



New England Fishery Management Council

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MEMORANDUM

DATE: September 12, 2014
TO: Groundfish Oversight Committee (OSC)
FROM: Groundfish Plan Development Team (PDT)
SUBJECT: **Framework Adjustment 53**

The Groundfish Plan Development Team (PDT) met on August 7 and September 3, 2014, to discuss Framework Adjustment 53 (FW 53). The following summarizes the PDT discussion.

Overview

The scope of FW 53 is to incorporate status changes for groundfish stocks, set specifications for several groundfish stocks, and adjust management measures for commercial and recreational fisheries that catch groundfish stocks. The objective of the action is to meet regulatory requirements and adjust management measures that are necessary to prevent overfishing, ensure rebuilding, and help achieve optimum yield in the fishery. The likely range of alternatives include:

- 4.1 *Updates to status determination criteria, formal rebuilding programs and annual catch limits*
 - 4.1.1 *Status Determination Criteria*
 - 4.1.2 *Annual Catch Limits*

- 4.2 *Commercial and Recreational Fishery Measures*
 - 4.2.1 *Windowpane flounder sub-ACLs and AMs*
 - 4.2.2 *GOM cod inshore spawning closure*
 - 4.2.3 *Roll-over provision for specifications*
 - 4.2.4 *Sector ACE carryover provisions*
 - 4.2.5 *Changes to trawl gear regulations*
 - 4.2.6 *Recreational management measures process*

At its June meeting in Portland, ME the Council gave the PDT discretion to address the work in order of priority and to discontinue work identified as a lower priority. The PDT may not have sufficient time to develop and analyze all of the potential alternatives, particularly 4.2.5 and 4.2.6 (below the line) on the management measures list. The PDT requests that the OSC remove 4.2.5 and 4.2.6 from further consideration at this time.

Regulatory Requirements

2014 Stock Assessments-Several stock assessments have been completed in 2014. These include:

- EGB cod
- EGB haddock
- GB yellowtail flounder
- GOM cod
- GOM haddock
- GOM winter flounder
- GB winter flounder
- Pollock

Status Determination Criteria- Status determination criteria will be updated for all of these stocks, based on the outcomes of the peer reviewed stock assessments. Reference points for GB yellowtail flounder can no longer be calculated, based on the results of the 2014 diagnostic benchmark and TRAC assessments. Based on the 2014 benchmark assessment, GOM haddock is not overfished and overfishing is not occurring. For all stocks except GB yellowtail flounder, the reference points will not change, but their numerical estimate will. The PDT plans to provide these updates to the numerical estimates for informational purposes in FW53.

Annual Catch Limits- The PDT encourages the OSC to review recommendations by the PDT to the SSC, and SSC (GB yellowtail flounder, GOM haddock and GOM cod) and TRAC (EGB cod, EGB haddock, and GB yellowtail flounder) reports in advance of the OSC meeting in order to facilitate discussion and recommendations to the Council on specifications.

The SSC will not have recommended GOM winter flounder, GB winter flounder, and pollock ABCs/OFLs in time for the September/October Council meeting. The PDT plans to provide a range of ABCs/OFLs for these three stocks as a placeholder in the Annual Catch Limits (4.1.2) section and will update the draft FW 53 document with the SSC recommendations for the November Council meeting.

Management Measures

GOM/GB (Northern) Windowpane Flounder Sub-ACLs- The PDT reviewed recent fishing year catches of northern windowpane flounder (Tables 1 and 2). The PDT noted that scallop fishery catches could be large enough that the effectiveness of the AM system could be undermined if those catches are not constrained and subject to an AM. In addition, adopting an allocation for the scallop fishery would also ensure the groundfish fishery is not negatively affected by any overage caused by the scallop fishery. The PDT also noted that the scallop fishery is virtually the sole contributor of the other sub-component catches. As a result, the PDT only pursued development of an allocation for the scallop fishery.

Table 1 – FY 2010-2012 Northern Windowpane Flounder Catch

Fishing Year	Total Catch Limit	Catch (mt)				% of Catch Limit Caught
		Total	Groundfish Fishery	State Waters	Other sub-Components	
2010	161 mt	163	154	0	9.1	101%
2011	161 mt	191	157	0	35	119%
2012	163 mt	209	130	2	77	128%

Table 2 – Other sub-Component Catch of Northern Windowpane

Fishing Year	Total Catch	Scallop Fishery	Squid/Whiting Fisheries
2010	9.1	8.2	0.7
2011	34.8	33.0	1.4
2012	77.0	75.7	0.9

The PDT reviewed the approach outlined for calculating the SNE/MA (Southern) windowpane flounder sub-ACL for the scallop fishery in FW 48 and recommends using the same approach for determining the northern windowpane flounder sub-ACL. This approach would use the 90th percentile of the scallop fishery catches (as a percent of the total catch) from calendar year 2001 through 2010 from the GOM/GB Windowpane Flounder 2012 Assessment Update. This value is 12 % (rounded up from 11.9 % of catches; Table 3). However, prior to 2004, there was limited observer coverage of the General Category scallop dredge fleet, and discards from this fleet were not included in the 2012 Update. As a result, the PDT estimated discards for this fleet and included them in the 2001-2010 catches used as the basis for the suggested allocation.

From 2004 to 2011, the average General Category catch of this stock was 4 mt, and this catch assumption was added to the scallop fishery catch values for each year from 2001 through 2010. Based on these updated catches, the 90th percentile would be 14 percent (rounded up from 13.7%) of all catches for this stock (Table 3). This percentage of the U.S. ABC would be used to determine the scallop fishery sub-ABC, then adjusted for management uncertainty to get the scallop fishery sub-ACL. The management uncertainty buffer would likely be 7 percent, consistent with the Council’s treatment of other zero possession stocks.

If a northern windowpane allocation is adopted for the scallop fishery, the Council is expected to develop AMs for this sub-ACL within FW 26 to the Scallop FMP during 2014/2015. These would be implemented in time to be effective in FY 2015. If there is an overage in the scallop fishery sub-ACL that is allocated in 2015, any overage of the 2015 sub-ACL will be subject to the AMs that are adopted. Consistent with a policy adopted in FW 47 for the scallop fishery, any scallop fishery AMs for this sub-ACL will only be triggered if the overall ACL is exceeded and the scallop fishery sub-ACL is exceeded, or the scallop fishery catch is 150 percent or more of the sub-ACL.

Table 3– Limited access scallop fishery discards of GOM/GB windowpane flounder, 2001-2010. Landings were less than 1 metric ton in all years. Catch from Table I2 in the 2012 GF Updates pp. 571. LA Scallop Dredge from Table I5 in the 20112 GF Updates pp. 573-574. Gen Cat estimated at 4 mt, average of 2004-2011 discards using the same method as the in the 2012 GF Updates.

Calendar Year	Catch	Limited Access Scallop Dredge	Limited Access Scallop Fishery Catches as Percent of Total	General Category Scallop Fishery Catch Assumption	Total Scallop Fishery Catch As Percent of Total
	A	B	B/A	C	(B+C)/(A+C)
2001	229	22	9.6%	4	11.2%
2002	176	21	11.9%	4	13.9%
2003	377	13	3.4%	4	4.5%
2004	328	7	2.1%	4	3.3%
2005	968	17	1.8%	4	2.2%
2006	683	73	10.7%	4	11.2%
2007	1091	98	9.0%	4	9.3%
2008	376	43	11.4%	4	12.4%
2009	440	15	3.4%	4	4.3%
2010	236	9	3.8%	4	5.4%
		Average, 2001-2010	6.7%		7.8%
		90th percentile, 2001-2010	11.9%		13.7%

GOM Cod Inshore Spawning Closure- The PDT discussed possible approaches that could be considered to expand inshore spawning closures. The PDT reviewed analysis conducted by the Closed Area Technical Team (CATT), along with additional spawning information, and six options are presented below for OSC consideration and discussion. The CATT-developed options are based on a peer-reviewed hot-spot analysis that identified areas where groundfish spawn. These areas identified by the CATT are driven by GOM cod spawning locations, but also incorporate hotspots from other spawning groundfish, such as GOM haddock.

1. **CATT-developed discrete seasonal areas for winter and spring closures** (Appendix 1: Figure 1)

These discrete seasonal areas are smaller and more site specific than other Options presented here, but also cover much of the western GOM. These areas could be difficult to enforce and consolidate fishable areas so that areas left open to fishing are subject to heavy fishing pressure.

2. CATT-developed adjustments to GOM rolling closure areas

These adjustments modify the rolling closures in a way that more closely followed the hot-spots identified. These areas are larger, would be easier to enforce, and are more representative of current management measures.

- Extend sector April rolling closure into March (blocks 124, 125, 132, 133), including portions of blocks 131 and 123 that overlap with the existing WGOM closed area (Appendix 1:Figure 2).
- May: blocks 132, 133, 139, 140, and portions of blocks 138 and 131 that overlap with the existing WGOM closed area (Appendix 1:Figure 3).
- June: blocks 139, 140, 147, and the portion of block 138 north of eastern boundary of the WGOM closed area (Appendix 1:Figure 4).
- Remove additional common pool closure areas.

3. Reinstate GOM rolling closures for all limited access groundfish permit holders

This would remove the sector rolling closure exemptions (Appendix 1:Figures 5-9) implemented through Amendment 16. The PDT noted one disadvantage of this option is that some of these areas may no longer be necessary, as indicated by the CATT analysis. For instance, the CATT suggested removing all rolling closure restrictions east of the WGOM eastern boundary. The GOM rolling closure areas would close the following blocks to all fishing vessels, with a few exceptions (see regulations):

- March: 121, 122, 123
- April: 121, 122, 123, 124, 125, 129, 130, 131, 132, 133
- May: 124, 125, 129, 130, 131, 132, 133, 136, 137, 138, 139, 140
- June: 132, 133, 139, 140, 141, 142, 143, 144, 145, 146, 147, 152
- October-November: 124, 125.

4. Remove some sector rolling closure exemptions and incorporate the CATT-developed adjustments to the rolling closure areas (Hybrid of Options 2 and 3)

After noting differences between Option 2 and 3, the PDT discussed the possibility of developing a hybrid of the two options. A hybrid approach would add additional closures in March (suggested by the CATT) and return the inshore GOM closures that sectors were previously exempt from in May, June, and October. This option would also remove closures to the east in areas where spawning is not believed to occur (as suggested by the CATT). This would result in fewer areas being closed than if all of the sector exemptions were revoked, but slightly more area than initially suggested by the CATT. This option would close the following blocks to all fishing vessels:

- March-April: 124, 125, 132, 133 (Appendix 1:Figure 10)
- May: 124, 125, 132, 133, 139, 140 (Appendix 1:Figure 11)
- June: 132, 133, 139, 140, 147 (Appendix 1:Figure 12)
- October-November: 124-125 (Appendix 1:Figure 9)

5. Winter closure west of 70°W for GOM cod (Appendix 1:Figure 13)

6. **Prohibit fishing by private recreational and charter/party fishing vessels in inshore spawning closure areas** (Appendix 1:Figure 13)

Currently, private recreational vessels are exempt from the WGOM closed area and the GOM rolling closure areas. Private and charter party vessels can fish in these areas as well if they acquire a letter of authorization from the Regional Administrator. The PDT noted that, because approximately 34% of the GOM cod quota is allocated to the recreational fisheries, allowing recreational vessels access to inshore spawning closures could be counterproductive to rebuilding efforts for a stock that is overfished and subject to overfishing. Prohibiting recreational fishing in the WGOM closed area and the rolling closures could also increase equity between the commercial and recreational fleets.

Roll-over provision for Specifications- To address the issue of beginning a fishing year without specifications, the PDT has examined so-called “rollover provisions” or “default measures” that have been adopted in other NEFMC and MAFMC FMPs. The PDT prepared a white paper to examine how specification roll-over is used in other NEFMC FMPs (see *Development of Rollover Provisions in the Groundfish Fishery*).

The majority of NEFMC FMPs include provisions that allow for prior year specifications to be rolled forward at the start of a new fishing year in the event that new specifications have not been implemented through rulemaking. The scallop fishery sets default measures for the third year of their specifications that hold back a portion of DAS at the start of their FY (March 1st). The scallop fishery does not allocate access area trips until rulemaking from the most recent management action is published in the CFR. The PDT proposes the OSC consider a default measures approach as was done in the Scallop FMP, as opposed to straight rollover of specifications. Such an approach is warranted in the Groundfish FMP for the following reasons:

- Stock statuses vary widely within the multispecies complex, and multiple stocks are currently rebuilding;
- Changes in the status of individual stocks have caused drastic increases and decreases in ABCs within the complex from one fishing year to the next; and
- Having default measures in place by May 1st ensures the timely start of the FY.

The PDT proposes the following options for discussion by the OSC, with the expectation that rollover provisions or default measures for specifications would be replaced when final specifications are published. The proposed default measures approach could include:

- Specifications for May 1 - August 31 of the fishing year (an interim ACL) that reflects prior year’s commercial and recreational catch rates (Tables 4 and 5). Appendix II includes the portion of Common Pool Sub-ACLs apportioned to each stock for each trimester.
- A percentage (e.g., 22%) of the prior year’s ACL could be used to set specifications in advance of May 1. Each time ACLs are established, a formulaic application of the prior year’s ACL could be used for the following fishing year default for potential use in the interim between May 1 and August 31 while specifications are finalized. Example: FY 2015-2017 specifications: 1200 mt, 1575 mt, and 2230 mt. Default would be 264 mt in

Q1 (May-August) of FY 2016 and 346.5 mt for Q1 of 2017. New defaults for FY 2018 and beyond would be set in subsequent specification.

As background for the approach of setting specifications for May – August, the PDT considered preliminary commercial and recreational catch data from May – August. While this commercial catch data is only an estimate of catch at a given point in the fishing year, the PDT brought forward this information as it is the data that NMFS would use to assess in-season catch rates and utilization of the groundfish resource (Table 4). In the last three fishing years, the estimated percentage of commercial catch has tracked closely with time elapsed in the fishing year (# days into FY beginning on May 1/365). Estimated catches of non-allocated groundfish stocks have exceeded elapsed time in FY by large margins (see Northern windowpane flounder).

The PDT also looked at recreational catch data for GOM cod and GOM haddock from May-August ¹ in FYs 2012-2013 (Table 5). Results of this analysis indicate that a large percentage of the recreational haddock catch occurred in Waves 3 and 4 in these years. In performing this analysis, the PDT notes that the last assessment of GOM haddock indicated that the stock is not overfished and overfishing is not occurring. Default measures for the recreational fishery for GOM haddock and cod could also be considered as an element of this approach (e.g., increase the minimum fish size to 24 inches). Potential default measures will require additional analysis for development.

In the considering the development of rollover or default measures for specification, the PDT noted that as part of A16, common pool sub-ACLs were apportioned to each stock for each trimester (May – August, September – December, January – April) based on prior commercial groundfish catch history. The PDT has provided stock specific values for each trimester in Appendix II.

At the start of the fishing year, 20% of Sector’s ACE is withheld for the first two months of the FY (61 days) to account for any overages in the previous year as catch numbers are finalized. While this is a precaution taken to address compliance with catch limits for the previous FY, the reduction in available ACE does build in precaution during the following FY.

¹ Marine Recreational Information Program (MRIP) Wave 3 (May-June) and Wave 4 (July-August) data

Table 4- Preliminary August Commercial Catch Data of Allocated and Non-Allocated Groundfish Stocks for FY2012-FY2014.

August Preliminary Commercial Catch Data (Sectors and Common Pool) From NMFS: FY 2012 - FY2014				
Allocated Stocks	Data Reported Through	8/14/2012	8/15/2013	8/20/2014
	% FY Complete	29%	29%	31%
	GB Cod East	26.9%	11.8%	7.80%
	GB Cod	14.1%	17.7%	26.60%
	GOM Cod	15.0%	19.1%	29.10%
	GB Haddock East	2.8%	1.8%	4.40%
	GB Haddock	1.9%	1.5%	11.40%
	GOM Haddock	8.5%	22.5%	35.40%
	GB Yellowtail Flounder	6.6%	10.5%	10.30%
	SNE/MA Yellowtail Flounder	0.5%	6.0%	20.70%
	CC/GOM Yellowtail Flounder	23.2%	19.6%	21.70%
	Plaice	14.9%	27.4%	32.10%
	Witch Flounder	19.3%	28.4%	28%
	GB Winter Flounder	30.7%	27.2%	22.30%
	GOM Winter Flounder	7.7%	8.1%	7.10%
	SNE/MA Winter Flounder	11.8%	23.5%	23.80%
	Redfish	16.4%	11.0%	20%
	White Hake	21.9%	16.6%	14.80%
Pollock	19.2%	10.5%	11.80%	
Non-Allocated Stocks	Data Reported Through	8/14/2012	8/15/2012	8/20/2014
	% FY Complete	29%	29%	31%
	Northern Windowpane Flounder	20.6%	162.8%	75.0%
	Southern Windowpane Flounder	17.9%	33.0%	24.4%
	Ocean Pout	9.1%	8.7%	13.9%
	Halibut	45.3%	31.5%	28.1%
	Wolffish	34.0%	3.6%	14.4%
	Data gathered from: http://www.greateratlantic.fisheries.noaa.gov/aps/monitoring/nemultispecies.html			
Estimated catches on report date that exceed the percentage of the FY complete are shown as: 				
Estimated catches on report date within 5% of the percentage of the FY complete are shown as: 				

Table 5- 2012 and 2013 GOM Cod and GOM Haddock Wave 4 and 5 Recreational Catch Data

Recreational mortality (retained catch + dead discards) information for MRIP Waves 4 and 5 (May/June and July/August) by year and stock, 2012-preliminary 2014. <i>Weights in pounds (lb) except where noted.</i>					
Gulf of Maine Atlantic Cod					
Year	Total Mortality Waves 4-5	Total Mortality for Fishing Year	Percent of Total taken in Waves 4-5	Sub-ACL	Percent of Sub-ACL taken in Waves 4-5
2012	417,183	1,772,403	24%	4,883,239	9%
2013	316,563	1,409,443	22%	1,071,447	30%
2014 (Wave 4 only)	342,669	N/A	N/A	1,071,447	N/A
Gulf of Maine Haddock					
Year	Total Mortality Waves 4-5	Total Mortality for Fishing Year	Percent of Total taken in Waves 4-5	Sub-ACL	Percent of Sub-ACL taken in Waves 4-5
2012	552,625	976,913	57%	570,997	97%
2013	671,205	942,279	71%	163,142	411%
2014 (Wave 4 only)	633,902	N/A	N/A		N/A
<p><i>Caveats:</i> 2014 data incomplete (Wave 4 only) average weights used for 2014 are borrowed from 2013 and, thus, may not be accurate. B2 discard data use a derived average weight based on reported length frequency distribution of discarded fish. Weights derived from assessment L/F tables. Discard mortalities of 50 percent for haddock and 30 percent for cod are applied for the total mortality estimates.</p>					

Sector ACE Carryover Provisions- On April 4, 2014, the U.S. District Court for the District of Columbia issued a ruling on NMFS' carryover-related Framework Adjustment 50 measures FMP that:

1. Invalidated and vacated the fishing year 2013 carryover measures; and
2. Specified that the 'total potential catch'² cannot exceed Acceptable Biological Catch (ABC)

The agency took emergency action (79 FR 36433; June 27, 2014) to address the FY 2013 remand issued by the Court. This action ensured that any sector use of carryover that exceeded ABC was subject to a pound-for-pound repayment accountability measure in FY 2014. This action addressed the action taken by the Court under #1, above. However, moving forward, the FMP must be modified to ensure that the second item (#2; above) is addressed and made consistent with the Court ruling.

The PDT has previously discussed this in broad terms as has the OSC. The OSC included carryover measures on the list of FW 53 priorities, assigning it a relatively low priority. However, NMFS has indicated that the change is an essential requirement for the FMP and should be addressed in FW 53 to ensure optimal public process. If the Council does not take action to modify the carryover-related measures in conjunction with FW 53, NMFS would likely be required to take unilateral action. The possible mechanisms for so doing would be Magnuson-Stevens Act section 304(c) Secretarial amendment authority, section 305(c) emergency/interim authority, section 305(d) FMP clarification authority or a combination of these authorities. None of these authorities are preferable to a Council action, because they diminish the Council's and the public's input and control over how to address carryover in a manner consistent with the Court's opinion, and, it is not clear to what extent any of these authorities may be justified.

A revision to the Groundfish FMP implemented through a regulatory change is necessary to cap the amount of carryover that can be harvested to ensure that the 'total potential catch' (i.e., total ACL + max. carryover) does not exceed the ABC for the fishing year in which the carried over ACE may be harvested. A more detailed discussion document is in development by the Agency and will be distributed prior to the OSC meeting.

² a term of art coined by the Agency for the potential full utilization of an available stock-level ACL plus the full 10 percent unused ACE carryover from the prior fishing year

Appendix I:

Options for GOM Cod Inshore Spawning Closure

Figure 1. CATT Developed Discrete Seasonal Closure Areas. Presence (red)/absence (red) of cod in spawning condition observed during the 2002-2012 NMFS spring trawl surveys.

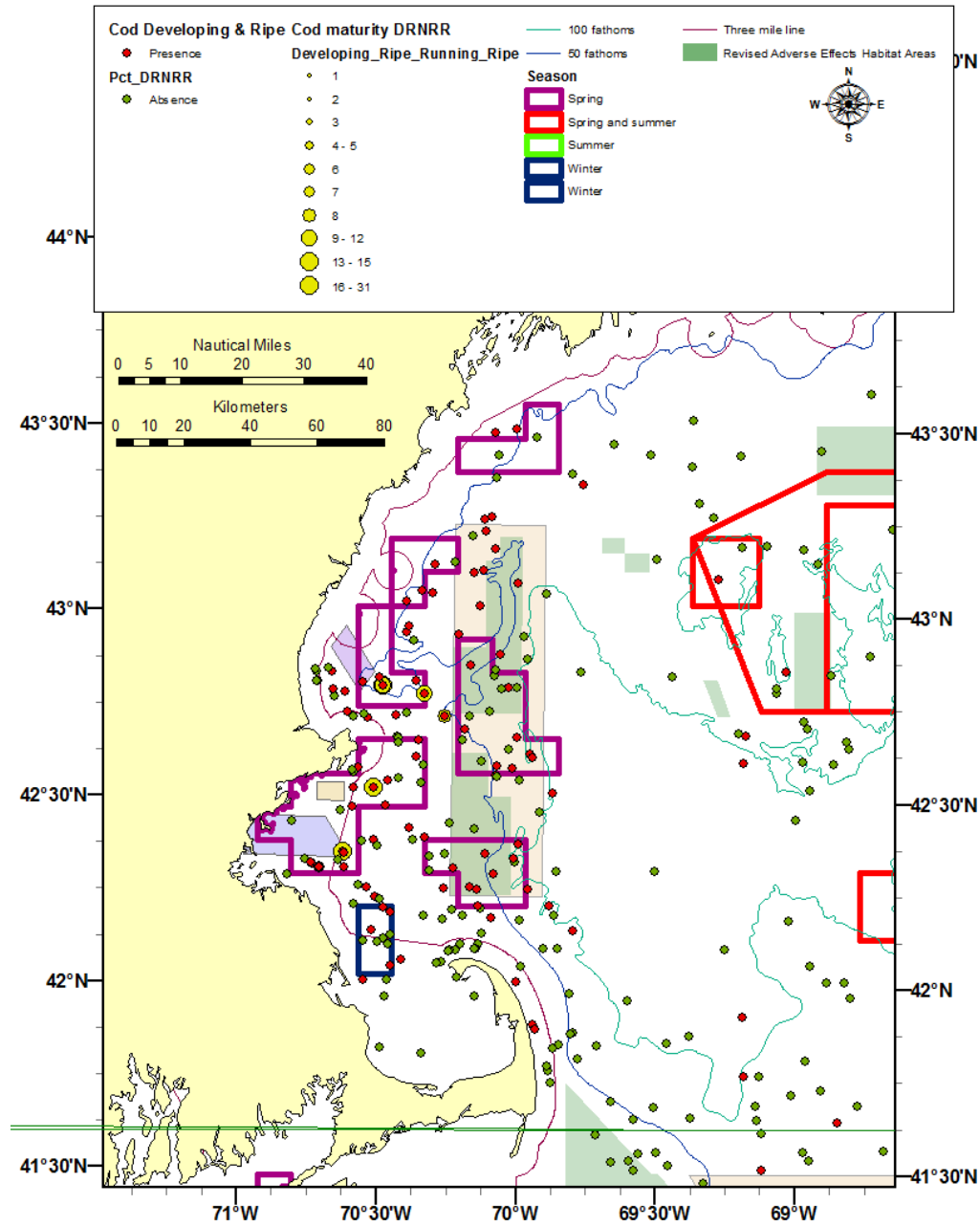


Figure 2: CATT Proposed March-April modified rolling closure option (black outline) compared to existing April sector rolling closure (shaded).

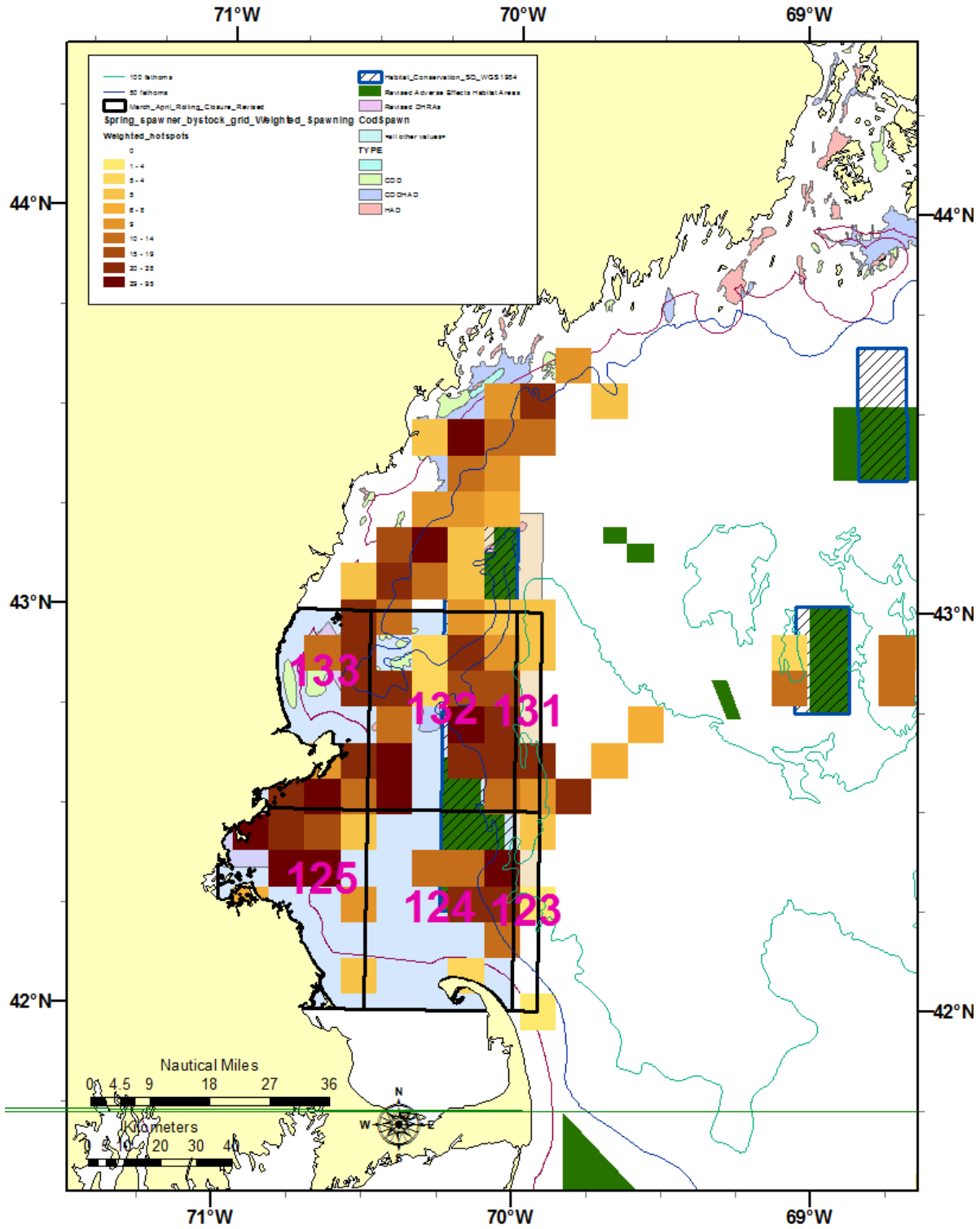


Figure 3: CATT Proposed May modified rolling closure option (black outline) compared to existing May sector rolling closure (shaded).

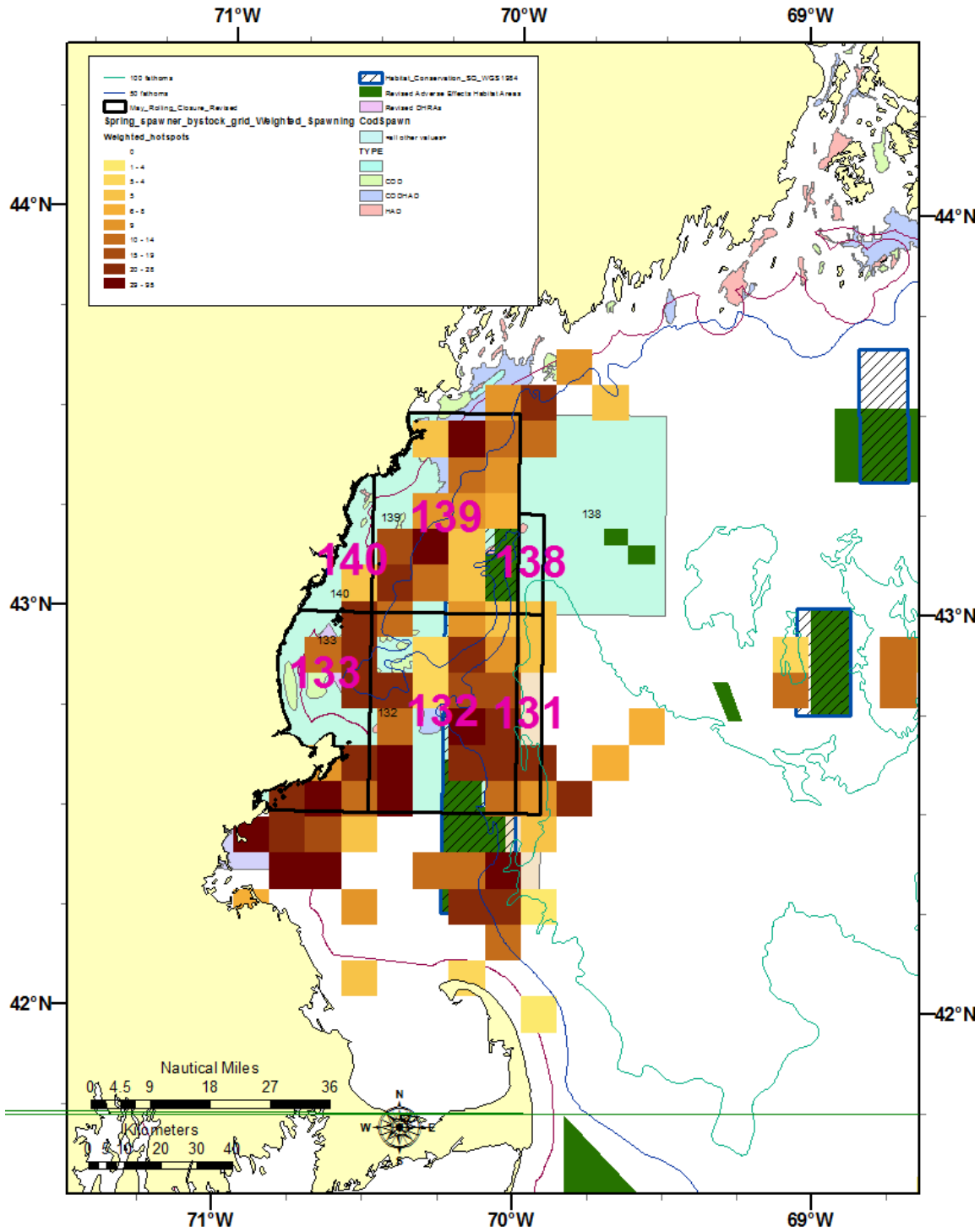


Figure 4: CATT proposed June modified rolling closure option (black outline) compared to existing June sector rolling closure (shaded).

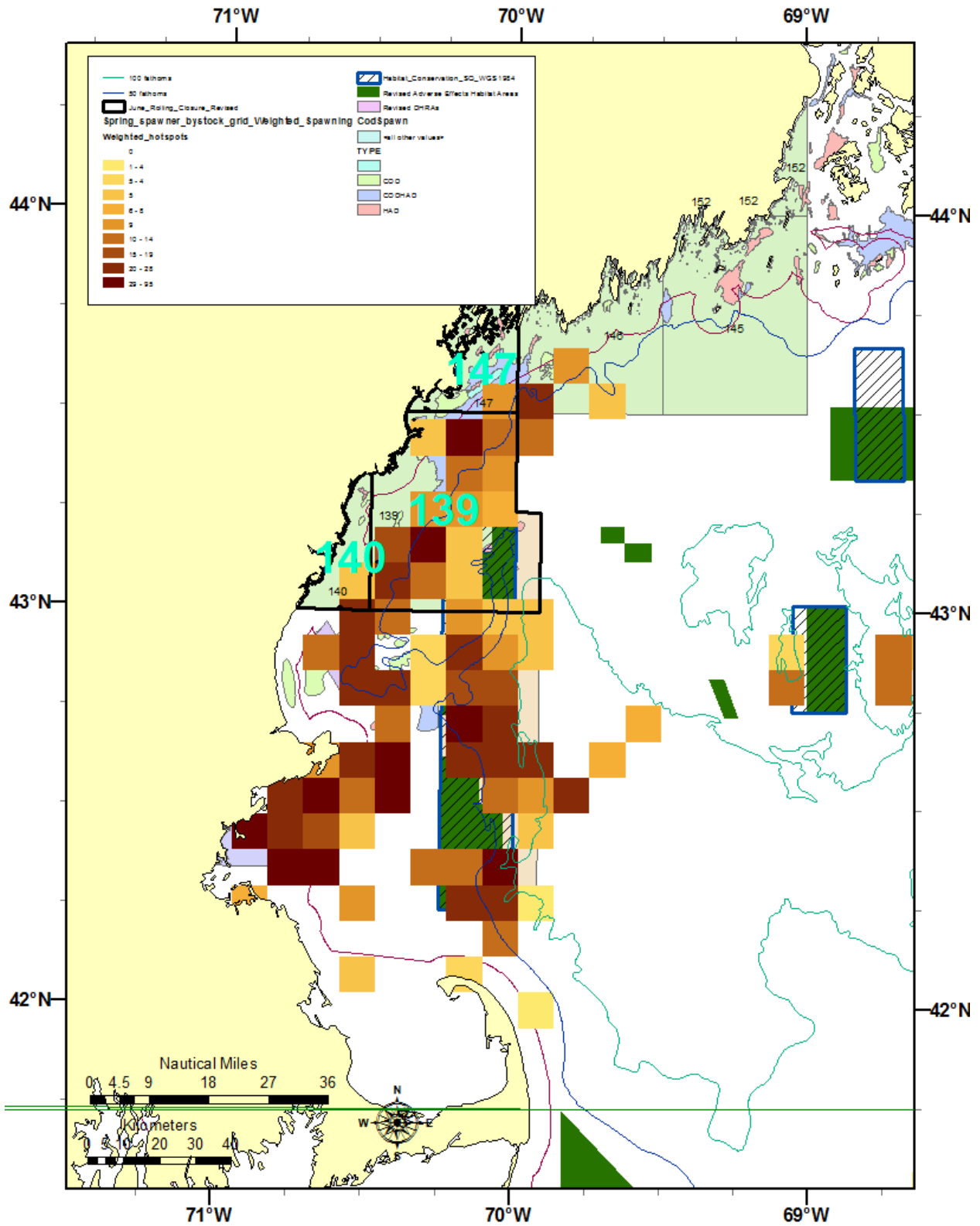


Figure 5: GOM Rolling Closure Area I: March 1st through March 30th for 30-minute squares 121, 122, 123.

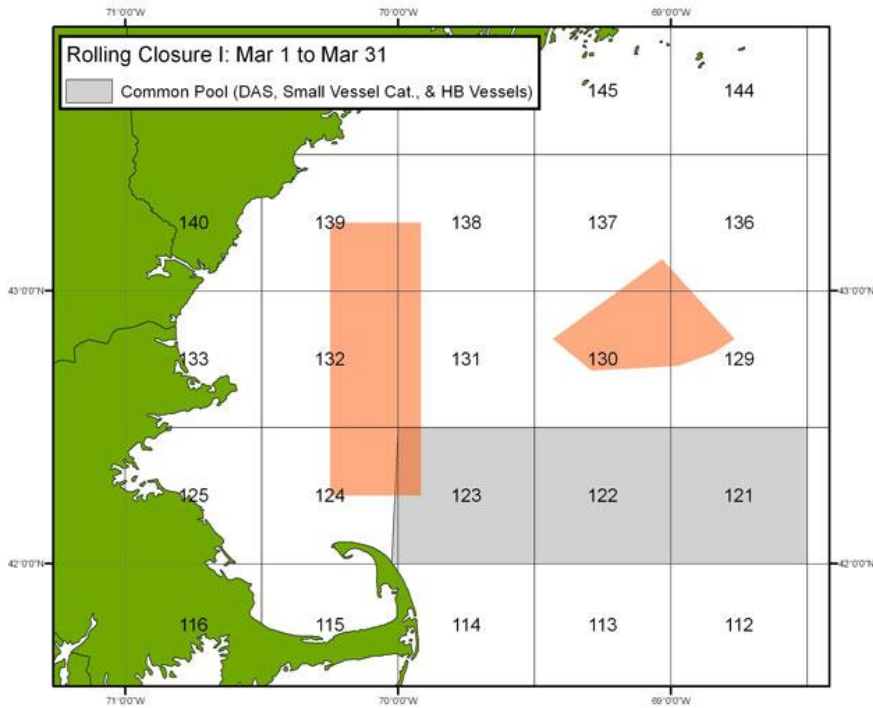


Figure 6: GOM Rolling Closure Area II: April 1st – April 30th for 30-minute squares 121, 122, 123, 124, 125, 129, 130, 131, 132, 13.

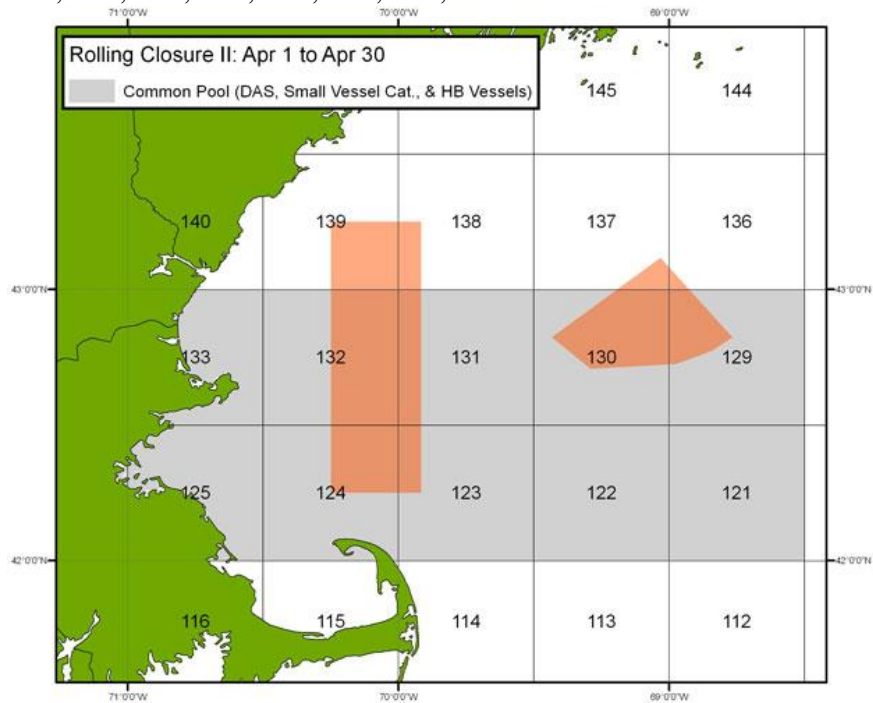


Figure 7: GOM Rolling Closure Area III: May 1st to May 31st for 30-minute squares 124, 125, 129, 130, 131, 132, 133, 136, 137, 138, 139, 140.

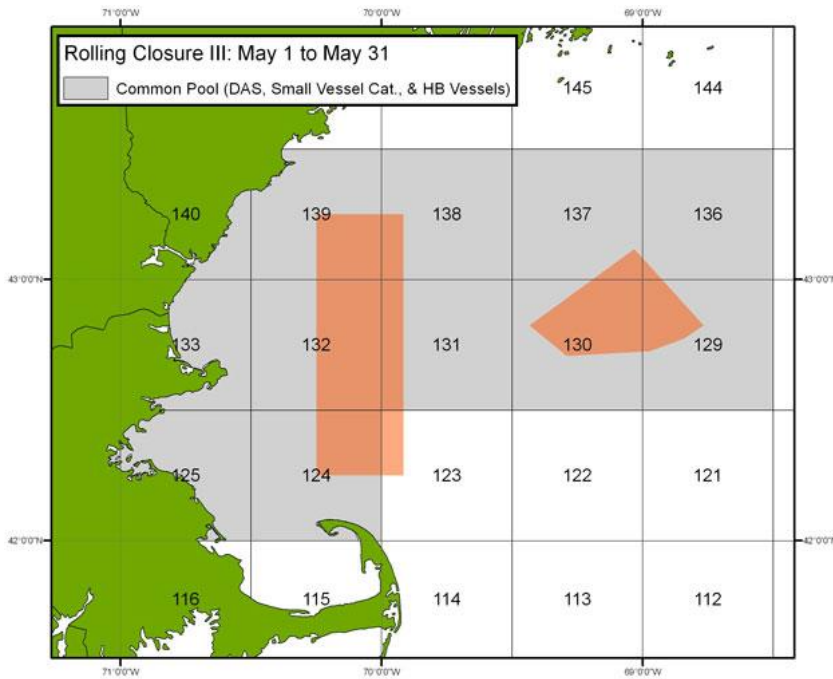


Figure 8: GOM Rolling Closure Area IV: June 1st to June 30th for 30-minute squares 132, 133, 139, 140, 141, 142, 143, 144, 145, 146, 147.

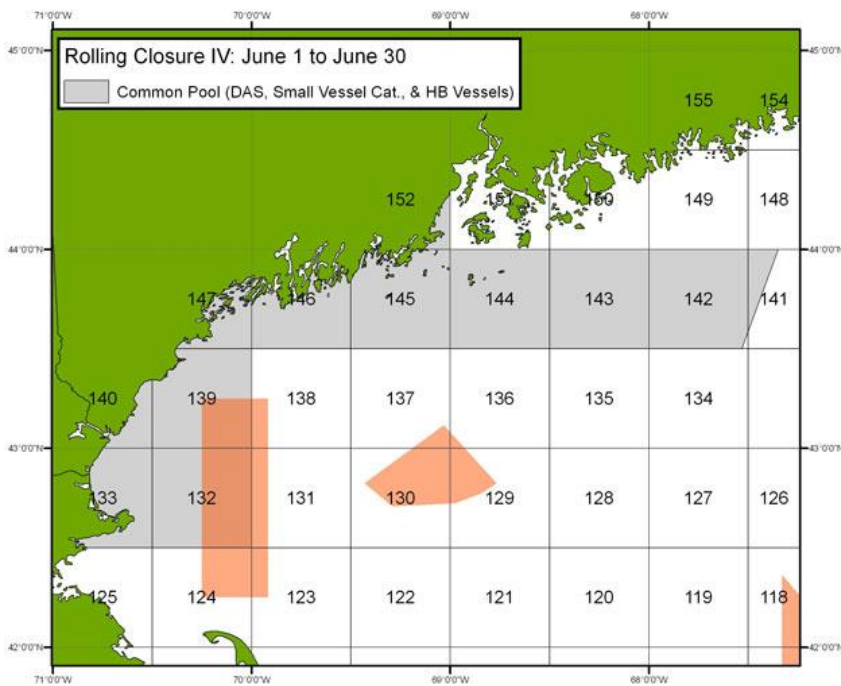


Figure 9: GOM Rolling Closure V: October 1st – November 30th for 30-minute squares 124 and 125.

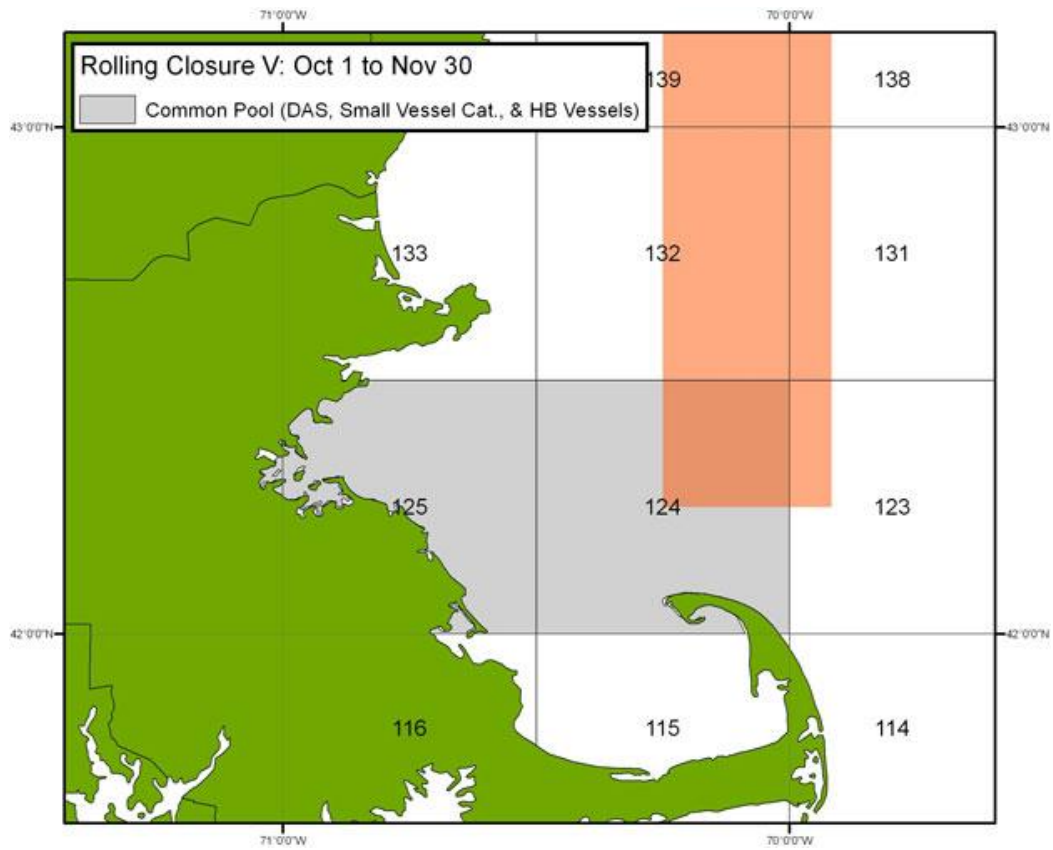


Figure 10- Hybrid option for March and April.

GOM Cod Inshore Spawning Closure
Hybrid Option - March 1st to April 30th (Blocks 124, 125, 132, 133)

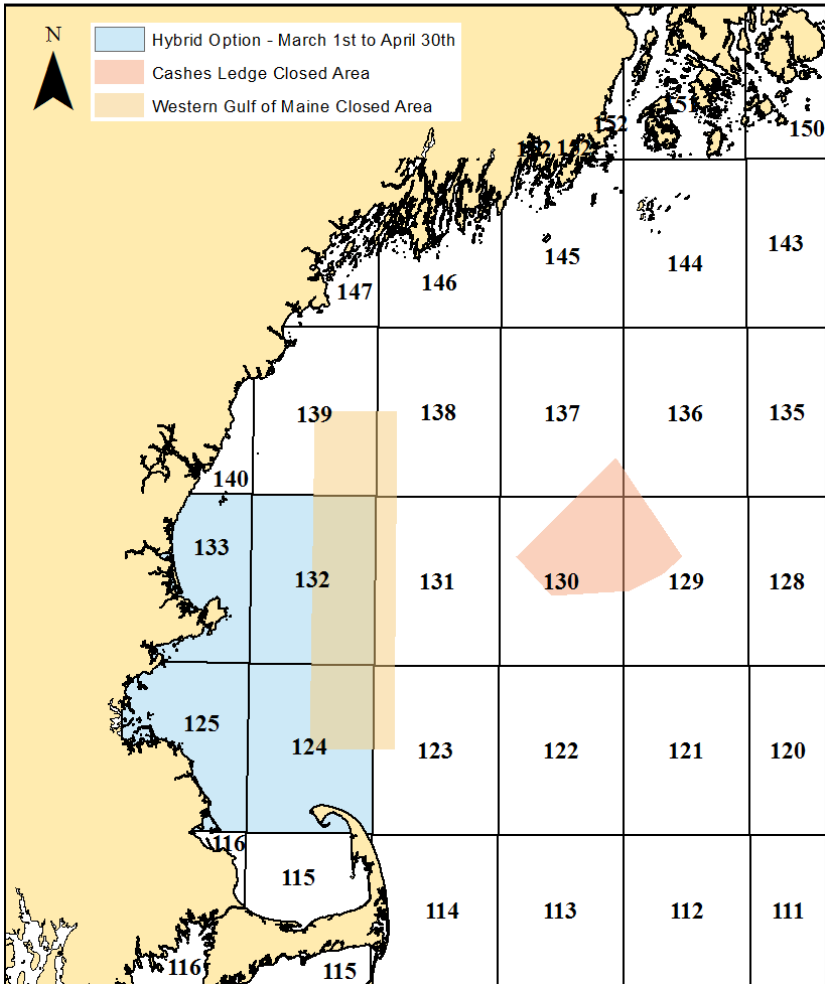


Figure 11- Hybrid option for May.

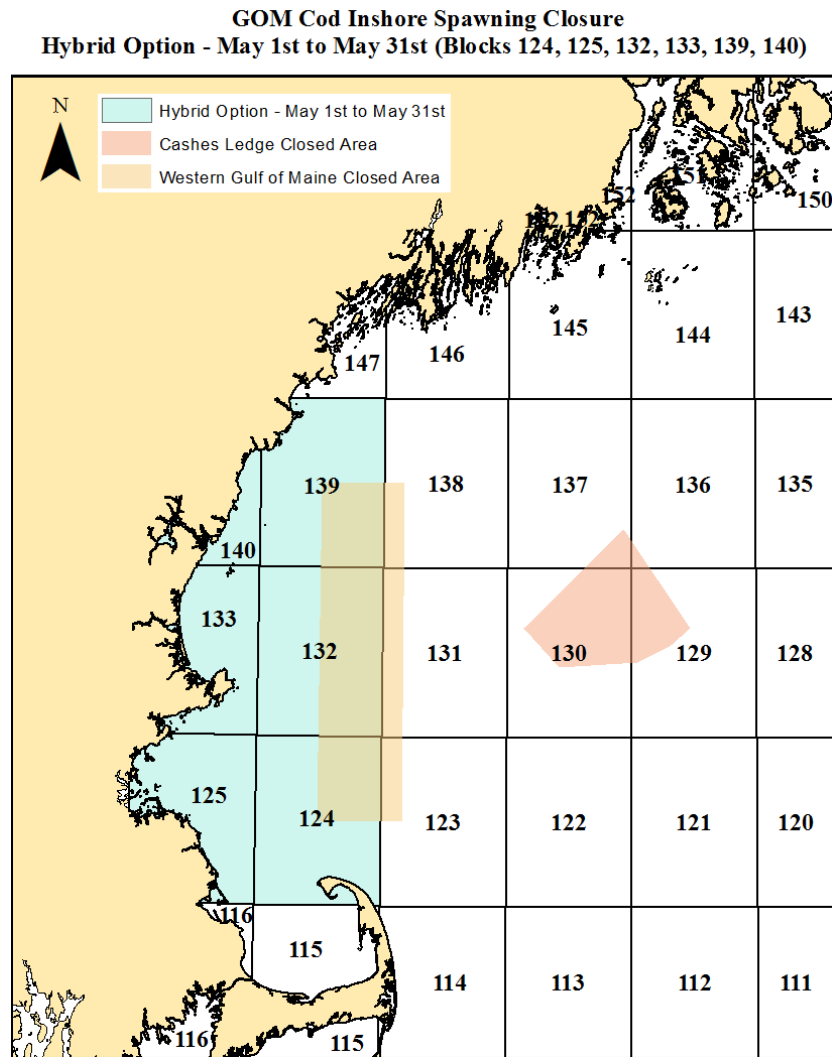


Figure 12- Hybrid option for June.

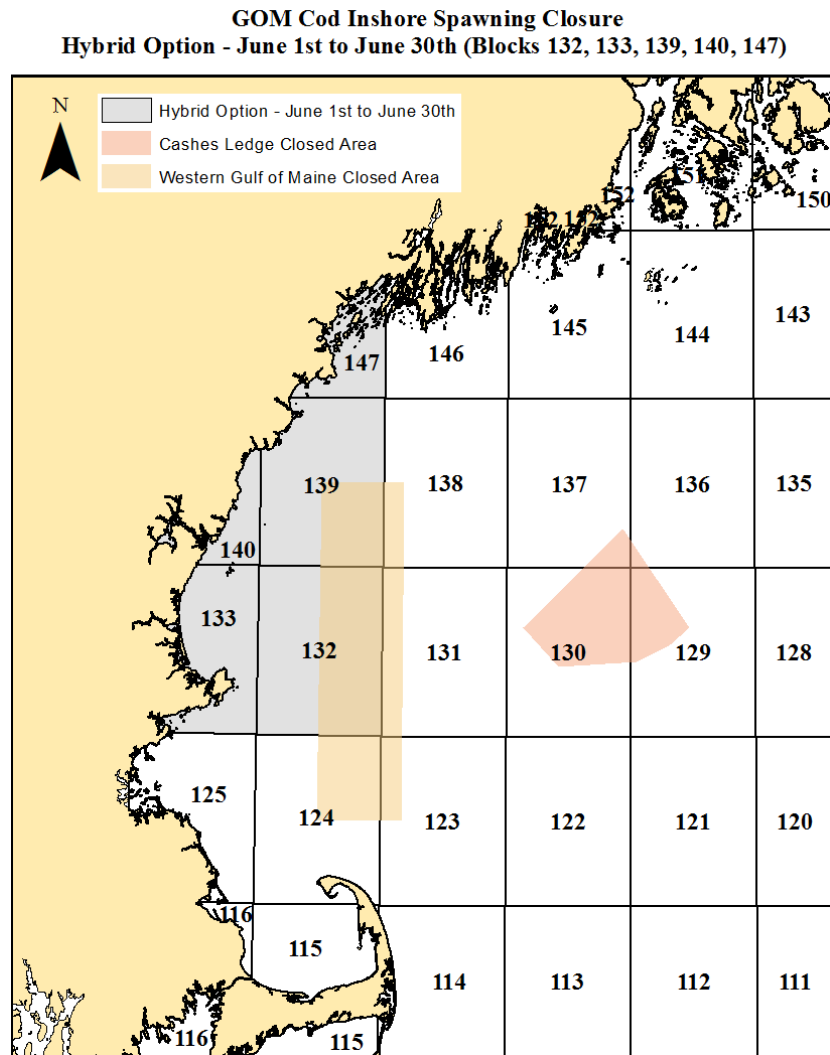
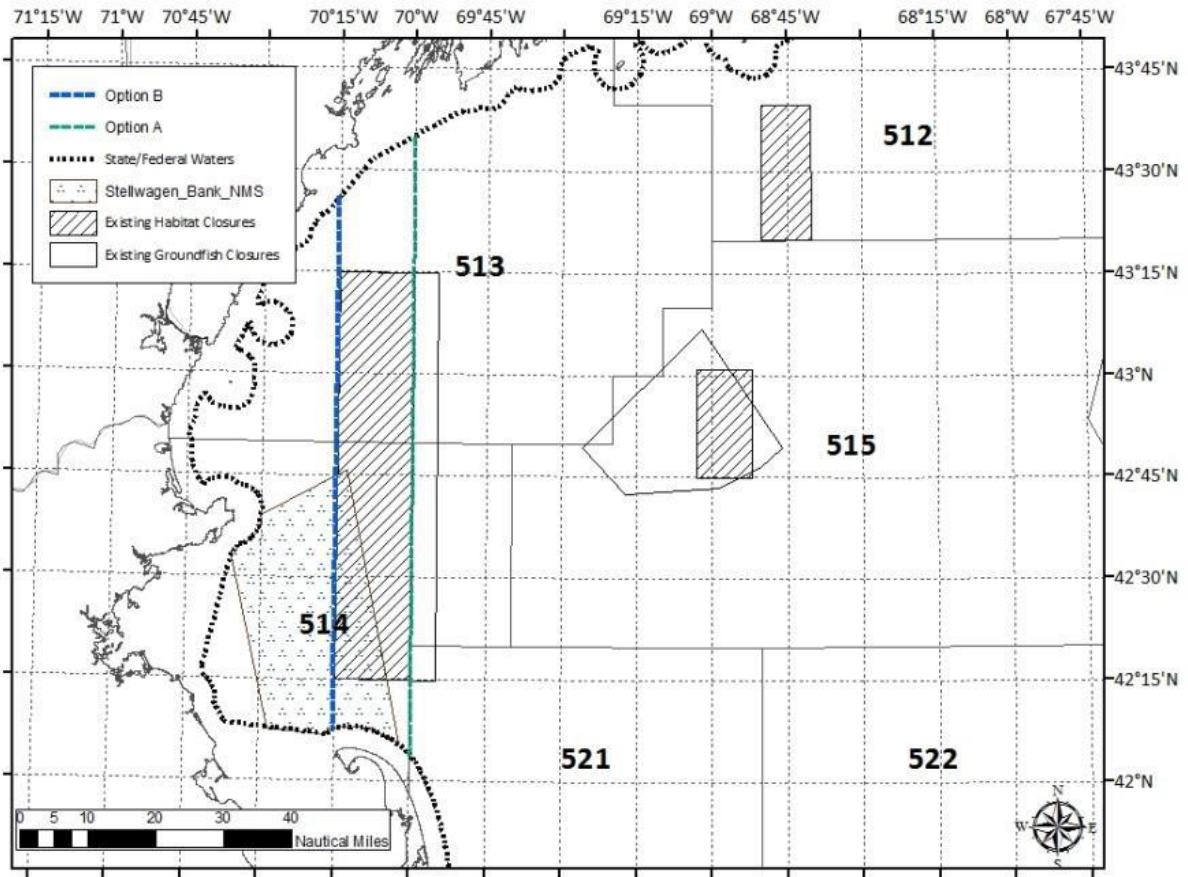


Figure 13: Amendment 18 Inshore GOM Boundary Alternatives A (70) & B (70 15).



Appendix 2:

Common Pool Sub-ACLs apportioned to each stock for each trimester in A16

Table 1: Portion of Common Pool Sub-ACLs Apportioned to Each Stock for Each Trimester. See CFR 648.82 - Effort-control program for NE multispecies limited access vessels.

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM cod	27	36	37
GB cod	25	37	38
GOM haddock	27	26	47
GB haddock	27	33	40
CC/GOM yellowtail flounder	35	35	30
GB yellowtail flounder	19	30	52
SNE/MA yellowtail flounder	21	37	42
GOM winter flounder	37	38	25
GB winter flounder	8	24	69
Witch flounder	27	31	42
American plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44
White hake	38	31	31