

## RECORD OF DECISION

### FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

#### AMENDMENT 13 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

National Marine Fisheries Service

This document comprises the National Marine Fisheries Service's (NMFS) Record of Decision (ROD) for Amendment 13 to the Northeast Multispecies Fishery Management Plan as required by the National Environmental Policy Act (NEPA). The ROD is based on and incorporates as described below, the Northeast Regional Administrator's Decision Memorandum dated March 10, 2004, Amendment 13, the Final Supplemental Environmental Impact Statement (FSEIS) and all other analytical documents prepared for this action.

#### Background:

The New England Fishery Management Council (Council) has been developing Amendment 13 since 1999, in order to bring the NEFMP into conformance with all Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements.

Amendment 13 was developed by the Council to end overfishing of all groundfish stocks and to rebuild all groundfish stocks that are overfished, and includes measures to minimize bycatch to the extent practicable, to implement improved reporting and recordkeeping requirements, and to address other conservation and management issues. In addition, Amendment 13 contains measures to minimize to the extent practicable adverse fishing effects on essential fish habitat (EFH), in accordance with the Joint Stipulation and Order in *American Oceans Campaign, et al. v Daley, et al.*, Civil No. 99-982 GK (D.D.C. December 17, 2001). Thus, Amendment 13 evaluates the impacts of fishing on EFH through analysis in the FSEIS prepared for this plan amendment, and includes alternatives for management measures developed to practicably minimize adverse fishing effects on EFH. Finally, Amendment 13 contains changes to overfishing definitions and other aspects of the management program that are not reflected in regulations.

#### Proposed Measures for Amendment 13

After evaluating all of the measures contained in Amendment 13 and the analyses contained in the FSEIS, NMFS is approving most of the measures and disapproving others, as specified in the Northeast Regional Administrator's Decision Memorandum dated March 10, 2004. Some of the approved measures include, but are not limited to, the establishment of target TACs during the rebuilding program; percentage reductions over time of DAS; a combination of an adaptive rebuilding strategy for the majority of overfished groundfish stocks and a phased rebuilding

strategy for the remaining overfished stocks; clarification and revisions to the overfishing definitions for groundfish stocks; default rebuilding measures; a DAS leasing and transfer program; a new limited access Handgear A Permit category; the establishment DAS categories (A, B, and C DAS); new gear requirements; possession limits; the establishment of Special Access Programs; a U.S./Canada Resource Sharing Understanding; and a Sector Allocation system. Additional management measures approved are contained in Amendment 13 and the March 10, 2004 Regional Administrator's Decision Memorandum.

In addition to the measures developed for other aspects of the management program, the Council also considered various other measures to practicably minimize adverse fishing impacts on EFH. The EFH measures recommended by the Council, consist of the complementary benefits of other Amendment 13 alternatives (Habitat Alternative 2); prohibiting clam dredges in the year-round closed areas (Habitat Alternative 7); and imposing Level III habitat closed areas (areas closed indefinitely on a year round basis to all bottom-tending mobile gear), except for shrimp trawls in the WGOM closed area, that are modifications of existing mortality closures and other proposed habitat closures (Habitat Alternative 10b). NMFS approved Habitat Alternative 2 and partially approved Habitat Alternative 10b. NMFS disapproved Habitat Alternative 7 and Habitat Alternative 10b's exemption for shrimp trawls in the WGOM closed area.

#### Other Alternatives Contained in Amendment 13

The Council and NMFS also considered other fishery management alternatives including, but not limited to, a no action alternative, whereby, the fishery would revert to the 2001 fishery management measures; a step increase program that would have increased biomass targets from the Amendment 9 values to the values recommended by the Northeast Fisheries Science Center's 2002 biomass reference points; a "High 3" biomass target alternative; rebuilding timelines that would have ended in 2009; rebuilding strategies that would have utilized a constant fishing mortality rate; harvest controls that would have utilized "Hard TACs" for various groundfish stocks; target TACs for each species that would have included DAS differentials, gear changes, trip limit adjustments and area closures depending upon the rate of harvest; and recreational fishing alternatives. For a concise description of the remaining alternatives see pages I-xix - I-xxxv in the DSEIS that was submitted for public comment. For a full analysis of these alternatives see corresponding sections of the FSEIS for Amendment 13.

The Council also considered, but did not recommend to NMFS for implementation, several other alternatives to minimize adverse fishing effects on EFH. These alternatives generally fall into the following three categories:

1. those that produce no new management measures to minimize adverse fishing effects, including Habitat Alternative 1 (the no action alternative implementing no further direct or indirect measures to minimize adverse fishing impacts on EFH) and Habitat Alternative 9 (requiring utilization of VMS on all groundfish vessels).

2. those that impose habitat closed areas, including Habitat Alternative 3 (habitat closures designed to protect hard-bottom habitats inside and outside existing groundfish closed areas), Habitat Alternative 4 (habitat closures based on modified Habitat Alternative 3 areas that overlap modified groundfish closed areas originally proposed to address stock rebuilding in Amendment 13), Habitat Alternative 5 (options for habitat closures proposed closed areas based upon EFH importance and fishery productivity), Habitat Alternative 6 (habitat closures consistent with Framework 13's Scallop Closed Area Access Program), and Habitat Alternative 10a (modified version of selected Habitat Alternative 10b).
3. those that impose additional gear restrictions, including Habitat Alternative 8 (restrictions on the use of rockhopper and roller gear).

For a concise description of the remaining alternatives see pages I-xix – I-xxxv in the DSEIS that was submitted for public comment. For a full analysis of these alternatives see corresponding sections of the FSEIS for Amendment 13.

#### Factors Considered in Making a Decision on the Proposed Action

Through the FSEIS as documented in this ROD, NMFS analyzed project alternatives, associated environmental impacts, the extent to which the impacts could be mitigated, and has considered the objectives of the proposed action. NMFS has also considered public and agency comments received during the NEPA and Magnuson-Stevens Act review periods.

NMFS and the Council are required by the Magnuson-Stevens Act, the agency's National Standard Guidelines, the EFH regulations and other applicable law to determine whether Amendment 13 contained adequate measures to prevent overfishing, rebuild overfished stocks, minimize bycatch to the extent practicable and minimize to the extent practicable adverse effects of fishing on EFH, among other things. With regard to EFH, NMFS may only implement those measures to minimize adverse effects of fishing on EFH that are practicable, as well as compliant with the National Standards and other provisions of the Magnuson-Stevens Act.

In determining which measures are appropriate to minimize adverse effects of fishing on EFH, the Magnuson-Stevens Act mandates that implemented measures be practicable. The EFH regulations provide guidance on conducting a practicability analysis on alternatives considered to minimize fishing effects on EFH. To make this determination, Councils and NMFS are encouraged to consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with the National Standards. A practicability analysis was prepared and is contained in Amendment 13.

NMFS is limited in its authority under the Magnuson-Stevens Act to choose only those alternatives that meet the EFH requirements of the statute. Consistent with the Magnuson-

Stevens Act, NMFS has approved only those alternatives that minimize to the extent practicable adverse effects of fishing on EFH.

#### Decision on the Proposed Action

After careful review of the proposed measures, the associated analyses and the public comments that NMFS received on Amendment 13, NMFS has decided to partially approve most of the Council's recommended measures. NMFS believes that, overall, the combination of approved measures (e.g., those identified in the Regional Administrator's Decision Memorandum dated March 10, 2004) represent the environmentally preferable alternatives when considering the degree of environmental and economic effects and benefits that might accrue from these measures within the context and strictures of the Magnuson-Stevens Act. Further, NMFS believes that these alternatives will promote the national environmental policy as discussed in Section 101 of NEPA. NMFS also concludes that all practical and legally justifiable means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. NMFS has responded to all applicable public comments received on Amendment 13, the NEPA document, and the proposed rule.

#### A) Fishery Management Measures

Amendment 13 is a comprehensive management program designed primarily to end overfishing on all groundfish stocks and to rebuild all groundfish stocks that are overfished. The Amendment also contains a variety of measures, including effort reductions, adjustments to trip limits and gear modifications, a DAS leasing and transfer program, Special Access Programs, a U.S./Canada Resource Understanding, additional year-round closures to protect EFH, etc. The measures are designed to rebuild overfished stocks, control fishing mortality, minimize bycatch to the extent practicable, minimize effects of fishing on EFH to the extent practicable and to address other conservation and management issues consistent with the Magnuson-Stevens Act.

The decision to approve Amendment 13 is based on the rationale contained in the Regional Administrator's Decision Memorandum dated March 10, 2004, the analyses prepared for Amendment 13 and the FSEIS, and all other analytical documents prepared for this action. Because of the complexity of Amendment 13 and the fishery management measures being implemented, only the most significant components of Amendment 13 are discussed herein. The remaining measures selected for implementation and those that have been disapproved are contained in the Regional Administrator's Decision Memorandum dated March 10, 2004.

First, with respect to rebuilding alternatives, NMFS determined that the adoption of a phased reduction rebuilding strategy, combined with an adaptive rebuilding strategy is consistent with the Magnuson-Stevens Act and the National Standards and will help rebuild overfished groundfish stocks within their specified rebuilding periods. The rebuilding strategies selected, combined with many of the additional management measures being implemented will help reduce fishing mortality so that all 12 overfished stocks can be rebuilt. The selection of this dual rebuilding strategy (i.e., phased and adaptive approach) represents a balancing of the objectives

of reducing fishing mortality and minimizing economic impacts, while achieving the goals set forth in Amendment 13.

Next, Amendment 13 contains a series of default measures to ensure that scheduled fishing mortality reductions in fishing years 2006 are realized. In the event that rebuilding objectives are not being realized in the coming years, automatic reductions in DAS would become effective at the beginning of the 2006 fishing season, while additional reductions in DAS may take place at the beginning of the 2009 fishing season. Based on future stock assessments, the Regional Administrator will determine whether the default measures are necessary.

In addition, Amendment 13 implements adjustments to trip limits to the current cod and yellowtail flounder stocks in various regions (e.g., Georges Bank, Gulf of Maine, Southern New England and Mid-Atlantic). Amendment 13 also implements adjustments to gear restrictions. Both of these measures are designed to help reduce fishing mortality and control fishing effort at certain times of the fishing season so that vulnerable stocks are not fished too heavily.

Furthermore, Amendment 13 also implements a DAS leasing and transfer program for fishing years 2004 and 2005, whereby "A" DAS can be leased between limited access groundfish permit holders with certain restrictions. These restrictions include conditions on the lease of DAS based on horsepower ratings and baseline LOA. In addition, the program also provides, among other things, that DAS can only be leased for 1 fishing year. The transfer program will allow limited access NE multispecies DAS permit holders to transfer DAS permanently to other limited access NE multispecies DAS permit holders, subject to certain restrictions. These programs are designed primarily to mitigate negative economic impacts that may result from other Amendment 13 measures. For vessels with few alternative fisheries to participate in, the ability to acquire more DAS may help offset reductions in profit.

Finally, Amendment 13 contains Special Access Programs (SAPs) that are designed primarily to allow vessels to use Category B DAS to target healthy groundfish stocks. Although only two of the four proposed SAPs (CA II Yellowtail Flounder SAP and SNE/MA Winter Flounder SAP) have been approved, vessels will be allowed to fish in these areas subject to certain conditions and restrictions (e.g., gear use, season, number of trips, possession limits, etc.). The SAPs should allow vessels to obtain additional economic benefits through the targeting of healthy groundfish stocks, while allowing the Regional Administrator to monitor and control effort in these areas so that stocks of concern are not jeopardized.

#### **B) Essential Fish Habitat Measures**

NMFS has determined through the analysis conducted in the EFH components of the FSEIS for Amendment 13 that the approved EFH and other conservation measures minimize to the extent practicable adverse effects of fishing on EFH. Amendment 13 implements a series of management measures that represent several major strategies for providing explicit and implicit protection to a wide variety of vulnerable habitat within EFH, including reductions in overall fishing effort that will reduce impacts to benthic habitats. The measures intended to address rebuilding requirements provide implicit benefits to EFH because they are intended to reduce

fishing mortality through effort reductions, but they provide additional EFH benefits due to reduced contact with the benthic habitat. In the long-term, this effort level may increase as the stocks recover, but the habitat impacts from this measure are less when compared to the level of effort maintained prior to the implementation of this plan amendment. Measures to address overcapacity will also have positive benefits for EFH by reducing the amount of time vessels can spend fishing.

To ensure that Amendment 13 practicably minimizes adverse effects of fishing on EFH, NMFS has partially approved Habitat Alternative 10b which establishes a series of closed areas within the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Area that prohibit the use of bottom-tending mobile gear, including shrimp trawl gear in the WGOM closure area. The agency decided not to approve the exemption for shrimp trawl gear in the WGOM closure area because allowing such gear may compromise the effectiveness of this habitat closure. There is also little justification in the FSEIS and plan amendment for this exemption, and approval of such a measure without clear justification would violate National Standard 2 (mandating the use of best scientific information available). Habitat Alternative 10b has been shown to be highly effective in protecting vulnerable EFH from the effects of bottom-tending mobile gear, and will be more protective with the prohibition of shrimp trawl gear in the WGOM closed area. This alternative also qualifies as the most practicable alternative based on the balancing of protection to EFH versus its economic cost to the fishing industry and port communities.

The agency has decided not to implement Council recommended Habitat Alternative 7 regarding the prohibition on Surfclam and Ocean Quahog dredge gear in NE Multispecies closed areas due to the lack of a sufficient rationale and justification for this restriction. As explained in the Regional Administrator's Decision Memo at page 6, the agency determined that this alternative is non-compliant with National Standard 2 and the EFH requirements of the Magnuson-Stevens Act because the impacts of the proposed exclusion of dredge gear from these areas were not analyzed in the FSEIS and there is no evidence that the exclusion of this gear is necessary to protect EFH to the extent practicable.

Other significant alternatives considered, but not recommended include Habitat Alternatives 3a, 3b, 4, 5, 6 and 10a. Some of these alternatives may appear to provide more comprehensive protection when compared to Habitat Alternative 10b from the perspective of protecting certain types of important benthic habitat. However, the only additional benefits to EFH from these alternatives are small increases in the amount of hard bottom substrate that would be protected from the adverse effects of mobile bottom-tending fishing gear. These alternatives have been determined to be impracticable in terms of their costs to the fishing industry and therefore, have not been selected. The habitat analyses for Habitat Alternatives 3a, 3b, 4, 5, 6, and 10a and b shows that the overall benefits from each alternative are so close that the EFH preferences in these alternatives are virtually indistinguishable from one another. None of these alternatives would minimize adverse fishing impacts to any significantly greater degree than the measures contained within the agency's choice, Alternative 10b, as modified.

The combination of Habitat Alternative 2 and Habitat Alternative 10b, as modified, minimize to the extent practicable the adverse effects of fishing on EFH as required by the Magnuson-Stevens Act.

Further information regarding this ROD may be obtained by contacting Susan Murphy, Northeast Region, NMFS, 1 Blackburn, Gloucester, MA 01930, (978) 281-9252.

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Date