to the EFH amendment. It is not yet clear whether an Environmental Assessment vs. and Environmental Impact Statement would be

required for this action. A separate coral action would not represent the initiation of a New England coral FMP.²

Memorandum of Understanding: The Atlantic coast Fishery Management Councils are in the process of developing a memorandum of understanding related to deep-sea coral management issues. A draft is provided with the meeting materials. To date, the MOU has been reviewed by the MAFMC Ecosystems and Ocean Planning Committee, and by their full Council, as well as by the NEFMC Habitat Committee. All three groups responded favorably to the content and recommended only minor changes. The Habitat Committee requested that General Counsel review the MOU, and the SAFMC plans to review the document later this fall.

Timelines: Staff has estimated that OA2 as is, with corals included, would probably take one additional Council meeting to draft as compared to OA2 without corals. This is because work on the coral action would come at the expense of work on the EFH action, since the same Council, NERO, NEFSC staff, and other PDT members (with the exception of one PDT member at NEFSC who is primarily focused on corals) are involved in the analysis of both types of alternatives. To most quickly expedite the EFH elements of OA2, it would make sense to largely table further work on a separate action until the EFH action is submitted.

Spatial overlaps between EFH and coral management areas: There is little 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. However, if there are spatial overlaps and the measures are developed in two separate actions, the analysis of cumulative economic effects may be complicated. This concern is mitigated if the actions are completed sequentially, rather than in parallel. Overlapping/nearby areas include:

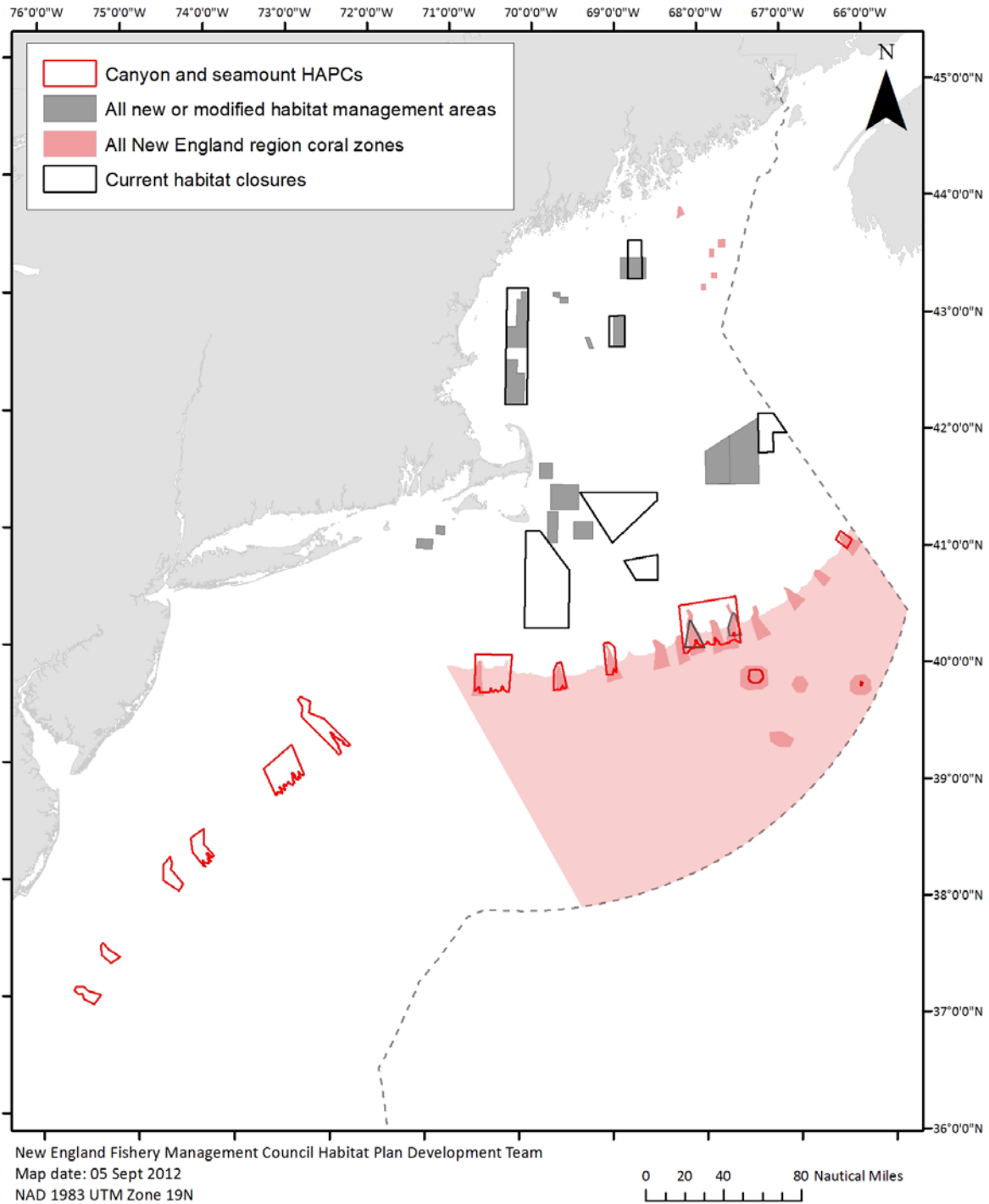
- The two existing habitat areas in Lydonia and Oceanographer Canyons that are closed to fishing on a monkfish day at sea overlap with both the broad shelf-slope coral zone alternatives, and the discrete zone alternatives for those same canyons.
- There are two coral areas proposed in the Gulf of Maine near Mt Desert Rock and in western Jordan Basin. These do not overlap with any of the GOM habitat management areas designed for adverse effects minimization, but the same fishing vessels might be operating in and around both sets of areas.

Enclosures

- 1. Figure showing overlaps between Habitat Management Areas, HAPCs, and Coral Protection Zones***
- 2. Notice of Intent***
- 3. Oceana comments***
- 4. Natural Resources Defense Council comments***

² Note that the SAFMC manages corals directly via a Coral, Coral Reef, and Live/Hardbottom Habitat FMP. At their August meeting, the MAFMC discussed developing their recently initiated coral-related action as an amendment to their Mackerel/Squid/Butterfish FMP.

Figure 1 – Overlaps between new and modified Habitat Management Areas, existing habitat closed areas, proposed canyon and seamount HAPCs, and New England region Coral Protection Zones.



layered corrosion-resistant carbon steel flat-rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Further, the Department made three changed circumstances determination with respect to the order on Germany. The Department partially revoked the order with respect to deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140.⁵ The Department also partially revoked the order with respect to certain wear plate products.⁶ In addition, the Department partially revoked the order with respect to the following products: Certain corrosion-resistant carbon steel from Germany, meeting the following description: electrolytically zinc coated flat steel products, with a coating mass between 35 and 72 grams per meter squared on each side; with a thickness range of 0.67 mm or more but not more than 2.95 mm and width 817 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.25, manganese not over 0.9, phosphorus not over 0.025, sulfur not over 0.012, chromium not over 0.1, titanium not over 0.005 and niobium not over 0.05; with a minimum yield strength of 310 Mpa and a minimum tensile strength of 390 Mpa; additionally coated on one or both sides with an organic coating containing not less than 30 percent and not more than 60 percent zinc and free of hexavalent chrome.⁷

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum (“Decision Memorandum”) from Susan Kuhbach, Director, Antidumping and Countervailing Duty Operations Office 1, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrent with this notice of preliminary results, which is hereby adopted by this notice. The issues

⁵ See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany, 64 FR 51292 (September 22, 1999).

⁶ See Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada and Germany, 71 FR 14498 (March 22, 2006).

⁷ See Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany, 71 FR 66163 (November 13, 2006).

discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. In our analysis, the Department addresses the concerns raised by interested parties with regard to the *Final Modification for Reviews*. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). Access to IA ACCESS is available in the Central Records Unit (“CRU”), Room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading “July 2012.” The signed version and the electronic versions are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the magnitude of the margin likely to prevail were the antidumping duty orders on CORE from Germany and Korea to be revoked is at least 9.35 percent for Thyssen Stahl AG and all other German producers and exporters of CORE and at least 12.85 percent for all Korean producers and exporters of CORE, other than POSCO.⁸

Interested parties may submit case briefs no later than 50 days after the date of publication of the preliminary results of these full sunset reviews, in accordance with 19 CFR 351.309(c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than the five days after the time limit for filing case briefs in accordance with 19 CFR 351.309(d).

A hearing, if requested, will be held two days after the date the rebuttal briefs are due. The Department will issue a notice of final results of these full sunset reviews, which will include the results of its analysis of issues raised

⁸ The order was revoked with respect to Pohang Iron & Steel Co., Ltd. and Pohang Coated Steel Co., Ltd. (collectively, “POSCO”), who was the only respondent examined in the original antidumping investigation. See *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009–2010 Administrative Review and Revocation, in Part*, 77 FR 14501 (March 12, 2012).

in any such comments, no later than November 28, 2012.⁹

The Department is issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 23, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–18423 Filed 7–26–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR75

Essential Fish Habitat Components of Fishery Management Plans; 5-Year Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplemental notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The New England Fishery Management Council is in the process of preparing an Essential Fish Habitat Omnibus Amendment to the fishery management plans for Northeast multispecies, Atlantic sea scallop, monkfish, Atlantic herring, skates, Atlantic salmon, and Atlantic deep-sea red crab. The Council is seeking comments about removing the range of alternatives pertaining to deep-sea corals from this action and developing them as a separate omnibus amendment.

DATES: Written comments must be received on or before 5 p.m. e.s.t., August 27, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Email:* CoralNOI@noaa.gov.
- *Mail:* Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

- *Fax:* (978) 465–3116.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council’s (Council) Essential Fish Habitat (EFH) Omnibus Amendment 2 (OA2) currently includes: (1) Review and update of EFH designations, (2) review and update of

⁹ See *CORE Extension Notice*.

Habitat Area of Particular Concern (HAPC) designations, (3) other EFH requirements of fishery management plans including prey species information and non-fishing impacts, (4) alternatives to minimize, to the extent practicable, the adverse effects of Council-managed fisheries on EFH, and (5) alternatives to minimize fishing effects on deep-sea corals developed under the authority granted in the fishery management plan (FMP) discretionary provisions (section 303(b)) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Alternatives developed under item 4 will include options related to the groundfish closed areas as well as options to designate spatially-overlapping dedicated habitat research areas. The Council added review of the groundfish closed areas to OA2 in April 2011 (76 FR 35408). Approval of a range of adverse effects minimization, groundfish area, and research area alternatives (item 3) has not yet occurred.

The purpose of this notification is to alert and seek comment from the public about Council's consideration of splitting the deep-sea coral discretionary provision alternatives from OA2, and including them in a separate omnibus amendment.

The Magnuson-Stevens Act section 303(b) discretionary authority gives Councils broad latitude to develop measures to minimize the impacts of fishing on deep-sea corals. Because most of the deep-sea corals occur beyond the limits of EFH, the Council is considering conservation measures under these discretionary provisions of the Magnuson-Stevens Act. This authority was added when the Magnuson-Stevens Act was reauthorized in 2007. The Council first directed its Habitat Plan Development Team to evaluate information related to deep-sea corals and develop alternatives for their protection in February 2008. The coral alternatives were folded into OA2 as a matter of convenience, because it was an ongoing habitat-related action. A range of coral alternatives were approved by the Council for further development and analysis in April 2012.

The following considerations were discussed by the Council and its Habitat Committee during recent meetings, and may be helpful to members of the public who wish to submit comments.

The range of coral alternatives developed by NEFMC includes broad zones beginning at 300, 400, or 500 m on the continental slope and extending to the Exclusive Economic Zone boundary, and discrete zones

encompassing submarine canyons on the continental slope off Georges Bank and Southern New England, four seamounts within the EEZ, and two locations in the Gulf of Maine. The range of possible management measures for these zones includes mobile bottom-tending gear restrictions or bottom-tending gear restrictions, with exceptions for deep-sea red crab traps, special access programs, and exploratory fishing programs. The Council anticipates allowing these management measures to be revised via framework action. More detailed information can be found on the Council's Habitat Web page (<http://www.nefmc.org/habitat/index.html>).

The fishing restriction alternatives as currently drafted are gear-based, not fishery or FMP based, and would apply to vessels operating in fisheries managed by both the New England and Mid-Atlantic Fishery Management Councils. The Mid-Atlantic Council initiated their own action related to deep-sea corals at their April 2012 meeting. Assuming the New England Council implements coral-related measures north of the inter-council boundary, and Mid-Atlantic Council does so south of the boundary, consistency in management approaches will be critically important, because fisheries managed by both Councils operate near or within coral habitats and are prosecuted both sides of the boundary line.

To facilitate inter-council coordination, the Councils are in the process of drafting a memorandum of understanding between the New England, Mid-Atlantic, and South Atlantic Councils. This document will identify areas of consensus and common strategy related to conservation of corals and mitigation of the negative impacts of fishery/coral interactions. At their June meeting, the New England Council reiterated that this is a priority issue for the short term. If additional development time is necessary to ensure that management actions related to deep sea corals are consistent throughout the region, these delays could impact completion of OA2 if the coral measures remain in the same action. Conversely, there have been delays associated with groundfish-related aspects of alternatives development for OA2 (item 3 above), and it might be possible to move the coral alternatives forward first if those delays continue. Overall, placing the two sets of actions on separate tracks could allow increased flexibility as the Council re-evaluates its priorities over time.

Separate actions for corals and EFH could be clearer and easier to

understand than a single combined action, since each one would be focused towards a narrower set of goals and objectives. However, there would be overlaps in terms of some of the content of the two separate amendments, especially background 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 might be difficult to incorporate this material by reference.

Also, there is a linkage between the coral discretionary provision alternatives and the other alternatives in the EFH amendment because portions of the submarine canyons and seamounts harboring deep-sea corals and other associated ecosystem components were recommended as HAPCs during Phase 1 of OA2 development (June 2007). 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. 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 will be undertaken whether they are developed via one action or two separate actions.

It is possible that some of the impacts analyses of both the coral and adverse effects/groundfish would be streamlined if coral alternatives and adverse effects/groundfish alternatives continue to be developed in a single amendment, because restrictions in one area could increase fishing activity in other areas. However, as there are few spatial overlaps between the coral zone alternatives and the adverse effects minimization areas as currently drafted, and different fisheries are associated with both sets of areas, this may not be a major issue. 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 simplify the

analysis required because the combined effect of the two sets of alternatives would be limited to the cumulative effects analyses in each of the amendment documents.

The Council is requesting comments on: splitting the deep-sea coral discretionary provision alternatives out of the EFH action and into a separate amendment, the range of deep-sea coral alternatives themselves, and coordination and consultation with the other Atlantic coast Councils, particularly the Mid-Atlantic Council.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 2012.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012-18400 Filed 7-26-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC118

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes a notification of a zero (0) percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the fee percentage for the 2012/2013 crab fishing year.

DATES: Fee liability payments made by the Crab Rationalization Program Registered Crab Receiver permit holders, if necessary, are due to NMFS on or before July 31, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, 907-586-7240.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program are set forth at 50 CFR part 680.

The Program is a limited access system authorized by section 313(j) of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. NMFS developed the cost recovery provision to conform to statutory requirements and to partially reimburse the agency for the unique added costs of management, data collection, and enforcement of the Program. Section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section 304(d)(2)(A) and additional detail for cost recovery provisions specific to the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. Additionally, section 313(j) requires the harvesting and processing sectors to each pay half the cost recovery fees. Catcher/processor quota share holders are required to pay the full fee percentage for crab processed at sea.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. The crab allocations include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect his or her own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before the due date of July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation. Specific details on the Program's cost recovery provision may be found in the implementing regulations set forth at § 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described in Federal regulations at § 680.44(c)(2). The formula for determining the fee percentage is the "direct program costs" divided by "value of the fishery," where "direct program costs" are the direct program costs for the Program for the

previous fiscal year, and "value of the fishery" is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than, or greater than, the actual costs and fishery value for that year, because, by regulation, the fee percentage is established in the first quarter of a crab fishery year based on the fishery value and the costs of the prior year.

The fee percentage has declined over time because of a variety of factors, including the increasing value of the fishery due to increased total allowable catch limits for various crab species such as Bristol Bay red king crab (*Paralithodes camtschaticus*) and Bering Sea snow crab (*Chionoecetes opilio*), increased ex-vessel price per pound of crab relative to previous years, and decreased management costs relative to previous years primarily due to decreased staff and contract costs.

Using the fee percentage formula described above, the estimated percentage of costs to value for the 2010/2011 and 2011/2012 crab fishing years was 2.67 percent and 1.23 percent, respectively. These fee levels have resulted in a fee collection greater than the actual management, data collection, and enforcement costs for the 2010/2011 and 2011/2012 crab fishing years. Therefore, fee revenues remain to cover projected actual costs for 2012/2013. As a result, NMFS has determined that the fee percentage will be zero (0) percent for the 2012/2013 fishing year.

Authority: 16 U.S.C. 1862; Pub. L. 109-241; Pub. L. 109-479.

Dated: July 24, 2012.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012-18403 Filed 7-26-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC130

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Strategic Planning Working Group, its

August 27, 2012

Paul J. Howard
Executive Director, New England Fishery Management Council
50 Water Street,
Newburyport, MA 01950

Re: Supplemental Notice of Intent (NOI) to Prepare an Environmental Impact
Statement (EIS) related to Omnibus Essential Fish Habitat Amendment 2 (77
Fed. Reg. 44214, July 27, 2012)

Captain Howard:

Oceana writes to express its support for the above-captioned proposed New England Fishery Management Council action to separate management and conservation of deep-sea coral from the Omnibus Essential Fish Habitat (EFH) Amendment 2 (OA2). The Council, the Habitat Oversight Committee, and the Habitat Plan Development Team have done commendable work developing a set of management alternatives related to deep-sea coral conservation and these should be moved forward without connection to the complex and convoluted EFH assessment and management process.

Oceana has suggested this separation of issues for more than a year and applauds the Council for considering this action. Separating these actions will clarify the work of the Council, simplify the public comment process and allow the Council to make the best use of its staff, Habitat Plan Development Team and other resources to act quickly on deep-sea coral conservation and management.

Oceana encourages the Council proceed with this separate approach and coordinate its action with the Mid-Atlantic Fishery Management Council which has recently initiated its own deep-sea coral management action. Considering the work that has been done to date, we look forward to the completion of this action in 2013.

Two separate issues: Deep-Sea Coral and Essential Fish Habitat

When OA2 was initiated, deep-sea coral conservation was connected to the Council fishery management process because EFH was the best available option to allow the Council to act on coral management. Deep-sea coral areas were connected to the EFH of some managed species and designated as Habitat Areas of Particular Concern (HAPC). However, the management goal of these areas was as the protection of the coral, not the conservation of the managed species.

In 2007 the Magnuson-Stevens Reauthorization Act clarified the importance of deep-sea corals and confirmed the power of the Councils to conserve deep-sea coral through

the discretionary provisions included in section 303(b) of the Magnuson-Stevens Act. Congress' message was plain: Councils did not need to connect deep-sea coral to managed species, but could conserve deep-sea corals for their own sakes.

Now that the Councils understand their authority to conserve deep-sea coral areas without a connection to EFH, these issues should be separated in the Council. Continuing to manage these distinct items in the same management action conflates the issues and generally confuses the Council process. Separating these actions will simply and clarify the process for the both the Council and the range of stakeholders that have participated in the development of OA2.

A Solid Range of Alternatives and an Opportunity for Immediate Action

During the past five years, the Habitat Plan Development Team has been working simultaneously on the development of EFH and deep-sea coral management and conservation measures under the umbrella of OA2. Although work has progressed on each of these issues, the development of EFH measures has been delayed for a variety of reasons and the current timeline for this action is uncertain.

In the meantime, the deep-sea coral portions of the amendment have continued to be developed with strong scientific analysis and the participation and guidance of the Habitat Oversight committee. Oceana believes that the range of alternatives currently under development is strong. The 'broad area' alternatives (with the addition of an empirically-derived depth alternative) are a proven way to conserve unfished areas and the 'discrete area' alternatives are similarly effective to conserve areas with known coral assemblages that may have experienced fishing. In tandem, these approaches create a sound method to conserve corals in the northeast that is consistent with the National Marine Fisheries Service Deep-Sea Coral Strategy¹.

Most encouraging about these alternatives is the fact that Council staff recently advised the Habitat Committee that at this point the deep-sea coral management alternatives are nearly ready for Council review and approval apart from the drafting of the supporting National Environmental Policy Act (NEPA) analysis and documentation. This development makes completion of this action a possibility in late 2012 or early 2013. The Council should strive for completion by the end of this year or early next year.

In sum, the work that has been done to date presents the Council with a distinct opportunity to take action to conserve deep-sea coral areas in the northeast region. Separating the EFH and coral management measures will provide the Council with a clean management action to complement the action which has been initiated by the

¹ National Oceanic and Atmospheric Administration, Coral Reef Conservation Program. 2010. NOAA Strategic Plan for Deep-Sea Coral and Sponge Ecosystems: Research, Management, and International Cooperation. Silver Spring, MD: NOAA Coral Reef Conservation Program. NOAA Technical Memorandum CRCP 11. 67 pp.

Paul Howard
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Mid-Atlantic Fishery Management Council. This direction creates a clear pathway for both Councils to enact meaningful deep-sea coral conservation and management measures similar to those that have been adopted in the Southeast, Pacific and North Pacific regions.

Oceana encourages the Council to follow through on this action and finish the stand-alone deep-sea coral conservation and management amendment as soon as possible and to include the completion of this action in its 2013 priorities.

Thank you for considering these comments,

A handwritten signature in black ink that reads "Gilbert A. Brogan". The signature is written in a cursive, flowing style.

Gib Brogan
Northeast Representative
Oceana
Wayland, MA



Natural Resources Defense Council
40 West 20th Street
New York, NY 10011
Tel: (212) 727-2700
Fax: (212) 727-1773

August 22, 2012

Paul J. Howard
Executive Director, New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Re: Supplemental Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) related to Omnibus Essential Fish Habitat Amendment (77 Fed. Reg. 44214, July 27, 2012)

Submitted via e-mail CoralNOI@NOAA.gov

Dear Captain Howard:

The Natural Resources Defense Council (NRDC) writes to express its support for the removal of proposed deep-sea coral protection measures from the Omnibus Essential Fish Habitat (EFH) Amendment and the further development of these proposals as a separate omnibus amendment. We also generally support the range of alternatives relating to deep-sea coral protection currently in the Omnibus EFH Amendment with the exception of the range of boundary alternatives for a broad deep-sea coral protection zone, which we believe should include at least one alternative with a landward boundary shallower than 300 meters. The Habitat Committee and its Plan Development Team should be commended for developing what is generally a promising suite of management proposals supported by a sound draft analysis and discussion with respect to deep-sea corals.

NRDC believes that separating the deep-sea coral protection alternatives from the Omnibus EFH Amendment is the appropriate approach at this point in time in light of (1) how close the draft coral provisions are to completion, (2) the complicated and contentious nature of the remaining EFH provisions of the Omnibus, and (3) the decision by the Mid-Atlantic Fishery Management Council (MAFMC) to develop its own deep-sea coral protection-related amendment. It is our current view that this approach will lead to the most expeditious finalization of robust deep sea coral protection measures for the region. While we understand that additional time is involved in preparing a separate amendment, we believe that this is outweighed by opportunities for more effective resource sharing across the two councils and enhanced flexibility for the deep sea coral protection measures to move forward independent of continued development of the remainder of the Omnibus EFH Amendment.

Our support for separating out the deep-sea coral protection measures is predicated on the NEFMC continuing to commit adequate resources to expeditiously finalizing deep-sea coral

protection measures for public comment and subsequent submission to the National Marine Fisheries Service. The draft alternatives and supporting analysis are very close to completion. We understand and support the high priority being accorded the completion of the Omnibus EFH Amendment but also believe finalizing a draft deep sea coral protection omnibus in the near future is possible without slowing that process down.

NRDC currently understands that the MAFMC intends to rely very substantially on the current deep-sea coral protection alternatives and the supporting analysis. We strongly support this approach, as these draft measures and the analysis are the product of a tremendous amount of work, including by MAFMC's staff and the MAFMC's representative on the Habitat Committee, and represent a sound management framework (with the one caveat discussed below) and excellent technical product.

With respect to the current range of alternatives for deep-sea coral protection contained in the Omnibus EFH Amendment, we have one comment. We are concerned that the range of boundary alternatives for a broad deep-sea coral protection zone contains no alternatives shallower than 300 meters. The best available information indicates that the significant presence of deep-sea corals, particularly such corals as stony corals, at depths shallower than 300 meters. The vast majority of current fishing effort is also shallower than 300 meters. The broad deep-sea coral protection zone is akin to a "freeze the footprint" approach – it is thus important that it encompass current fishing effort, rather than provide for an expansion of fishing into areas where corals are likely present. The development of the boundary alternatives should be based on quantitative analysis and empirical data, including approaches based on the bottom trawl depth encompassing 90th and possibly 95th percent of the fishing activity based on observer data. Arguably, the most endangered deep-sea corals on the shelf-slope are those in the 200-300 meter depth range, persisting for now in pockets but highly vulnerable to evolving fishing practices.

We hope that the preceding comments are helpful. We continue to be excited about this deep-sea coral protection initiative, which would represent the first use of the deep sea provisions added to the Magnuson-Stevens Act in 2006 and make the region a national leader in marine habitat protection.

Very Truly Yours,



Bradford H. Sewell
Senior Attorney

cc: Richard B. Robins, Jr
G. Warren Elliott