From: McNamara, Madeleine W CIV USCG D1 (USA) <Madeleine.W.McNamara@uscg.mil>
Sent: Thursday, April 23, 2026 9:10 AM
Subject: USCG PoC Env Protection New England FW: [Non-DoD Source] RE: Public Notice No. NAE-2025-01715, Newport Mussel Farm; Technical Assistance

Good Morning Christine,

Thank you for your early interagency coordination re: Newport Mussel Farm.

Following-up on the interagency email below to identify myself as the Coast Guard's Environmental Protection Specialist throughout the New England region. I am the point of contact for interagency correspondence related broadly to NEPA.

As you know, I am part of a broader team addressing CG equities for the Newport Mussel Farm. The Coast Guard contacts identified in your 4/2/26 post meeting summary email (attached) and interagency list are accurate.

Appreciate the group's continued discussion to identify complexities.

Best,

Madeleine

Madeleine McNamara, Ph.D.
Environmental Protection
Coast Guard Northeast District (dpw)

From: Thomas Heimann - NOAA Federal <thomas.heimann@noaa.gov>
Sent: Tuesday, March 10, 2026 5:16 PM
To: cenae-rma@usace.army.mil; Jacek, Christine M CIV USARMY CENAE (USA) <Christine.M.Jacek@usace.army.mil>
Cc: Deshais, Janet <deshais.janet@epa.gov>; Colarusso, Phil <colarusso.phil@epa.gov>; Desautels, Michele CIV USCG D1 (USA) <Michele.E.DesAutels@uscg.mil>; Ellen Keane - NOAA Federal <ellen.keane@noaa.gov>; Kevin Madley - NOAA Federal <kevin.madley@noaa.gov>; cokeefe@nefmc.org; cmoore@mafmc.org
Subject: [Non-DoD Source] RE: Public Notice No. NAE-2025-01715, Newport Mussel Farm; Technical Assistance

Hello,

We have reviewed the USACE Public Notice No. NAE-2025-01715 regarding the Newport Mussel Farm permit application. Please find the attached Technical Assistance letter for your consideration as you review the permit application and evaluate the project. Please reach out if you have any questions.

Thanks

Thomas

Thomas Heimann
Marine Habitat Resource Specialist
NOAA Fisheries
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930
(978) 238-9721

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

March 10, 2026

Christine Jacek, Project Manager
U.S. Army Corps of Engineers
New England District
Regulatory Division
696 Virginia Road
Concord, MA 01742-2751

RE: Public Notice No. NAE-2025-01715, Newport Mussel Farm; Technical Assistance

We have reviewed Public Notice No. NAE-2025-01715 published on February 10, 2026, describing an application by Newport Mussel Farm for the construction and operation of a commercial longline blue mussel (*Mytilus edulis)* mariculture facility. The mariculture facility is proposed in federal waters, ranging in depths from 35 to 42 meters, roughly 20 nautical miles southeast of Newport, RI, 12 nautical miles south of Westport, MA, and nine nautical miles west-southwest of Martha's Vineyard, MA. The proposed project encompasses a total area of 3,806 acres and includes the installation of 240 horizontal longlines and associated components such as helical anchors, grow lines, mooring lines, marker buoys, and surface floats.

We understand, as the lead federal agency, the US Army Corps of Engineers (USACE) intends to request consultation with us pursuant to the Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Section 7 of the Endangered Species Act (ESA). Given the size, location, and potential impacts to resources resulting from the proposed project, we request an interagency pre-application meeting be convened to discuss priority concerns. In an effort to provide you with early technical assistance on this project, we provide comments and information below related to resources under our jurisdiction to help inform your evaluation of the proposed project and assist in environmental review and permitting.

Project Description

Based on information in the Public Notice, the project proposes 240 longlines to be deployed in three units, each consisting of 80 parallel horizontal longlines spaced 100 meters apart. The three units would be arranged in 10 columns and eight rows, with 200 meter wide gear-free corridors separating the three units. The entire project area would be marked by twelve signal buoys with radar reflectors and automatic identification system (AIS) beacons. Vertical lines with marker buoys will be deployed and anchored with helical anchors, approximately 100 meters from the end of each horizontal longline. Each horizontal longline will use a mooring line approximately

150.25 meters in length, affixed at each end of the longline, and moored to the seafloor with helical anchors. Additionally, each mooring line will have an 80-liter subsurface float affixed roughly 45 meters from each helical anchor. Additional, permanent, flotation will be provided to each horizontal longline through a pair of 220-liter surface floats attached at the terminus of where the mooring line meets the backbone. Line and float configuration is designed to maintain a consistent backbone depth of approximately 9 meters. Over the course of each mussel grow-out cycle, additional surface and subsurface floats will be added to each backbone to compensate for the increase in mussel biomass. To maintain the depth specifications (9 meters) and biomass (12 kilograms per meter) each horizontal longline was designed for, up to 43 additional 220-liter surface floats and 15 additional 220-liter subsurface floats would be added to compensate for the additional biomass. Surface, subsurface, and mooring line floats would all be tethered with 24 millimeter thick polypropylene-polyethylene rope (Duradan PPE) in respective lengths of 9-meters, 4-meters, and 2-meters. Depending on phase of operations (spat-collection or grow-out) the horizontal longlines will support either hanging weighted vertical spat collection ropes or continuous loop vertical mussel cultivation lines spaced every 1.8 meters. Spat catching ropes would consist of polypropylene ropes with a 14 millimeter wide weighted inner core and outer filamentous layer of 55-65 millimeter fibers.

The project description in the Public Notice either did not fully describe or did not include information specific, but not limited to, the following items: Vertical lines, cultivation lines, components used to connect lines, helical anchors, activities associated with facility installation and maintenance (i.e. description of vessels to be used, expected vessel traffic to and from the facility during installation and operation), gear monitoring requirements and plans, lifetime of the facility and facility components, or facility decommissioning activities. Additionally, any known or anticipated activities associated with incident responses to the facility from damage (e.g. from weather or vessel interaction) should be included in the description of the proposed action.

When gathering information needed to initiate consultation, all components related to the proposed action must be fully described, including equipment, methods for installation, and operation of the facility. This includes the physical infrastructure to be permanently or temporarily installed as well as the activities associated with installation and operation and maintenance of the facility. Descriptions of components and activities need to include the specific location, frequency of activity, seasonality, and/or duration of activity in order to analyze the potential adverse impacts from project installation and operation on NOAA Trust Resources.

Essential Fish Habitat

The MSA requires federal agencies to consult with us on any action or proposed action authorized, funded, or undertaken by such agency that may adversely affect EFH identified

under the MSA. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the consultation process. EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. An adverse impact to EFH can be considered as any impact which reduces the quality and/or quantity of EFH. Adverse impacts to EFH may be the result of either direct or indirect effects from the proposed action and may arise from individual, cumulative, or synergistic consequences of the proposed action. The intent of the EFH consultation is to evaluate the potential adverse effects of the proposed action and identify options to avoid, minimize, or mitigate such effects. Impact analysis in your EFH assessment should focus on the elements of the proposed action that may result in adverse impacts to EFH and how those impacts affect species.

The proposed project will require a project-specific consultation as it does not meet the mariculture activity thresholds of GARFO and USACE Programmatic Consultation and Project-Specific Consultations Requirements due to facility siting in non-state federal waters. Additionally, due to the size and complexity of the proposed project and overlap with Habitat Areas of Particular Concern (HAPCs), we believe an expanded consultation is warranted under 50 CFR 600.920 (h)(3) to ensure analysis needed to assess the effects of the action on EFH is reflected in the assessment.

The Programmatic Consultation and Project-Specific Consultation document identified above provides a description of the minimum information required for consultations on all projects, including projects with a project-specific consultation, and provides an outline of information typically required for an expanded EFH assessment. The types of information most pertinent when reviewing the potential effects to EFH include a complete description of the proposed action, descriptions of the existing site conditions (including EFH/HAPC features present or absent within the project area), delineation of habitat types within the project area, and project plans which illustrate the location of project related infrastructure and activity to delineated habitat.

The Public Notice states that direct impacts to the seabed are expected to be approximately 480 square feet and originate from the installation of helical anchors. Additionally, the Public Notice states that divers will be used to microsite anchor installation to avoid impacts to sensitive habitat. As discussed above, EFH is not limited to benthic habitats and impacts are not limited to direct physical disturbance. The EFH assessment should include discussion and analysis on all possible adverse effects to EFH from the proposed action. Finally, the presence and extent of overlap of EFH and HAPCs with the project area is determined by the characteristics of the site (salinity, depth, sediment, complexity, etc.) as it relates to a particular species or life stage of a species. As a result, the presence or absence of specific habitat characteristics, as defined for each species and species life stage with EFH or HAPC overlapping the project area, must be

described in the assessment to determine the potential for adverse affect and need for conservation recommendations.

The proposed project is in an area designated by the New England Fishery Management Council (NEFMC), Mid Atlantic Fishery Management Council (MAFMC), and NMFS as EFH for one or multiple life stages of the following federally managed species. These species are, Atlantic cod (*Gadus morhua*), Atlantic herring (*Clupea harengu*), Atlantic mackerel (*Scomber scombrus*), Atlantic sea scallop (*Placopecten magellanicus*), Black sea bass (*Centropristis striata*), Bluefish (*Pomatomus saltatrix)*, Butterfish (*Peprilus triacanthus*), Little skate (*Leucoraja erinacea*), Longfin inshore squid (*Doryteuthis (Amerigo) pealeii*), Monkfish (*Lophius americanus*), Ocean pout (*Zoarces americanus*), Quahog (*Arctica islandica*), Pollock (*Pollachius virens*), Red hake (*Urophycis chuss*), Scup (*Stenotomus chrysops*), Silver hake (*Merluccius bilinearis*), Spiny dogfish (*Squalus acanthias*), Summer flounder (*Paralichthys dentatus*), Windowpane flounder (*Scophthalmus aquosus*), Winter flounder (*Pseudopleuronectes americanus*), Winter skate (*Leucoraja ocellata*), and Yellowtail flounder (*Limanda ferruginea*). In addition, the project area overlaps with EFH for the following highly migratory species managed by NOAA: Albacore tuna (*Thunnus alalunga*), Basking shark (*Cetorhinus maximus*), Bluefin tuna (*Thunnus thynnus*), Thresher shark (*Alopias vulpinus*), Sand tiger shark (*Carcharias taurus*), Sandbar shark (*Carcharhinus plumbeus*), Skipjack tuna (*Katsuwonus pelamis*), Smoothhound shark complex, White shark (*Carcharodon carcharias*), and Yellowfin tuna (*Thunnus albacares*).

Certain species and life stages may receive higher levels of exposure to impact producing factors or be more vulnerable to adverse effects of those factors associated with installation and operation of the project due to inherent biological or ecological life history characteristics. In particular, species with benthic eggs sensitive to sedimentation, habitat limited species, and species which aggregate to spawn in areas overlapping the project are expected to be more vulnerable to adverse impacts. Specifically, Atlantic cod and longfin squid are anticipated to be more vulnerable to adverse impacts as a result of at least one of the following: Limited habitat availability, sensitive demersal eggs, and/or spawning aggregations. Below, we highlight species with EFH which overlap with the proposed project and should receive particular focus in the EFH assessment.

Atlantic Cod

Atlantic cod are an important ecological, economic, and cultural resource with a significance to the Greater Atlantic region dating back centuries. Presently, Atlantic cod are managed as two stocks: The Gulf of Maine and the Georges Bank stock. The most recent stock assessment concluded that a four stock structure is considered the best scientific information available and assessed cod as four stocks: The Eastern Gulf of Maine, Western Gulf of Maine, Georges Bank, and Southern New England/Mid-Atlantic. This project overlaps exclusively with the Southern

New England/Mid-Atlantic stock. The Southern New England/Mid-Atlantic stock was determined to be overfished with overfishing still occurring with an estimated spawning stock biomass of 3% of the targeted management threshold and experiencing an estimated fishing mortality rate at 806% of the annual target[1]. Spawning behaviors necessary for successful reproduction, in combination with the current stock status, make Atlantic cod particularly vulnerable to impacts from offshore development.

Atlantic cod form discrete aggregations during their spawning season, which varies based on location, as males acoustically communicate by producing sounds or "grunt" to establish spawning territory and attract mates. This process, necessary for successful reproduction, is vulnerable to disruption from disturbances which overlap in time and space with spawning activity. Data collected for nearby wind energy areas indicate that spawning activities of Atlantic cod have been observed in close proximity to the proposed project location between November and April. Areas with the greatest overlap with spawning activity were found to include a mix of complex rocky habitats, gravels, and soft bottom habitats. Atlantic cod exhibit high site-fidelity to spawning areas and complex behavior during spawning, forming leks and haystacks during active spawning that can extend for weeks to months. Cod settlement begins approximately 3-4 months post-spawn. Early life stages of Atlantic cod require complex habitats, particularly pebble, cobble and boulder habitats. The project area overlaps with a designated Habitat Area of Particular Concern (HAPC) for spawning cod (see below for more details).

The EFH assessment should focus on potential adverse effects to cod and cod spawning as a result of project installation and operation. Minimizing seafloor disturbances within areas known to support cod spawning aggregations and limiting construction related activity, particularly activities which generate significant levels of sound, between November and April would minimize potential impacts to cod spawning. Additionally, avoiding and minimizing impacts to any complex habitats would minimize adverse impacts to sensitive early life history stages of Atlantic cod that depend on such habitats.

Longfin Inshore Squid

Longfin inshore squid spawn throughout the New York Bight and migrate to shallow waters starting in April and continue through June or July when they return to deeper shelf waters; early life stages are found in coastal waters and throughout the project area. Egg masses are demersal and are typically attached to low-relief structure (e.g. rocks, small boulders) on sandy or muddy substrate in water depths less than 50 meters. Longfin squid demonstrate elaborate spawning behavior that could be disturbed by construction activities, and produce demersal egg mops that are susceptible to mortality from direct or indirect (e.g. sedimentation/burial) effects. Peak egg mops in this area occur between June and September depending on environmental conditions from year to year. Specific to the EFH assessment, analysis of potential adverse effects should

[1][NEFSC] Northeast Fisheries Science Center, 2024c. Southern New England Atlantic cod 2024 Management Track Assessment Report. US Dept Commer Northeast Fish Sci Cent [Retrieved from apps-st.fisheries.noaa.gov/stocksmart]

focus on the risk for egg mop mortality from construction and operation of the project in habitats which overlap with the project area.

Rocky Habitats

Intertidal and subtidal gravel (i.e. mixed sand, pebble, cobble, and/or boulder) habitats, often associated with additional complexity from invertebrate communities and macroalgal cover, serve as important habitat for a variety of species. Rocky habitats may be used by managed species for one or all of their respective life stages and species may exhibit a preference for a specific complexity level of rocky habitat (e.g. gravel mixes). Respective of the proposed project, there are multiple species reliant on rocky habitats for one or multiple life stages and have designated EFH for complex rocky habitat within the project area: Atlantic cod, Atlantic pollock, black sea bass, little skate, ocean pout, red hake, scup, winter flounder, and winter skate.

Impacts to rocky habitats should be avoided wherever feasible. This is particularly true for rocky habitats known to support spawning aggregations or early life stages of vulnerable species. To minimize impacts to these habitats we typically recommend measures such as the micrositing of structures (e.g. anchors) within allowable configuration tolerances, and/or relocation or removal when micrositing is unable to avoid or minimize permanent impacts to complex, rocky habitats. Other measures that may avoid and/or minimize impacts to these habitats include: 1) restricting anchoring in these habitats; and/or 2) time of year restrictions in those habitats if proposed activities are expected to impact species using those habitats during a specific window in time. To avoid and minimize impacts to complex habitats, the EFH assessment must identify and characterize habitats within the project area.

The Public Notice states the seafloor in the project area is composed of soft mud or fine sands and lacks complex habitat and seafloor features. The location of the proposed project is in close proximity to extensive areas of glacial moraine which has deposited rocky habitat, in varying levels of complexity, across the region. The EFH assessment should fully describe any data collected or referenced that is used to describe the existing habitat features of the project area. Identification and characterization of habitats can involve a combination of desktop-based and field studies to collect and ground truth habitat data. The EFH assessment should use appropriate methods to describe existing habitat for the size of the project area as this ensures a high level of confidence in mapped habitat delineation, characterization products, and identification of EFH and HAPC features. We recommend early discussion with our habitat staff to review current data, identify additional information needs for the EFH assessment, and if needed, provide input on ways to collect that information.

Habitat Areas of Particular Concern

HAPCs are a subset of EFH, designated by regional fishery management councils, that exhibit one or more of the following: Ecological importance to managed species, particular susceptibility to human-induced degradation, vulnerability to developmental stressors, and/or rarity. The HAPC status can be applied to a specific habitat type or to a discrete area if habitat features present are determined to meet at least one of the above criteria. This project overlaps with areas designated as HAPC.

The Southern New England HAPC, which overlaps the project area, has been designated by the NEFMC for complex and cod spawning habitat within an area covering the southern New England wind energy lease areas plus an additional 10-kilometer buffer. This HAPC is intended for application during EFH consultation when data indicate that cod spawning and/or complex habitats occur within or near the footprint of a project located within the HAPC. The extent of overlap of HAPC features within the project area (i.e. complex habitat and/or identified cod spawning habitat), in combination with the activities proposed, determine the potential for adverse impacts to this HAPC as well as the specifics of any necessary conservation recommendations. The EFH assessment must evaluate the presence of HAPC features and, if warranted, discuss potential adverse impacts to those features from project development and proposed measures to avoid and minimize impacts to HAPC. Activities which could result in the loss or modification of complex habitat or may disrupt the spawning activity of cod must be described in the EFH assessment, including a full description of all proposed actions associated with installation, operations and maintenance that may occur in the project area between November and April.

Affected Fisheries

In response to the Public Notice, we are providing the following technical assistance about historic fishery operations which overlap with the proposed project area. This technical assistance is provided to inform your efforts reviewing the proposed project under the National Environmental Policy Act.

As proposed, fisheries that operate within and around the proposed project area would be impacted through disruptions to transit to/from fishing grounds and from displacement of fishing effort within the project area. Fishing vessels from various ports transit through the proposed project area throughout the year, especially those from New Bedford, MA and Point Judith and Newport, RI. Although vessels may continue to transit through the area, the anticipated addition of floats during the course of the growing season could complicate navigation and result in vessels avoiding transiting through the area as a precaution, especially given its proximity to the structures associated with the adjacent Revolution Wind project. Historic fishing operations within the project area would likely be excluded due to the amount of gear that would be

installed, which would prevent the setting of any fixed or mobile fishing gear within the area. Since 2008, fishing logbook data indicates that the Atlantic herring, skate, silver hake, lobster, summer flounder, and squid fisheries would be most affected based on historic fishery landings and revenue from trips that overlapped with the project area. In some years, up to 220,000 lb of fish valued at up to $26,000 were harvested from trips that overlapped with the project area. Such fishing activities would likely be displaced to other locations within surrounding waters.

Endangered Species Act Section 7

Under section 7 of the Endangered Species Act (ESA), federal agencies must consult with NOAA Fisheries when any action the agency carries out, funds, or authorizes may affect either a species listed as threatened or endangered under the ESA, or any critical habitat designated for it. As the lead federal action agency, USACE is responsible for determining whether the proposed action may affect ESA-listed resources. If USACE determines that the proposed action may affect ESA-listed resources under our jurisdiction, a request for consultation, along with the corresponding determination of effects, and supporting analysis, should be submitted to the attention of the section 7 coordinator at nmfs.gar.esa.section7@noaa.gov. Prior to submitting a finalized consultation request and supporting analysis (e.g. biological assessment (BA)), we encourage the designated USACE project manager to coordinate with our section 7 staff for assistance in reviewing and structuring the assessment.

As the action agency, you must provide a comprehensive description of all areas to be affected by the Federal action (action area as defined in 50 CFR §402.02). Furthermore, the request for consultation must include a comprehensive description of the proposed action such as its purpose, duration, components and how they will be carried out, and information on the nature of the effects that the proposed action will have on ESA-listed species. This information is critical in adequately and completely analyzing the effects of the action so that you may meet your ESA Section 7 obligations. The statutory requirements for BAs and requests for consultation are described at 50 CFR §402.02. Please refer to our ample online guidance resources and tools, as well as the specific guidance on aquaculture consultations, for assistance with supplying the required information for the description of the proposed action and the corresponding analysis of effects. We recommend that special attention is given to the information gaps highlighted above as you draft your BA.

The following ESA-listed resources under our jurisdiction overlap in time and space with the proposed project, as we currently understand it, and must be included in your analysis and request for consultation:

Atlantic Large Whales

Federally endangered North Atlantic right whales and fin whales occur year-round off the waters of Rhode Island and Massachusetts in the Atlantic Ocean. Right whales are most likely to occur offshore between November and April, but could be present year-round. Adult and juvenile right whales feed on copepods and could be foraging in the project area if suitable forage is present; right whales are also likely to be migrating along the Atlantic coast. Fin whale sightings off the eastern United States are centered along the 100 meter isobath, but fin whales are well spread out over both shallow and deep water, including submarine canyons along the shelf break (Kenney and Winn 1987; Hain et al. 1992). The presence of adult and juvenile fin whales overlap with the proposed action and could be present year-round, feeding on small schooling fish, squid, and crustaceans, including krill.

Sea Turtles

Four species of ESA-listed threatened or endangered sea turtles under our jurisdiction are seasonally present in the project's area: the threatened Northwest Atlantic Ocean distinct population segment (DPS) of loggerhead, North Atlantic DPS of green, and the endangered Kemp's ridley and leatherback sea turtles. Sea turtles typically occur along the Rhode Island and Massachusetts waters from May to mid-November, with the highest concentration of sea turtles present from June through October.

Atlantic Sturgeon

Atlantic sturgeon presence overlaps with the proposed project. The New York Bight, Chesapeake Bay, Carolina, and South Atlantic Distinct Population Segments (DPSs) of Atlantic sturgeon are endangered; the Gulf of Maine DPS is threatened. Transient adult and subadult Atlantic sturgeon originating from any of these DPSs could occur in the proposed project area to opportunistically migrate and forage. Due to the habitat and salinity in the area, spawning or early life stages are not expected to occur. Adult and sub-adult Atlantic sturgeon are expected to occur in the project area.

Shortnose Sturgeon

Shortnose sturgeon are present in the waters of the proposed project. Shortnose sturgeon are listed as endangered throughout their range. Transient adult individuals could occur in the proposed project area to opportunistically migrate and forage. Due to the habitat and salinity in the area, spawning and early life stages are not expected to occur.

Guidance for ESA section 7 consultation:

As project details develop, we recommend that you consider the following in regard to ESA-listed whales, sea turtles and sturgeon species:

- Entanglement risk associated with the proposed in-water gear and lines. Please refer to the aquaculture consultation resources shared above for guidance on the development of your BA. Consider the implementation of measures to mitigate entanglement risk such as:
    - Minimizing the number of vertical lines
    - Maintaining tension on all lines under all tidal conditions and as feasible with the proposed gear design
    - Avoiding high quality or known foraging habitat and/or aggregation areas to reduce overlap of species and gear
    - Implementing weak links designed with the appropriate breaking strengths, according to the listed species present
    - Gear marking
- Increased risk of vessel strikes. Consider the vessels associated with the deployment, maintenance and monitoring of the proposed aquaculture gear; and how, when added to the existing baseline of vessel traffic in the area, those vessels will result in an increased risk of a vessel strike on ESA-listed species.
- Proposed gear monitoring and maintenance protocols. Detailed descriptions of the methods and frequency for the general gear maintenance; as well as the proposed procedures in case of gear damages, losses, and adverse weather conditions. Additionally, a decommissioning plan and corresponding operations schedule must be provided.

Marine Mammal Protection Act (MMPA)

The MMPA established a national policy to prevent marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are part. Given the overlap of ESA-listed marine mammal species with the proposed action area, we recommend that USACE review the guidance about coordination under the MMPA for ESA-listed marine mammals. Please refer to the Office of Protected Resources' website for appropriate contacts, requirements and instructions for incidental take authorizations.

Conclusion

Thank you for the opportunity to comment on the Public Notice and the consideration of our request for an interagency pre-application meeting. We look forward to continued work on the upcoming consultations and are available to answer any questions regarding information needs for the assessments. If you have any questions or need additional information in relation to the EFH consultation, please contact Thomas Heimann at (978) 238-9721 or by e-mail (thomas.heimann@noaa.gov). For the section 7 consultation, please contact Roosevelt Mesa at (978) 281-9186 or by email (roosevelt.mesa@noaa.gov).

Sincerely,

Christopher Boelke

for Louis A. Chiarella
Assistant Regional Administrator
for Habitat Conservation

cc:

Janet Deshais, EPA
Phil Colarusso, EPA
Michele Desautels, USCG
Ellen Keane, NMFS
Kevin Madley, NMFS
Cate O'Keefe, NEFMC
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Joseph Cimino, Chair | Skip Feller, Vice Chair
Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: April 27, 2026

To: Cate O'Keefe, Executive Director New England Fishery Management Council

From: Chris Moore, Executive Director

Subject: Revision of Spiny Dogfish Essential Fish Habitat (EFH)

The Mid-Atlantic Fishery Management Council voted (unanimously) on April 7, 2026, to submit its Omnibus Essential Fish Habitat (EFH) Amendment to NOAA Fisheries. This amendment was submitted on April 16, 2026, and includes revised EFH maps and text descriptions for 14 managed species including spiny dogfish.

Updated EFH maps and text combine information from species distribution models with an analysis of estuarine and coastal species habitat zones, as well as relevant literature. These species distribution models and inshore workflows were developed through the Northeast Regional Habitat Assessment and further refined during the EFH 5-Year Technical Review. This work was completed as a joint effort between our organizations, with the same methods used for both the New England Council's 2026 EFH Framework and Mid-Atlantic Council's Omnibus EFH Amendment. The proposed spiny dogfish EFH designations are provided below in Table 1, and Figures 1 and 2.

Thank you for supporting the ongoing collaboration between the New England and Mid-Atlantic Councils on EFH identification and habitat management topics. Please reach out to Jessica Coakley, jcoakley@mafmc.org, if you have questions.

Table 1. Spiny dogfish EFH designations in text.

Life Stage	Proposed (Action)
Juveniles	EFH for all spiny dogfish juveniles (combined male and female, including sub-adults; size < 64 cm stretched total length) is all inshore and offshore marine habitat in the principal EFH area (defined as the top 75% quantile of occupied habitat predicted from model outputs) joined to inshore species zones. Juveniles are generally found in bottom salinities that range from 29 to 36 ppt, although they generally avoid brackish waters and spend more time in full salinity marine waters (>32 ppt). Mating occurs in the winter months with newborns (neonates or "pups") delivered on the offshore wintering grounds from November to January; however, newborns are also sometimes observed in the Gulf of Maine or southern New England in early summer. Juvenile spiny dogfish in the Northwest Atlantic inhabit the marine water column (shallow/inner continental shelf, shelf bottom, and slope bottom). They utilize both pelagic (open water) and epibenthic habitats (just above seafloor bottom sediments). They inhabit a broad range of full salinity estuarine and marine habitats, including firm hard bottom habitat, loose coarse bottom habitat, loose fine bottom habitat, marine mud, structured sand, and glacial till. They exhibit strong seasonal movements and migrate both north and south as well as inshore and offshore seasonally in response to changes in water temperature. They are generally found where bottom temperatures range from 4 to 18°C. Very few remain in the Mid-Atlantic area in the summer and fall after water temperatures rise above 15°C. While spiny dogfish in the Northwest Atlantic US ranges from Labrador to Florida, they are most frequently found from Nova Scotia to Cape Hatteras and have been caught near shore to as deep as 600 meters, although they are more frequently found at depths between 15 and 205 meters.
Adults	EFH for all spiny dogfish adults (combined male and female; size > 64 cm stretched total length) is all inshore and offshore marine habitat in the principal EFH area (defined as the top 75% quantile of occupied habitat predicted from model outputs) joined to inshore species zones. Adults are generally found in bottom salinities that range from 27 to 36 ppt (polyhaline and marine waters), although they generally avoid brackish waters and spend more time in full salinity marine waters (32-36 ppt). Adult spiny dogfish in the Northwest Atlantic utilize both pelagic (open water) and epibenthic habitats (just above seafloor bottom sediments). They inhabit a broad range of full salinity estuarine and marine water column (shallow/inner continental shelf and shelf bottom) habitats, including firm hard bottom habitat, loose coarse bottom habitat, loose fine bottom habitat, structured sand, and glacial till. Satellite tag returns also indicate some usage of habitat beyond the shelf break. Like juveniles, adults exhibit strong seasonal movements and migrate both north and south as well as inshore and offshore seasonally in response to changes in water temperature. They are generally found where bottom temperatures range from 4 to 17°C. Very few remain in the Mid-Atlantic area in the summer and fall after water temperatures rise above 15°C. Mating occurs in the winter months. While spiny dogfish in the Northwest Atlantic US ranges from Labrador to Florida, they are most abundant from Nova Scotia to Cape Hatteras and have been caught near shore to as deep as 500 meters, although they are more frequently found at depths between 15 and 190 meters.

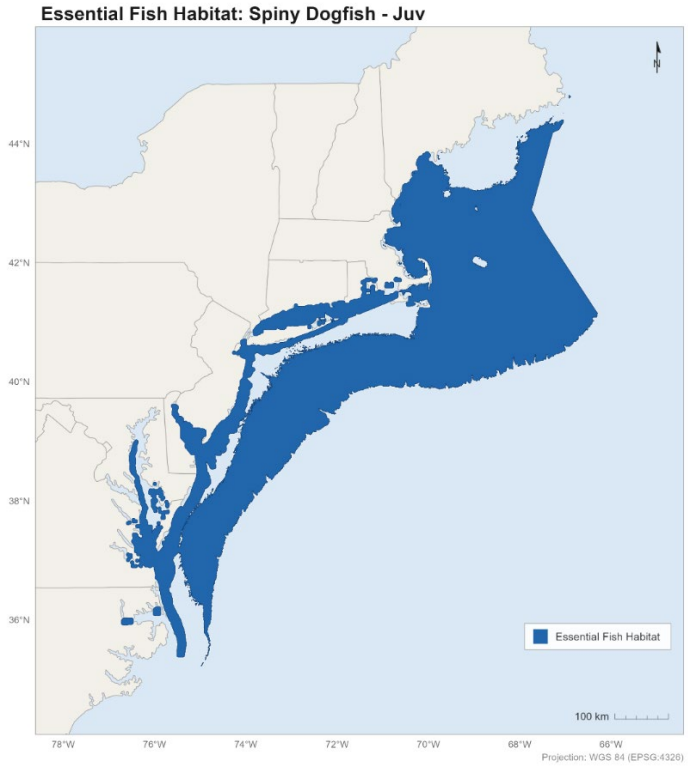

Figure 1. Spiny dogfish proposed juvenile EFH map.

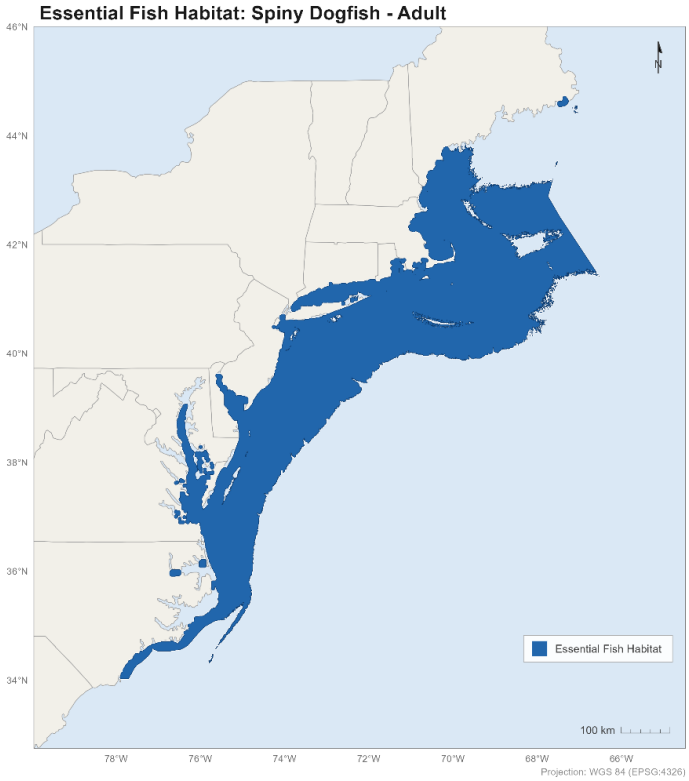

Figure 2. Spiny dogfish proposed adult EFH map.

Monte Rome & Intershell International Corp.

9 Backburn Drive

Gloucester, MA01930

5/20/2026

Chairman Dan Salerno

Executive Director Cate O'Keefe

NEFMC

50 Water Street

Newburyport, MA 01950

Re: Written Comments for the Habitat Advisory Panel Webinar 05/29/2026

Dear Chairman Salerno & Director O'Keefe,

As vessel owner, vessel operator, seafood processor, and as a participant in the recent survey work (EFP 23073) done on Davis Bank East, I comment that the research work must go on until such time as those of us who are working on this area for the sake of fisheries research, finish the work tasked them by the NEFMC and the Research Priorities for the GSCHMA.

By performing multibeam/side scan survey work with our vessel, F/V Tom Slaughter, pursuant to EFP 23073, we have been able to map detailed bathymetry, hardness and densities of the areas from which we have been harvesting clams to pay for the survey work.

While there are many takeaways to date from the work, one specific detail that the Habitat Committee should know is the minimal area worked for the results. In 286 compensation trips in the area, the harvesting vessels have used only 8.44 sq. km to harvest approximately 1,793,792 lbs of surf clam meat for food.

In this instance where most of the trips were conducted in the area known as Rose & Crown, the footprint of use is .003289 of the total 2566 sq km of the HMA. This activity was performed all in a sandy bottom area. During the events, we did not damage any fishing gear which is a testament to where we are able to find surf clams in the highest densities. During the work conducted, we did not encounter even 1 cod fish in our gear.

There has been much more information discovered since the April 2019 closure that has to do with Essential Surf Clam Habitat and the lack of damage to any surf clam habitat for which surf clam dredging could be held responsible. In fact, a leading NOAA habitat scientist, John Everett, has indicated that by MSA standards, fisheries should be allowed to harvest the target species if habitat damage from harvest operations produces only minimal and temporary damage. Everett indicates that from his 30+ years of scientific study with NOAA, that the outcome from surf

clam harvest is flawed in that surf clam dredging not only does minimal and temporary damage to the habitat where it is prosecuted, but in addition to temporary and minimal damage, hydraulic dredging improves the habitat and cleanses the bottom of build-up of detritus, other settled habitat materials, and brings up broken shells which create shell hash that complements the productive make-up of the HMA.

On page 8 of the July 22, 2019, Clam Dredge Framework Adjustment, it is made clear that codfish **s**pawn on the East and West of the HMA – not in the middle. This is consistent with many other reports and papers.

Please note the following:

1) Codfish do not spawn on the top of the Shoals (HMA) where surf clams are harvested.
2) Hydraulic dredging produces only Minimal and Temporary habitat damage and cleanses the bottom of the habitat it works. (Ammendment13 -SCOQ Mgt Plan)
3) Swept area consumed from dredging is almost negligible.

Our Team is ready and able to pursue all objectives of research necessary to demonstrate other surf clam exempt areas which should be opened as soon as possible in order to support the now fledgling New England Surf Clam Industry.

We have been doing the work in collaboration with our partner Coonamessett Farm Foundation and have contributed approximately $750,000.00 to this effort. We are certain that our continued work will answer the many questions that Fisheries Managers will need in order to reverse their position that Surf Clam harvesting has any negative impact on habitat, cod spawning, or negative impact on the small, perceived codfish habitat occurrence on the Shoals.

The eventual exemption for surf clam harvest must be considered and I respectfully request the full support of the Council in recommending that the EFP/Compensation Fishing be allowed to continue until all questions that closed the HMA are answered in full so that a scientific based decision will be made concerning surf clam harvest in the HMA.

Very truly yours,

Monte Rome,

Intershell International Corp. GM/Owner

The Tom Slaughter Surf Clam Fleet

MEMORANDUM

TO: Fellow Members, NEFMC Habitat Advisory Panel

FROM: Drew Minkiewicz

DATE: May 2026

RE: Three Year Review of the Georges Bank and Stellwagen Dedicated Habitat Research Areas

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Summary

This memo is intended to provoke discussion ahead of the May 29 meeting, and I welcome your thoughts, and any corrections. The DHRA review is an important decision on our agenda, and I think we will serve the Council better by working through the analysis together in advance.

My view is that the AP should recommend the Council advise the Regional Administrator to sunset the Georges Bank DHRA and should send the Stellwagen DHRA back to GARFO for completion of the dependence analysis the regulatory framework requires before any retention recommendation moves forward.

The PDT has recommended retention of both, and I have real respect for the work the PDT put into this review. With that said, the PDT memo acknowledges facts that, applied consistently to the regulatory standard, do not support retention of either. The Georges Bank case is straightforward. The Stellwagen case requires GARFO to do work it has not yet done.

The Regulatory Standard

Under 50 CFR 648.371(e) and the framework established in Omnibus Habitat Amendment 2, a DHRA may be maintained on the showing of any one of three things, all in the disjunctive:

- Documented active and ongoing research in the form of data records, cruise reports, or inventory of samples with analytical objectives focused on DHRA topics; or
- Approved research proposals focused on DHRA topics; or
- Funding requests for pending research focused on DHRA topics.

OHA2 defines DHRA topics as gear impacts on seabed habitat, habitat recovery dynamics, natural disturbance dynamics in the absence of fishing, and productivity of managed species across habitat types. The GARFO review framework, drawn from OHA2 Volume 3 at pages 116 to 117, applies the regulatory standard through a set of operational subquestions, including this one, which is dispositive for our purposes: are the fishing restrictions associated with the DHRA designation an explicit part of the design of the project?

That subquestion is not extra regulatory. It is part of the framework GARFO is required to apply, and it asks whether the research depends on the DHRA designation specifically. The procedural default favors retention because removal requires affirmative rulemaking by the Regional Administrator. The substantive standard places the burden of demonstrating qualifying research on those advocating retention. Our job, as the advisory panel, is to give the Council and the Regional Administrator a defensible record under the substantive standard, not to defer to procedural inertia.

Georges Bank DHRA: The Case for Sunset Is Already in the Record

The 2026 GARFO review states: NMFS did not identify any past, current, or planned research activities in which the designation of the Georges Bank DHRA has played a critical role. The 2022 GARFO review reached the same conclusion in identical language. Two consecutive triennial reviews, eight years apart from designation, with the same finding: no qualifying research.

GARFO documented 23 Scientific Research Permit applications from NEFSC for surveys overlapping the Georges Bank DHRA between October 2022 and March 2026. GARFO's own evaluation describes these as routine resource assessments that would occur in these areas regardless of their status as DHRAs. None of the three regulatory criteria, active research focused on DHRA topics, approved proposals focused on DHRA topics, or funding requests for pending research focused on DHRA topics, is satisfied on the record.

The PDT's recommendation to retain does not rest on the regulatory standard. It rests on opportunity cost arguments: the worry that letting the designation lapse will foreclose future closed area comparative research opportunities, and that recreating analogous closed conditions would take years. These are reasonable policy considerations, but they sit outside what 50 CFR 648.371(e) authorizes the Council to weigh in a sunset review. The regulation asks three specific questions about ongoing research, approved proposals, and pending funding requests. It does not invite a balancing test against speculative future research value. Treating opportunity cost as an independent basis for retention effectively rewrites the regulatory standard the Council itself adopted in OHA2.

The comparative research the PDT cites in support of its concern, including Murawski 2005, Davies 2015, Sherwood and Grabowski 2016, Vitaliano 2013, and Pereira 2012, predates the DHRA designation. Researchers conducted that work under prior groundfish closures that have existed in the area since December 1994. The DHRA itself has produced none of the research the PDT cites in its defense.

Two additional points reinforce sunset:

- **Resource conditions do not support a conservation rationale either.** Recent scallop resource surveys in the Georges Bank DHRA show essentially zero biomass with no recent recruitment. The closure is not protecting a productive resource. It is not generating spillover. Whatever conservation function the area may have served historically, the current scallop data do not support a continuing conservation rationale tied to this designation.

- **Sunsetting does not produce wholesale opening, but the PDT memo overstates the durability of the PSP overlap.** The PDT memo states that lifting the Georges Bank DHRA would still leave clam dredging prohibited under the overlapping Georges Bank PSP Closure. That is correct as a snapshot of the current regulatory regime. Outside a brief EFP that allowed fishing in part of the old Closed Area II, the area currently available to surfclam and ocean quahog harvest in the reopened portion of the Georges Bank PSP Closed Area does not extend into the DHRA itself, so sunsetting the DHRA in isolation would not immediately give clam dredges access to it. What the PDT memo does not address is that the PSP regulatory regime is expected to change in the next couple of years. NOAA Fisheries has indicated that the current Georges Bank PSP closure will be removed and replaced by a nationwide biotoxin monitoring regime administered by EPA and NOAA Seafood Inspection, with proposed and final rules expected. When that removal occurs, hydraulic dredge access to Georges Bank, including areas that today happen to fall within the DHRA, will be addressed in the separate Council action the agency itself anticipates. The DHRA is not the appropriate vehicle for managing hydraulic dredge access on Georges Bank, and using it as a placeholder for that policy question, in expectation of PSP changes, stretches the designation beyond what 50 CFR 648.371(e) authorizes. Sunsetting the DHRA on the regulatory record, and addressing dredge access in the dedicated Council action the agency expects to come, is the proper sequence of events.

The 2022 review found the regulatory criteria were not met and the Council retained the designation anyway. The 2026 review reaches the same finding. If the AP and Committee recommend retention again, we will have established a pattern in which sunset provisions never produce sunsets, and the Council's credibility in designing future closure with review measures will suffer for it. The integrity of the sunset mechanism, as a regulatory design choice the Council itself adopted in OHA2, depends on using it when the evidence supports doing so.

My recommendation: the AP should recommend that the Council advise the Regional Administrator to sunset the Georges Bank DHRA.

Stellwagen DHRA: The Dependence Analysis Has Not Been Done

Stellwagen is harder than Georges Bank, and the analytical question that matters under the regulatory framework deserves direct treatment rather than the gloss the PDT memo gives it.

The PDT memo points to specific research projects in support of retention: the SBNMS, Boston University, and University of Connecticut BRUV video analysis of natural disturbance patterns; the NEFSC passive acoustic monitoring soundscape study; and the Gloucester Marine Genomics Institute eDNA biodiversity work, with additional projects planned. GARFO concludes that the SBNMS video analysis explicitly relies on the Stellwagen DHRA designation and requires the exclusion of bottom tending gear from the DHRA.

That conclusion is doing the work in the retention recommendation. The record before us does not test that conclusion against the question the GARFO operational framework requires the agency to ask: do the fishing restrictions associated with the DHRA designation, as distinct from other overlapping restrictions, function as an explicit part of the design of the project?

The PDT memo itself contains the fact that exposes the contradiction. It states, on the question of what would change if the Stellwagen DHRA were sunset: Lifting the Stellwagen DHRA restrictions would not result in a change in fishing gear access to the area as there are overlapping restrictions associated with the year round Western Gulf of Maine Habitat Management Area, the Western Gulf of Maine Groundfish Closure Area, and the seasonal Cod Protection Closure Areas.

That sentence is dispositive on the dependence question, and the PDT did not appear to recognize it as such. If lifting the DHRA produces no change in gear access, then the overlapping closures, not the DHRA, produce the exclusion of bottom tending gear that the SBNMS research depends on. The DHRA is not the operative regulatory authority generating the research conditions. It runs concurrent with the operative authorities. SBNMS additionally holds independent permit authority over activities in the Sanctuary, and the Sanctuary Superintendent permits the video analysis under that authority in the first place.

The question is not whether the research relies on closure. It plainly does. The question is whether the research relies on the DHRA, as distinct from the WGOM HMA, the WGOM Groundfish Closure, the seasonal Cod Protection Closures, and the Sanctuary permit authority. The available record does not address that question. GARFO excludes NEFSC surveys from the dependence analysis on the explicit ground that they would occur regardless of DHRA status. GARFO then credits SBNMS research toward retention without applying the same test, even though the same overlapping closures produce identical gear exclusion.

The application of the dependence subquestion in the GARFO report is therefore inconsistent. The same logical test produces opposite conclusions for two sets of research projects in the same area, and the difference is not explained on the record.

Recommended AP Position on Stellwagen

A clean sunset recommendation for Stellwagen is harder to defend than for Georges Bank. Active research is occurring, and that research does benefit from the area being closed to bottom tending gear. The analytical weakness is not in whether closure helps the research. It is in whether the DHRA designation, specifically, is the operative source of that closure.

The cleanest AP position is therefore not a flat sunset recommendation. It is a recommendation that the Council does not act on Stellwagen retention until GARFO completes the dependence analysis the OHA2 review framework requires. Specifically, for each research project credited toward DHRA retention, GARFO should analyze whether the project would be impaired if the DHRA were sunset and the WGOM

HMA, the WGOM Groundfish Closure, the Cod Protection Closures, and the Sanctuary permit authority all remained in place. If that analysis demonstrates dependence on the DHRA specifically, retention is justified. If it does not, sunset is the appropriate recommendation.

This framing has three advantages. It accepts the regulatory framework on its own terms and asks only that the framework be applied consistently. It is unanswerable on the current record, because GARFO has not done the analysis. And it produces a defensible Council record whatever the ultimate outcome: if GARFO demonstrates dependence, retention rests on solid ground; if GARFO cannot demonstrate dependence, sunset rests on solid ground. Either way, the OHA2 sunset mechanism functions as the Council designed it to function.

If colleagues are not prepared to support remand for further analysis, an alternative position is to recommend sunset on the redundancy grounds the PDT memo itself supplies: lifting the designation produces no change in gear access, other closures not under review produce the controlled conditions for research, and the DHRA therefore functions as a redundant regulatory layer that adds nothing the underlying closures do not already provide. This is not an anti research position, because the research conditions persist regardless of what we recommend on the DHRA.

Conclusion

The AP has an opportunity at this meeting to give the Council and the Regional Administrator a defensible record under the substantive regulatory standard, rather than defaulting to retention on grounds the standard does not authorize.

For Georges Bank, the record across two consecutive triennial reviews supports a sunset recommendation. The regulatory criteria are not met, scallop biomass data does not support a conservation rationale, and using the sunset mechanism as designed protects the credibility of closure with review designs the Council may want to use in the future. The pending change to the PSP regulatory regime, with hydraulic dredge access on Georges Bank expected to be addressed in a separate Council action, reinforces rather than undermines that recommendation.

For Stellwagen, the AP should at minimum require GARFO to complete the dependence analysis the review framework requires before any retention recommendation moves forward. If colleagues are not prepared to support remand, sunset on regulatory redundancy grounds is defensible on the PDT memo's own acknowledged facts.

I would welcome the chance to discuss this with any of you ahead of the meeting.

Respectfully,
Drew Minkiewicz
Member, NEFMC Habitat Advisory Panel