

CORRESPONDENCE



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 01930-2276

Ernest F. Stockwell III
Chairman
New England Fishery Management Council
50 Water Street, Suite 2
Newburyport, MA 01950

MAR 16 2015

Dear Terry:

Several important legal and process questions regarding the Omnibus Habitat Amendment were raised at the Habitat Committee's February 24, 2015, meeting in Mansfield, MA. I would like to provide further guidance on two of those issues, so that the Committee and the public have a clear understanding of these two important issues. The first relates to the ability and limitations on how the Council can "mix and match" areas within the current suite of alternatives. The second issue I would like to address relates to Habitat Areas of Particular Concern (HAPC).

Mixing and Matching Alternatives

Much of the discussion at the meeting related to the degree to which the Council is able to mix and match various components from within the Amendment's currently assembled alternatives without triggering the need for significant new analysis and development that would delay final action on this amendment. As was noted during the meeting, this type of approach is within the Council's purview, but I wanted to remind you that there are a few caveats associated with this flexibility.

Under National Environmental Policy Act regulations, the Council may modify, revise, or repackage alternatives and areas within the existing alternatives based on public comment. In order to do that without triggering a supplemental comment period, those changes may not result in "substantial changes in the proposed action that are relevant to the environmental concerns" or "significant new circumstances or information relevant to the environmental concerns and bearing on the proposed action or its impacts," (Center for Environmental Quality Regulations 40 CFR 1502.9(c)). While this may include alternatives considered by some to be "less restrictive," the important factor to keep in mind is whether the impacts of the alternatives have already been analyzed and considered. That is, the changes to how the alternatives are combined or modified must not affect the quality of the human environment to a significant extent not already considered, or present a seriously different picture of the impacts.

Further, it is important to remember that any revised or repackaged alternatives must continue to meet the goals and objectives of the amendment. To help accomplish this, when any repackaged combinations are put forward, the Council should clearly articulate the rationale for the revisions, including an explanation of how/why the revised alternatives are superior to the alternatives as they were previously considered. The Council should also clearly comment on whether the long- and short-term costs and benefits of the new combination are different from



those of the previously considered alternatives, along with any changes to the impacts on habitat, affected species, and different user groups.

Habitat Area of Particular Concern Designations

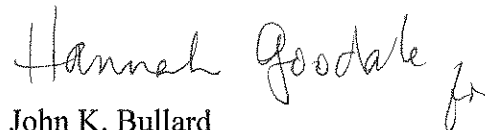
The designation of HAPCs and the impact of such a designation appears to continue to be a cause of confusion. The currently existing HAPCs and those HAPCs designated in Phase I of the Amendment must be fully incorporated into the discussion related to habitat management areas. Volume II of the Draft Environmental Impact Statement lays out the HAPC criteria and how the proposed HAPCs meet those criteria.

Essential fish habitat (EFH) regulations state that any EFH that is particularly vulnerable to fishing activities may be identified as an HAPC. Further, the EFH regulations require an evaluation of the potential adverse effects of fishing activity on EFH with special attention paid to the adverse effects on HAPCs. For existing HAPCs and the HAPCs identified in Phase I of the Amendment, additional analysis should be conducted specifically to inform the Council of the potential adverse effects of fishing on these areas and how the current alternatives address these potential effects (i.e., how the current alternatives prevent, mitigate, or minimize these adverse effects, to the extent practicable). As we noted in our January 2015 letter, the analyses should more clearly link the HAPC designations with the proposed habitat management areas. As suggested by comments received on this issue, information developed by the Habitat Plan Development Team since the HAPCs were approved in 2007 should be used to more clearly evaluate their sensitivity to fishing and non-fishing impacts. Upon review of the additional analyses, the Council may determine that HAPC designations (existing or currently preferred) no longer meet the criteria and an HAPC designation is no longer warranted. In such cases, a clear justification would need to be in the final EIS, including identifying what new information or circumstances have occurred since the original designation that would support the change.

As requested by some Habitat Committee members, I have attached the HAPC designation criteria and the Council's interpretation of those criteria from the Amendment for reference.

If you or the Habitat Committee have any questions related to these issues or wish to have other questions clarified before the next meeting, please do not hesitate to contact Moira Kelly in the Sustainable Fisheries Division at 978.281.9218.

Sincerely,



John K. Bullard
Regional Administrator

cc: Tom Nies, Executive Director
Michelle Bachmann, EFH Omnibus Amendment Coordinator
David Preble, Chair, Habitat Committee

Attachment

HAPC Criteria

Omnibus Habitat Amendment 2

Volume 2, Draft Environmental Impact Statement (October 1, 2014), pg 378-379

The EFH regulatory criteria for HAPCs are specified at 50 CFR 600.815(a)(8).

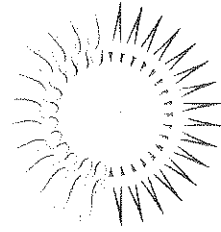
CRITERION 1A: Importance of Historic Ecological Function - The area or habitat feature proposed for HAPC designation at one time provided an important ecological function to a currently managed species, but no longer provides that function due to some form of degradation. An important ecological function could include, but is not limited to, protection from predation, increased food supply, appropriate spawning sites, egg beds, etc. The importance of the ecological function should be documented in scientific literature and based on either field studies, laboratory experiments, or a combination of the two.

CRITERION 1B: Importance of Current Ecological Function - The area or habitat feature proposed for HAPC designation currently provides an important ecological function to a managed species. An important ecological function could include, but is not limited to, protection from predation, increased food supply, appropriate spawning sites, egg beds, etc. The importance of the ecological function should be documented in scientific literature and based on either field studies, laboratory experiments, or a combination of the two.

CRITERION 2: Sensitivity to Anthropogenic Stresses – The area or habitat feature proposed for HAPC designation is particularly sensitive (either in absolute terms or relative to other areas and/or habitat features used by the target species) to the adverse effects associated with anthropogenic activities. These activities may be fishing or non-fishing related. The stress or activity must be a recognizable or perceived threat to the area of the proposed HAPC.

CRITERION 3: Extent of Current or Future Development Stresses – The area or habitat feature proposed for HAPC designation faces either an existing and on-going development-related threat or a planned or foreseeable development-related threat. Development-related threats may result from, but are not limited to, activities such as sand mining for beach nourishment, gravel mining for construction or other purposes, the filling of wetlands, salt marsh, or tidal pools, shoreline alteration, channel dredging (but not including routine maintenance dredging), dock construction, marina construction, etc.

CRITERION 4: Rarity of the Habitat Type – The habitat feature proposed for HAPC designation is considered “rare” either at the scale of the New England region or at the scale of the range of at least one life history stage of one or more Council-managed species. A “rare” habitat feature is that which is considered to occur infrequently, is uncommon, unusual, or highly valued owing to its uniqueness. Keep in mind that the term “rare” usually implies unusual quality and value enhanced by permanent infrequency. We may usually think of rare habitats or features as those that are spatially or temporally very limited in extent, but it could also be applied to a unique combination of common features that occur only in a very few places.



THE
PEW
CHARITABLE TRUSTS

Mr. Thomas Nies
Executive Director
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

March 17, 2015

Dear Mr. Nies:

As the chairman Preble explained before the habitat committee recently assembled in Mansfield, Massachusetts (February 24, 2015), the National Environmental Policy Act (NEPA) requires that the Council and the National Oceanic and Atmospheric Administration's Fisheries Service (NOAA Fisheries) carefully consider new information and specific alternatives offered through the formal public review process for the Omnibus Habitat Amendment 2 (OHA2) Draft Environmental Impact Statement (DEIS), closed January 8, 2015. In this letter I discuss new information and specific alternatives introduced during the comment period.

Specifically, I would like to draw your attention to new analyses of prey components of groundfish Essential Fish Habitat (EFH), the need for Habitat Management Area (HMA) protection for spawning Atlantic herring, and to three alternatives for improving EFH management through HMAs. These issues were all raised during the public comment period for OHA2, in previous letters, in public testimony before the Council and NOAA Fisheries and most recently in many thousands of comments on the draft Environmental Impact Statement (DEIS). To date, we have not seen any public response or analysis of these issues, nor treatment of the proposed alternatives, from the Council or NOAA Fisheries. As you know, EFH is defined as those *waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity* (MSA) and thus prey should be included as a component of EFH for managed species.

Prey species distributions have been entirely neglected in the preferred alternative for text descriptions of the new proposed EFH in the DEIS (Volume 2). No maps are provided for prey species that are not managed by the Council, and feeding has not been adequately analyzed as a factor in assessing adverse impacts of alternatives, or in the development of HMAs. The needs of managed species to have adequate food are briefly summarized in non-preferred alternatives for EFH text descriptions (DEIS Volume 2, *Modified abundance based* and *Abundance plus habitat considerations*) and in Appendix B: *EFH supplementary tables, prey species information, and spawning information* (DEIS volume 5).

Sandlance (*Ammodytes* spp), various herrings (e.g., alewife, blueback) and Atlantic herring are each identified as key prey species for Atlantic cod, haddock and other managed fishes in the DEIS and in many published sources.¹ Consequently, these forage fish species are important components of groundfish EFH; EFH areas for managed species that include these prey should be protected through habitat management areas.

(1) Atlantic herring spawning protection

Spawning is part of EFH as defined in the law, and protection of spawning is specified within the goals and objectives of the OHA2. The OHA2 amends the Atlantic herring FMP but proposes no protection for well-known herring spawning areas. Moreover, herring are a vital food source for the region's most important groundfish stocks including Atlantic cod, haddock and other species as detailed above. Not surprisingly, the EFH maps for these groundfish overlap extensively with herring spawning grounds and other components of EFH for Atlantic herring. This was a principal conclusion of an analysis presented to NOAA Fisheries and the Council in a letter February 20, 2014 (see CLF *et al.*, 2014, Figure 1A, page 13), and in our public comments on the DEIS (Pew, January 8, 2015). These letters presented maps of herring spawning areas from the most recent stock assessment for herring, and from the EFH source documents, showing their relationship to HMA options that are being considered. Spawning aggregations are disrupted by fishing and herring egg mats, attached to the seafloor, are vulnerable to mobile gear that impacts the seafloor.

Those HMA alternatives in the DEIS that could provide protection for herring spawning and eggs, and which include aggregations of this prey species within groundfish EFH, must be given the highest priority when the Council finalizes OHA2.

The HMA alternatives that overlap extensively with herring spawning areas and groundfish EFH include:

- Eastern Gulf of Maine Alternative 2: Large Eastern Maine HMA and Machias HMA.
- Western Gulf of Maine Alternative 1/No Action: Western Gulf of Maine Groundfish and Habitat Closure Areas
- Georges Bank Alternative 8: The Northern Georges HMA
- Georges Bank Closed Area I: Part of Alternative 1 (no action)
- Great South Channel (GSC) and Southern New England: Alternative 3 - GSC East HMA

¹ Richardson DE (2012) Role of egg predation by haddock in the decline of an Atlantic herring population. PNAS **108** (33):13606–611; Richardson DE et al (2014) The influence of forage fish abundance on the aggregation of Gulf of Maine Atlantic cod (*Gadus morhua*) and their catchability in the fishery. Can. J. Fish. Aquat. Sci. **71**: 1349–62; Gulf of Maine Atlantic Cod (*Gadus Morhua*) Stock Assessment For 2012, Updated Through 2011. 55th SAW Assessment Report. Northeast Fisheries Science Center Reference Document 13-11; Ames EP (1997) Cod and Haddock Spawning Grounds in the Gulf of Maine. Island Institute, Rockland, Maine; Ames EP, Lichter J (2013) Gadids and Alewives: Structure within complexity in the Gulf of Maine. Fisheries Research **141**: 70– 78; Zemeckis D et al (2014) Spawning site fidelity by Atlantic cod (*Gadus morhua*) in the Gulf of Maine: implications for population structure and rebuilding. ICES J. Mar. Sci. **71** (6): 1356-65; Ames EP (2010) Multispecies Coastal Shelf Recovery Plan: A Collaborative, Ecosystem-Based Approach. Marine and Coastal Fisheries: Dynamics, Management, and Ecosystem Science **2**:217–231; see DEIS Volume 2: *Modified abundance based and Abundance plus habitat considerations* for EFH definitions of groundfish and appendix B of the DEIS.

(2) Stellwagen Bank HMA for Atlantic Cod Foraging EFH

In a previous letter (CLF *et al.*, 2014) and in our public comments on the DEIS (Pew, 2015) an alternative for protecting an area of Stellwagen Bank was put forward, including a map of cod foraging hotspots. Stellwagen Bank has been recognized as a hotspot for cod feeding on sandlance in the recent cod stock assessment and in peer reviewed publications (Richardson *et al.*, 2014: Can. J. Fish. Aquat. Sci. Vol. 71). Thus, this portion of cod EFH (see DEIS Volume 2, Map 41) is particularly important to cod as a feeding area and should be protected as an HMA with measures suitable for protecting cod and their prey. The boundary of the areas is shown approximately in Richardson *et al.*, but could also be defined by depth contour around the bank (depth=60 meters). See further discussion in Pew letter page 7, and CLF *et al.*, 2014, Figure A3, page 15).

(3) New HMA Alternative for conservation of river herring as forage

Published research has focused on the specific role of river herring in the spawning and feeding of groundfish.² Areas of groundfish EFH that coincide with river herring concentrations must be considered as particularly important areas and protected as HMAs because they contain food for seriously compromised stocks like cod.

The times and locations of high rates of at-sea river herring catch were identified in a paper published by Cournane *et al.* 2013 (Fisheries Research 141:88– 94 – Figure 2), and also analyzed extensively during the development of Atlantic Herring Amendment 4/5. An alternative for seasonal HMAs within the OHA2 based upon Figure 2 in Cournane *et al.* should be included the OHA2. These HMAs should extend from shore to the boundary indicated in the appended map.

1. January through April (red box)
2. May through June (blue box)
3. July through October (green box)
4. November through December (yellow box)

(4) Multi-Function HMA - GOM

In our letter submitted to the Greater Atlantic Regional Fisheries Office (GARFO) during the comment period for the DEIS (Pew, January 8, 2015) we recommended that the Council include a multi-function HMA alternative for the near-shore Gulf of Maine, based on the work of the Closed Area Technical Team (CATT) on spawning and juvenile groundfish, and also considering forage concerns (river herring hotspots and spawning in Atlantic herring). This alternative was developed on pages 13-15 of our letter of January 8, 2015. An HMA defined by a line 15 nm seaward of shore, and extending from a point due east of Chatham to the border with Canada should be established through the OHA2 to protect spawning and juvenile groundfish, to protect spawning Atlantic herring, and to safeguard those areas of groundfish EFH that contain forage as a component of their EFH.

² Ames EP (1997) Cod and Haddock Spawning Grounds in the Gulf of Maine. Island Institute, Roeland, Maine; Ames EP, Lichter J (2013) Gadids and Alewives: Structure within complexity in the Gulf of Maine. Fisheries Research 141: 70– 78; Zemeckis D et al (2014) Spawning site fidelity by Atlantic cod (*Gadus morhua*) in the Gulf of Maine: implications for population structure and rebuilding. ICES J. Mar. Sci. 71 (6): 1356-65; Ames EP (2010) Multispecies Coastal Shelf Recovery Plan: A Collaborative, Ecosystem-Based Approach. Marine and Coastal Fisheries: Dynamics, Management, and Ecosystem Science 2:217–231; see species summaries in Collette and Klein-MacPhee (2002) Bigelow and Schroeder's Fishes of the Gulf of Maine, Smithsonian Press, DC.

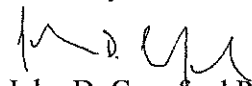
The new Atlantic herring spawning analysis presented by NOAA Fisheries at the March 11, 2015 meeting of the habitat Plan Development Team (PDT) in Braintree, MA adds further support for the ecological value of this HMA alternative, revealing extensive overlap between near-shore spawning areas and groundfish EFH. The HMA would also capture the areas shown in DEIS map 35, volume 3 (p 141), as recommended by the PDT and CATT in 2013. Per comments made at the PDT meeting March 11, such an HMA should include near shore waters to maximally benefit juvenile cod (see also DEIS on juvenile cod EFH). Though this area has received previous analysis and consideration, including a recommendation by the PDT, the analysis did not consider this as a joint spawning and juvenile area that has significant benefits for Atlantic and river herring as forage within groundfish EFH. We strongly urge NOAA Fisheries and the Council to give serious consideration to habitat protection to support juvenile and spawning groundfish and to address deficiencies in the DEIS where forage as a component of groundfish EFH must be addressed.

In several earlier letters on OHA2, we urged the Council to take an integrated view of habitat protection, seeking out HMA areas that could achieve multiple goals for specific stocks and the ecosystem (e.g., letter to Paul Howard dated July 18, 2011). This Multi-Function HMA for the inshore Gulf of Maine would achieve this goal and advance recovery of the ecology of this area.

Closing comment

Approximately 159,502 comments were submitted and about 95% of these called for increasing the footprint of habitat protection in the region, and doing more to protect spawning fish and the prey that managed species need for growth to maturity and reproduction. I urge the Council and NOAA Fisheries to give serious consideration to the alternatives we introduced during the comment period, summarized here and at the recent PDT meeting. I thank members of the habitat PDT for allowing me the opportunity to speak briefly to these and other issues raised in our formal comments on the OHA2 at their recent meeting, March 11, 2015 (Braintree, MA).

Sincerely,


John D. Crawford PhD

cc: Mr. John Bullard, Regional Administrator, Greater Atlantic Regional Fisheries Office

(3) New HMA Alternative for conservation of river herring as forage

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J.M. Coombs et al. / Fisheries Research 141 (2013) 88–94

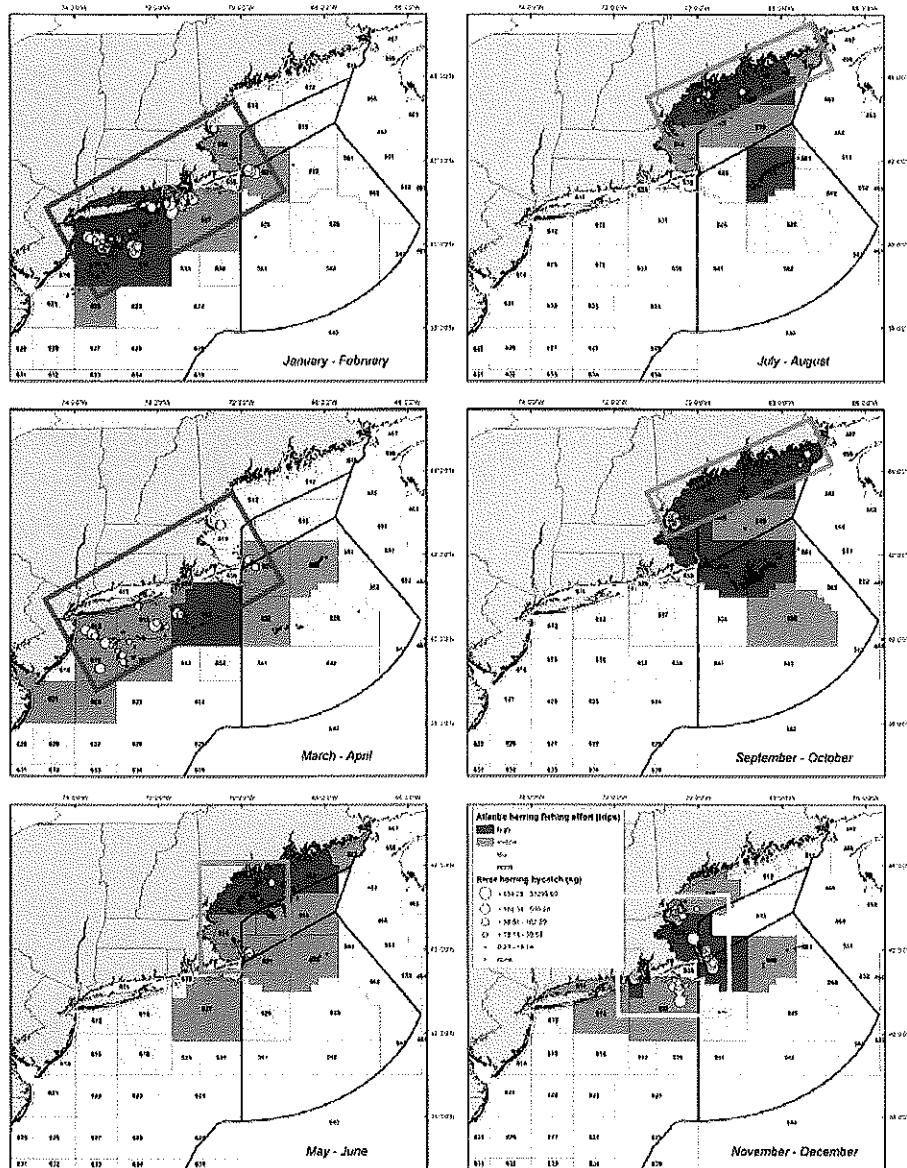


Fig. 2. Bimonthly Atlantic herring fishing effort and associated river herring bycatch patterns. Fishing effort (reported VTR trips) by SRA is grouped from high (69–89), medium (6–68), low (1–5), and no (0) effort within the bimonthly grouping. White areas indicate statistical areas with no fishing effort at any time during the year. Scaled circles represent the relative magnitude of river herring bycatch (kg), see categories in Table 3. A "*" signifies no river herring catch. Sources: VTR Database 2005–2009 and NECP Database 2005–2008.

From: togue@mainedayboatscallops.com
To: nmfs.gar.OA2.DEIS@noaa.gov; Michelle S. Bachman
Subject: Comments for next week's meeting
Date: Thursday, March 19, 2015 10:19:23 AM

Hello Michelle and members of the Habitat Advisory Panel and Committee:

After years of low biomass, the Northern Gulf of Maine scallop resource is finally recovering and the fishery is growing, providing a much-needed source of diversification for Maine fishermen.

The NGOM resource has always been patchy. The current Omnibus Habitat Amendment includes closures, some of which are listed as preferred alternatives, that *would essentially wipe out the burgeoning NGOM scallop fishery*. The Platts Bank closures and Machias Area Closures may seem small when you look at all the areas groundfishermen can go, but they are hugely important to NGOM scallop fishermen, as evidenced by recent VTR data. It does not make sense to extinguish a growing, sustainable scallop fishery in a (very uncertain) attempt to resuscitate the groundfishery.

If you must implement closures, please do so in a way that does not so differentially and devastatingly impact NGOM scallop fishermen.

Thank you

- Togue Brawn

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