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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BF82

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;
Fisheries of the Northeastern United States; Essential Fish Habitat**

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The New England Fishery Management Council has submitted the Omnibus Essential Fish Habitat Amendment 2, incorporating an Environmental Impact Statement, for review by the Secretary of Commerce. NMFS is requesting comments from the public on the Omnibus Amendment, which was developed by the Council to revise the essential fish habitat designations for each Council-managed species, designate Habitat Areas of Particular Concern, revise the system of essential fish habitat management areas, address seasonal groundfish spawning spatial management, establish Dedicated Habitat Research Areas, and identify actions that can be modified by framework and other administrative concerns relating to the Amendment. The intended effect of this action is to ensure the Council's fishery management plans comply with the Magnuson-Stevens Fishery Conservation and Management Act's requirements to routinely review and update essential fish habitat designations and to continue to

minimize to the extent practicable the adverse effects of fishing on such designated habitat.

DATES: Public comments must be received on or before [*insert date 60 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0123, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0123 click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Omnibus EFH Amendment.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Omnibus Amendment, including its Environmental Impact Statement, preliminary Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA), are available from the New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EIS/RIR/IRFA is also accessible via the Internet at: www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Senior Fishery Program Specialist, (978) 281-9218; fax: (978) 281-9135, Moira.Kelly@noaa.gov.

SUPPLEMENTARY INFORMATION

Background

The Omnibus Essential Fish Habitat Amendment 2 (Omnibus EFH Amendment) was initiated to review and update the essential fish habitat (EFH) designations, the habitat area of particular concern (HAPC) designations, and the habitat-related spatial management program for the New England Fishery Management Council's suite of fishery management plans (FMP). Omnibus EFH Amendment was developed over several years, with the first half dedicated to updating the EFH designations and consideration of HAPCs. The remainder of the development was focused on revising the system of year-round closed areas, which restrict some types of fishing gear in order to protect vulnerable habitat and establish a system of Dedicated Habitat Research Areas (DHRAs). Prior to consideration of management area changes, the Council determined it was important to consider revisions to the year-round groundfish closures together because of the substantial overlap with the habitat management closures.

The Council established 10 goals and 14 objectives to guide the development of this action. Goals 1-8 were established in 2004, at the onset of the Amendment's

development, and focus on identification of EFH, fishing and non-fishing activities that may adversely affect EFH, and the development of measures and management programs to conserve, protect, and enhance EFH and to minimize to the extent practicable the adverse effects of fishing on EFH. The additional goals (9 and 10) were developed after the Council voted to incorporate revision of the groundfish closures in the Amendment. These goals are focused on enhancing groundfish productivity and maximizing the societal net benefits from groundfish.

The 14 objectives map to 1 or more of the Amendment's goals and provide more specific guidance on how to achieve that goal. For example, the objectives include identifying new data sources upon which to base the EFH designations (Objective A), developing analytical tools for EFH designation, minimization of adverse impacts, and monitoring the effectiveness of measures (Objective D; Goals 1, 3, and 5). Other objectives include modifying fishing methods to reduce impacts (Objective E; Goal 4), supporting the restoration of degraded habitat (Objective F; Goal 4), improved groundfish spawning protection, including protection of localized spawning contingents, and improved protection of critical groundfish habitats (Goals 9 and 10). Please see Volume 1, Section 3 of the in the EIS for more details on the goals and objectives of this Amendment.

Proposed Measures

1. Essential Fish Habitat Designations

The Council proposes to update the EFH designations for all species and all life stages for which more recent information is available. EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

EFH designations consist of two complementary elements, the text descriptions, and the map representations. Any specific area is only considered EFH if it is displayed in the EFH map and meets the conditions defined in the text description. Thus, the two components of EFH must be used in conjunction with one another when applying EFH designations to fishery management, EFH consultation, or other questions.

A full description of the updated designations, including maps of the designations, can be found in Volume 2 of the EIS. In addition, a thorough discussion of the methods and approaches used to assemble the designations is provided in the EIS. The quality and quantity of information varied by species, so a single approach for all Council-managed species and lifestage is not possible. The Council relied upon the best available scientific information for each species.

2. Habitat Areas of Particular Concern.

Habitat Areas of Particular Concern (HAPC) are intended to highlight specific areas of EFH that require additional consideration. HAPC designations should be based on one or more of the following criteria: (1) The importance of the ecological function provided by the habitat, including both the historical and current ecological function; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) the rarity of the habitat type (50 CFR 600.815(a)(8)). The Council considered proposals from the public using additional criteria in designating HAPCs, including whether the designation would improve fisheries management in the exclusive economic zone, include EFH for more than one Council-managed species, include juvenile cod EFH, and meet more than one of the regulatory HAPC criteria listed above.

Discussion of the areas considered and the eight criteria listed above can be found in Volume 2 of the EIS.

The Council is recommending that the current Atlantic Salmon HAPC and the Northern Edge Juvenile Cod HAPC remain as designated because they continue to meet the criteria listed above. In addition, the Council is recommending the following areas as new HAPCs: Inshore Juvenile Cod HAPC; Great South Channel Juvenile Cod HAPC; Cashes Ledge HAPC; Jeffreys Ledge/Stellwagen Bank HAPC; Bear and Retriever Seamounts; and eleven canyon/canyon complexes (Heezen; Lydonia, Gilbert, and Oceanographers; Hydrographer; Veatch; Alvin, and Atlantis; Hudson; Toms, Middle Toms, and Hendrickson; Wilmington; Baltimore; Washington; and Norfolk). Maps and coordinates for the HAPC designations can be found in Volume 2 of the EIS.

3. Spatial Management for Adverse Effects Minimization

The Magnuson-Stevens Act requires that fishery management plans evaluate and minimize, to the extent practicable, the adverse effects of fishing on designated EFH. The evaluation should consider the effects of each fishing activity on each type of habitat found with EFH. Councils must prevent, mitigate, or minimize any adverse effects from fishing on EFH, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature. To that end, the Council is recommending the following habitat management areas (HMA) and restrictions. Full descriptions, including maps and coordinates of the Council's recommendations, can be found in Volume 3 of the EIS.

In the Eastern Gulf of Maine, the Council recommends establishing the Small Eastern Maine HMA, closed to all mobile bottom-tending gears.

In the Central Gulf of Maine, the Council recommends maintaining the existing Cashes Ledge Groundfish Closure Area, with its current fishing restrictions and exemptions; modifying the existing Jeffreys Bank and Cashes Ledge Habitat Closure Areas, with their current fishing restrictions and exemptions; establishing the Fippennies Ledge HMA, closed to mobile bottom-tending gear; and establishing the Ammen Rock HMA, closed to all fishing except lobster traps.

In the Western Gulf of Maine, the Council recommends maintaining the existing Western Gulf of Maine Habitat Closure Area, closed to mobile bottom-tending gears, and modifying the eastern boundary of the Western Gulf of Maine Closure Area to align with the habitat closure area, while maintaining the current fishing restrictions and requirements for both areas. The Council also recommends creating an exemption area within the northwest corner of those closures for shrimp trawls and designating the existing Roller Gear Restricted Area requirements as a habitat protection measure.

On Georges Bank, the Council recommends removing the year-round and habitat closures of Closed Areas I and II and replacing them with three new areas: (1) The Georges Shoal 2 HMA, closed to mobile bottom-tending gear, with a one-year delay in closure to hydraulic clam dredges; (2) the Northern Edge Reduced Impact HMA, closed to mobile bottom-tending gear, with two exceptions described below; and (3) the Northern Edge Mobile Bottom-Tending Gear HMA, closed to mobile bottom-tending gear without any exceptions. Exemptions to the Reduced Impact HMA are scallop dredge fishing in accordance with the scallop rotational area program, and trawl fishing to the west of the existing western boundary of Closed Area II ($67^{\circ} 20'$ W long.), in what is now the Eastern Georges Bank Special Access Program. In addition, any portions of

the Closed Area II groundfish closed area north of 41° 30' N lat. would be closed to scallop fishing between June 15 and October 31 of each year. The remainder of the existing Closed Area I Habitat and Groundfish Closure Areas and Closed Area II Groundfish Closure Area would be opened, except for seasonal spawning protection as described below.

In the Great South Channel, the Council recommends establishing the Great South Channel HMA, closed to mobile bottom-tending gear. Closure to hydraulic clam dredges would be delayed for one year, outside of the northeast corner of the area. The Council also recommends establishing two HMAs on Cox Ledge, closed to hydraulic clam dredges, and requiring no ground cables on trawls fishing in the areas. The Nantucket Lightship Habitat Closure Area and the Nantucket Lightship Closed Area would be removed.

4. Groundfish Spawning Protections

In the Gulf of Maine, the Council recommends establishing the Massachusetts Bay Cod Spawning Protection Area from November through January of each year and closing statistical block 125 for the first half of April each year (the “Spring Massachusetts Bay Spawning Protection Area.”) The Massachusetts Bay Spawning Protection Area would be closed to all vessels, except those that do not have a Federal Northeast multispecies permit and are fishing exclusively in state waters; that are fishing with exempted gears (Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate), and surfclam and ocean quahog dredges); charter/party or recreational fishing vessels, provided that pelagic hook and line

gear is used, and there is no retention of regulated species or ocean pout; and vessels that are transiting. The Spring Massachusetts Bay Spawning Protection Area would be closed to all vessels, except vessels that do not have a Federal Northeast multispecies permit and are fishing exclusively in state waters; vessels fishing with exempted gears (Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate), and surfclam and ocean quahog dredges); vessels participating in the mid-water trawl exempted fishery; vessels participating in the purse seine exempted fishery, sea scallop dredge gear when under a scallop day-at-sea; vessels lawfully in a scallop dredge exemption area; vessels that are transiting; charter and party vessels; and recreational vessels.

On Georges Bank, the Council recommends converting the existing groundfish closure area, Closed Area II, and the existing habitat area, Closed Area I North, into seasonal closures. Both areas would be closed from February 1 through April 15 of each year to all commercial and recreational gears that catch groundfish, except scallop dredges, vessels fishing with exempted gears, vessels participating in the mid-water trawl fishery, and vessels that are transiting.

5. Dedicated Habitat Research Areas

Dedicated Habitat Research Areas (DHRAs) are intended to facilitate more focused research on fishing gear impacts on habitat or other issues related to habitat and fisheries productivity. The Council is recommending two DHRAs in this amendment. The Stellwagen DHRA would be implemented with the same restrictions as the Western Gulf of Maine closed areas described above. The Georges Bank DHRA, which is the

same footprint as the current Closed Area I South Habitat Closure Area, would be closed to mobile bottom-tending gear.

The Council is recommending these DHRAs in combination with a three-year sunset provision. If approved, three years after implementation, the Regional Administrator would initiate a review of the DHRAs and the research activity being conducted within them. If no research has been conducted or initiated to further the Council's habitat-related questions, the Regional Administrator may, after consultation with the Council, remove the DHRA designation.

6. Framework and Administrative Actions

The Council is recommending three administrative actions as part of the Omnibus EFH Amendment. First, additional spatial management measures, including designation or removal of HMAs and changes to fishing restrictions within HMAs, would be added to the list of frameworkable items for all fisheries. Second, a strategic process would be established to routinely evaluate the boundaries, scope, characteristics, and timing of the habitat and spawning protection areas, including a technical review that evaluates the performance of these areas at 10-year intervals following implementation. A list of questions to guide this review are provided in Volume 3 of the EIS. Third, building on what the Council learned during the review of the performance of existing closed areas and the development of new EFH management in this amendment, the Council would identify and periodically revise research priorities to improve habitat and spawning area monitoring.

Public Comment Instructions

Public comments on the Omnibus EFH Amendment and its incorporated

documents may be submitted through the end of the comment period stated in this notice of availability. A proposed rule to implement the Amendment, including draft regulatory text, will be published in the *Federal Register* for public comment. Public comments on the proposed rule received by the end of the comment period provided in this notice of availability will be considered in the approval/disapproval decision on the amendment. All comments received by [*insert date 60 days after date of publication in the Federal Register*], whether specifically directed to the Omnibus EFH Amendment or the proposed rule for this amendment, will be considered in the approval/disapproval decision on the Omnibus EFH Amendment. Comments received after that date will not be considered in the decision to approve or disapprove the Amendment. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: October 3, 2017.

Alan D. Risenhoover,
Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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