



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

Dr. John Quinn
Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

JAN 3 - 2018

Dear Dr. Quinn:

I am writing to inform you that we have approved the majority of the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2.

We approved, as recommended, the essential fish habitat (EFH) designations, the habitat areas of particular concern (HAPC) designations, the dedicated habitat research areas (DHRA), the groundfish spawning recommendations, the framework and monitoring measures, and most of the habitat management area (HMA) recommendations. We have determined that the approved measures comply with the Magnuson-Stevens Fishery Conservation and Management Act requirements to identify and describe EFH and to minimize to the extent practicable the adverse effects of fishing on such habitat.

We have disapproved two of the HMA recommendations—the recommendations for eastern Georges Bank and Cox Ledge.

Approved Measures

We approved the following Council recommendations, as proposed:

- All of the Council's essential fish habitat designation updates.
- All HAPC designations--
 - Two status quo HAPCs (Atlantic Salmon and Northern Edge Juvenile Cod);
 - Four additional HAPCs (Inshore Juvenile Cod, Great South Channel Juvenile Cod, Cashes Ledge, and Jeffreys Ledge/Stellwagen Bank);
 - Eleven canyons or canyon assemblages (Heezan Canyon; Lydonia, Gilbert, and Oceanographer Canyons; Hydrographer Canyon; Veatch Canyon; Alvin and Atlantis Canyons; Hudson Canyon; Toms, Middle Tom, and Hendrickson Canyon; Wilmington Canyon; Baltimore Canyon; Washington Canyon; and Norfolk Canyon); and
 - Two seamounts (Bear and Retriever).
- Most proposed Habitat Management Area measures--
 - Establish the (Small) Eastern Maine HMA, closed to mobile bottom-tending gear;
 - Maintain Cashes Ledge (Groundfish) Closure Area, with current restrictions and exemptions;



- Modify the Cashes Ledge Habitat Closure Area, closed to mobile bottom-tending gear;
- Modify the Jeffreys Ledge Habitat Closure Area, closed to mobile bottom-tending gear;
- Establish the Fippennies Ledge HMA, closed to mobile bottom-tending gear;
- Maintain the Western Gulf of Maine Habitat Closure Area, closed to mobile bottom-tending gear;
- Modify the Western Gulf of Maine Groundfish Closure Area to align with the Western Gulf of Maine Habitat Closure Area, with current restrictions and exemptions;
- Exempt shrimp trawling from the designated portion of the northwest corner of the Western Gulf of Maine Closure Areas;
- Add the Gulf of Maine Roller Gear restriction as a habitat protection measure;
- Remove the Closed Area I Habitat and Groundfish Closure Area designations;
- Remove the Nantucket Lightship Habitat and Groundfish Closure Area designations; and
- Establish the Great South Channel HMA, closed to mobile bottom-tending gear throughout and clam dredge gear in the defined northeast section. Clam dredge gear would be permitted throughout the rest of the HMA for 1 year while the Council considers restrictions that are more refined.
- Both proposed DHRA designations, with a 3-year sunset provision--
 - Stellwagen Bank (within the Western Gulf of Maine Closure Area); and
 - Georges Bank (i.e., the current Closed Area I South Habitat Closure Area).
- All proposed groundfish spawning measures--
 - Gulf of Maine: Establish the Winter Massachusetts Bay Spawning Closure from November 1-January 31 of each year; and close block 125 from April 15-April 30 of each year;
 - Georges Bank: Establish Closed Area I North and Closed Area II Groundfish Closure Area as spawning closures from February 1-April 15 of each year, closed to commercial and recreational gears capable of catching groundfish except scallop dredges; and remove the May Georges Bank Spawning Closure.
- Both proposed framework adjustment and monitoring measures--
 - 10-year review requirement; and
 - Modifications to habitat management areas are frameworkable.

Disapproved Measures

Cox Ledge

On Cox Ledge, the Council recommended establishing an HMA that would have prohibited the use of ground cables on trawl vessels and prohibited hydraulic clam dredging in the area. Based on the analysis submitted, NOAA's National Marine Fisheries Service determined there was insufficient information to implement the ground cable measure at this time. While there have been studies in other regions supporting the prohibition of ground cables as a method to minimize area swept, there was not enough information to determine how successful this approach would be in this region. Because it is unclear how inefficient this measure would make the gear, it is also unclear if this measure would reduce habitat impacts or actually increase them.

Further, there is insufficient information to determine the potential costs to the industry from the potential increased fishing time. As a result, the recommendation to establish the Cox Ledge HMA with these measures is disapproved because there is little rationale and evidence to demonstrate how it complies with the requirements of the Magnuson-Stevens Act to minimize the adverse effects of fishing if the measure would actually increase fishing time due to a reduction in fishing efficiency.

Eastern Georges Bank

On eastern Georges Bank, the Council recommended removing Closed Areas I and II and implementing the Georges Shoal and Northern Edge Mobile Bottom-Tending Gear Habitat Management Areas, both closed to mobile bottom-tending gears, and Northern Edge Reduced Impact Habitat Management Area, closed to mobile bottom-tending gears, except scallop dredges in a rotational management program and trawls west of 67° 20' W longitude. We have partially approved this recommendation. We approved the removal of the Closed Area I Groundfish and Habitat Closures, but disapproved the recommendation to remove Closed Area II.

This action approves the Council's recommendation to remove the Closed Area I EFH and Groundfish Closure Area designations and replace them with a DHRA and seasonal spawning closure. NMFS determined that the removal of the Closed Area I designations and proposed new designations do not compromise the ability of the Council's fishery management plans to comply with the EFH requirements of the Magnuson-Stevens Act.

We determined that there was insufficient information to support the Closed Area II recommendation. The Council's recommended HMAs on Georges Bank do not sufficiently address the impact of limited access scallop dredging on the highly vulnerable habitat within the Closed Area II Habitat Closure Area. Overall, the Council's recommended changes to Closed Area II and eastern Georges Bank would prevent achieving the Amendment's goals and objectives, notably to *improve* juvenile groundfish habitat protection, and the requirements of the Magnuson-Stevens Act to minimize the adverse effects of fishing to the extent practicable. Furthermore, the Closed Area II Habitat Closure Area has the same footprint as the Northern Edge Juvenile Cod HAPC. The area has been closed to mobile bottom-tending gear since 1995 and was designated as an HAPC in 1998. The rationale for the designation of the HAPC was that this is important habitat for juvenile cod that is particularly vulnerable to the impacts of fishing. The Council reaffirmed the HAPC designation in this Amendment, but the Council's recommendation does not avoid, mitigate, or compensate for the adverse effects of the proposed action on this HAPC.

The Amendment's focus of minimizing the total area closed to fishing, while maximizing the amount of vulnerable habitat protected, sought in part to provide more habitat for juvenile groundfish and enhance the productivity of groundfish resources. The proposed habitat management measures on eastern Georges Bank do not support these goals and objectives, however. Removing protections from, and allowing scallop dredging in, the most vulnerable portion of Closed Area II without adopting comparable protections that reasonably balance the long- and short-term costs and benefits to EFH, associated fisheries, and the nation does not minimize the adverse effects of fishing in this area to the extent practicable. It also prevents the

Council from achieving this action's goals and objectives to improve protections of groundfish, and juvenile cod specifically. The potential benefits to habitat from the proposed closed areas do not outweigh the potential adverse effects on highly valuable EFH and vulnerable groundfish stocks that would result from the proposed opening of the current Closed Area II Habitat Closure Area to limited access scallop dredging. The no action alternative that remains on Georges Bank, and the HMAs in other sub-regions as approved, provide a reasonable balance of EFH protection and long- and short-term costs and benefits as well as meet the Amendment's goals and objectives to improve groundfish protection.

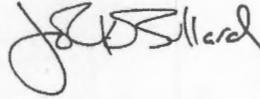
Further supporting the determination that the proposed areas and measures do not sufficiently offset the quality and importance of the habitat on eastern Georges Bank against the adverse impacts of fishing in this area is the lack of consideration of allowing fishing in the Northern Edge Juvenile Cod HAPC in the Closed Area II Habitat Closure Area. As noted above, the Council initially made this HAPC designation in 1998 and reaffirmed the importance of the area in this Amendment. One of the four considerations for HAPC designation is sensitivity to anthropogenic stress. The Council concluded that there are "no known anthropogenic threats to this area beyond those associated with fishing activity." While there are no fishery restrictions automatically associated with HAPC designations themselves, the designation should result in the Council taking a more precautionary approach to management of those areas, particularly when the only noted human-induced stressor is fishing. The 2002 final rule for the EFH regulations notes, "designation of HAPCs is a valuable way to highlight priority areas within EFH for conservation and management . . . Proposed fishing activities that might threaten HAPCs may likewise receive a higher level of scrutiny." This guidance suggests that councils should prioritize the protection of HAPCs where fishing is a primary or significant threat to the habitat.

The designation of an area as an HAPC does not inherently require a fishing closure in the area. However, the Council provided insufficient information to understand which aspects of the area are critical to juvenile cod survival, how those aspects of the habitat are affected by scallop dredges, the recovery time for such impacts, and the anticipated rotation periods for scallop fishing. Without more consideration and analyses of these critical components, it is not possible to determine under what conditions rotational scallop fishing should be permitted in the Northern Edge HAPC and the full nature and extent of how such access would affect juvenile cod. The Council's recommendations in this Amendment would open the most vulnerable portions of the HAPC and do not adequately mitigate or compensate for those impacts by restricting them or closing any other comparable habitat. The Council's recommendation to allow even rotational fishing in this sensitive habitat appears to be inconsistent with its own rationale for the designation that the habitat in this area warrants particular concern and consideration.

For these reasons, we have disapproved this recommendation. If this issue were revisited in the future, a more thorough discussion of these critical issues would be required. We will continue to provide support for reconsidering reasonably balanced approaches to providing limited fishing opportunities in this area, while protecting this valuable habitat and better minimizing the adverse impacts of fishing.

Thank you for the Council's work on this action. It was a massive undertaking and your staff, especially Michelle Bachman, should be proud of their groundbreaking work that went into supporting this Amendment. As always, our staff are available to answer any questions you may have on this decision.

Sincerely,

A handwritten signature in black ink, appearing to read "John K. Bullard". The signature is written in a cursive style with a large initial "J" and "K".

John K. Bullard
Regional Administrator