

REOPENING A PORTION OF THE GEORGES BANK CLOSED AREA TO SURFCLAM AND OCEAN QUAHOG HARVESTING

Supplemental Environmental Assessment
Regulatory Impact Review

National Marine Fisheries Service
Northeast Regional Office
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LIST OF ACRONYMS

CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DPS	Distinct Population Segment
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EFP	Experimental Fishing Permit
EIS	Environmental Impact Statement
EO	Executive Order
ESA	Endangered Species Act
FDA	Food and Drug Administration
FMP	Fishery Management Plan
FR	Federal Register
FY	Fishing Year
GB	Georges Bank
HAB	Harmful Algal Bloom
HMA	Habitat Management Areas
ISSC	Interstate Shellfish Sanitation Conference
ITQ	Individual Transferable Quota
LOA	Letter of Authorization
LUPE-	Landings Per Unit Effort
MAFMC	Mid-Atlantic Fishery Management Council
MMPA	Marine Mammal Protection Act
NEFMC	New England Fisheries Management Council
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NAO	National Oceanic and Atmospheric Administration Administrative Order
NSSP	National Shellfish Sanitation Program
OA2	Essential Fish Habitat Omnibus Amendment
OQ	Ocean quahog
PSP	Paralytic Shellfish Poison
RA	Regional Administrator
RIR	Regulatory Impact Review
SEA	Supplemental Environmental Assessment
SC	Surfclam
SC/OQ	Atlantic Surfclam and Ocean Quahog
VEC	Valued Ecosystem Component

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1.0 INTRODUCTION

This Supplemental Environmental Assessment (SEA) updates a previously approved Final Environmental Assessment (December 2012) that analyzed reopening a portion of the Georges Bank (GB) Paralytic Shellfish Poisoning (PSP) Closed Area to the harvest of Atlantic surfclams and ocean quahogs (SC/OQ). This document is not a stand-alone document, but rather a supplement and is intended to be utilized in conjunction with the approved December, 2012 Final EA and the associated interim final rule (December 19, 2012; 77 FR 75057). Unless otherwise noted, the Final EA prepared for this action and attached to this SEA remains applicable. Therefore, sections addressed in this supplement should be considered within the context of the full Final EA.

The following SEA has been prepared in response to requests from the Mid-Atlantic and New England Fishery Management Councils (NEFMC and MAFMC) and the fishing industry to reopen an additional portion of the GB PSP Closed Area that has been closed to SC/OQ harvesting since 1990 due to red tide blooms which cause PSP. In response to the comments received on the interim final rule for this action, NOAA's National Marine Fisheries Service (NMFS) intends to reopen an additional portion of the GB PSP Closed Area that was in the Draft EA (August 2012) and published in the proposed rule (August 31, 2012; 77 FR 53164), but was later rejected in the Final EA (December 2012).

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the National Oceanic and Atmospheric Administration (NOAA) Administrative Order (NAO) 216-6, the environmental impacts of this action and the anticipated level of significance of these impacts are addressed in this SEA.

Since red tide events can vary inter-annually, the areas of closure can vary depending upon the severity of the event and the level of monitoring by the U.S. Food and Drug Administration (FDA) to indicate safe consumption. For purposes of this SEA, it is anticipated that the FDA will request portions of the existing GB Closed Area to be reopened and closed based upon future PSP-toxin monitoring results of SC/OQ. The impacts related to reopening and closing areas within the GB PSP Closed Area to harvesting SC/OQ are discussed in this SEA, and this analysis would be in compliance with NEPA for future related actions.

It should be noted that in the case of an emergency, such as a public health concern, the Secretary of Commerce has the authority, under section 305(c) of the Magnuson-Stevens Act, to reopen or close an area at any time by publication in the Federal Register. Duration and seasonality are factors associated with a SC/OQ harvest area reopening or closing that would affect the economic impacts described below in Section 6.0.

2.0 BACKGROUND

As noted above, in response to comments received on the proposed rule, the area that was reopened with the interim final rule was modified slightly from the proposed rule. The NEFMC submitted a comment on the proposed rule informing us that its Habitat Oversight Committee is developing Essential Fish Habitat Omnibus Amendment 2, which may include potential Habitat Management Areas (HMAs) that, if implemented, may spatially overlap with the areas proposed for reopening in the proposed rule. Because of the NEFMC concern, NMFS modified the area that was reopened through the interim final

rule to ensure that there was no overlap with any portion of the potential HMAs. The intent was to protect the potential HMA from any additional disturbances, while also allowing the SC/OQ fleet to access the reopened area.

The NEFMC also requested that we extend the comment period on the proposed rule for an additional 60 days to allow them time to compose a more formal comment. We did not extend the comment period on the proposed rule, but, instead, we published an interim final rule, which included an additional 60-day comment period while also satisfying the industry's and the MAFMC's request to have the area reopened by the start of the Atlantic surfclam and ocean quahog fishing year on January 1, 2013.

The comment period on the interim final rule closed on February 19, 2013. We received an additional comment from the NEFMC, in which they rescinded their previous comment regarding concern with reopening the portion of the area that would overlap with the potential HMA. Instead, the NEFMC requested that we reopen all portions of the GB PSP Closed Area that are open to other types of bottom-tending mobile gear.

In addition to the NEFMC's comment, the majority of the comments received on the interim final rule supported reopening additional portions of the area. At this time, NMFS cannot accommodate this request in full. The original reopening was based on years of PSP data that were collected within the areas originally proposed for reopening, and there are no PSP data available for the remainder of the GB PSP Closed Area. In addition, no analysis was done for areas outside of what was in the proposed rule. Therefore, further analysis would have to be completed to consider areas outside of the areas that were described in the proposed rule. This type of analysis is best conducted by the Mid-Atlantic Council working through its Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP).

However, in light of comments received on the interim final rule, NMFS plans to reopen the Northeast portion of the area that was originally proposed, but which remained closed based on the NEFMC's initial concern. That is, in addition to the area that was reopened in the interim final rule, the final rule will reopen an additional 958 square miles of the GB PSP Closed Area. This additional 958 square miles area was part of the preferred alternative in the Draft EA, but was rejected in the Final EA. The remainder of the GB PSP Closed Area will remain closed.

3.0 PURPOSE AND NEED FOR THE ACTION

The purpose of this action is to reopen an additional portion of the GB PSP Closed Area for the harvest of SC/OQ at the request of the NEFMC, MAFMC, and members of the SC/OQ industry. NMFS published a similar rule in the Federal Register (December 19, 2012; 77 FR 75057) that reopened a portion of the GB PSP Closed Area. Based on comments received on that action, NMFS is now reopening an additional 958 square mile (2,481 square km) portion of the GB PSP Closed Area.

This action is needed to relieve fishing pressure on Mid-Atlantic populations of SC/OQ. In the recent past, SC/OQ effort has been focused in Mid-Atlantic waters. As a result of this concentrated effort, over time, Mid-Atlantic populations of SC/OQ have become less productive. Reopening an additional portion of the GB PSP Closed Area would reduce effort focused in the Mid-Atlantic waters, allowing SC/OQ stocks to recover. The additional area being reopened was included in the preferred alternative in the Draft EA (August 2012), but based on comments received from the NEFMC, this portion of the

area was rejected in the Final EA (December 2012). Now that the NEFMC has had more time to consider the reopening, they have withdrawn their previous comment and instead requested that NMFS reopen additional portions of the GB PSP Closed Area. Based on this request, this action is needed to reopen the additional 958 square mile (2,481 square km) Northeast portion of the GB PSP Closed Area that was considered in the Draft EA, but was rejected in the Final EA.

4.0 PROPOSED ALTERNATIVES

4.1 Alternative E - Reopen Additional Northeast Portion of the Historic EFP Area (Area Alternatives A – D are in the Final EA, December 2012)

This alternative would reopen an additional portion of an area defined under previously issued EFPs, and fished pursuant to the protocol. The preferred alternative in the Draft EA (August 2012) included this area, but was rejected due to public comment on the proposed rule. However, additional comments were received on the interim final rule and NMFS is now reopening the additional Northeast portion that was within the overall preferred alternative in the Draft EA (August 2012), but was rejected in the Final EA (December 2012). The additional area encompasses approximately 958 square miles (2,481 square km), and the east side is adjacent to the groundfish Closed Area II. The latitude and longitude of the points forming this alternative area (Figure 1 and Figure 2) begin with the north-westernmost point (point 1) and continue clockwise as follows:

Point	N. Latitude	W. Longitude
ROA1	42°00'	68°00'
ROA2	42°00'	67°20'
ROA3	41°34'	67°20'
ROA4	41°34'	68°00'
ROA1	42°00'	68°00'

This alternative would limit harvesting of SC/OQ to areas determined to be safe for human health consumption by the FDA. Any or all portions of Alternative E, and other areas, may be reopened or closed based upon PSP monitoring levels and requested by the FDA and approved by NMFS. The size and area definition of any reopenings or closures would be based on results of the PSP testing protocol or other testing and environmental conditions. Should samples of surfclams test positive for toxins that cause paralytic shellfish poisoning it is likely that the area where the positive results were found would be closed. Harvesting SC/OQ for research purposes has been occurring within the GB Closed Area using the testing protocol since 2008, and to date, no positive results have been recorded that would have led to a reclosure.

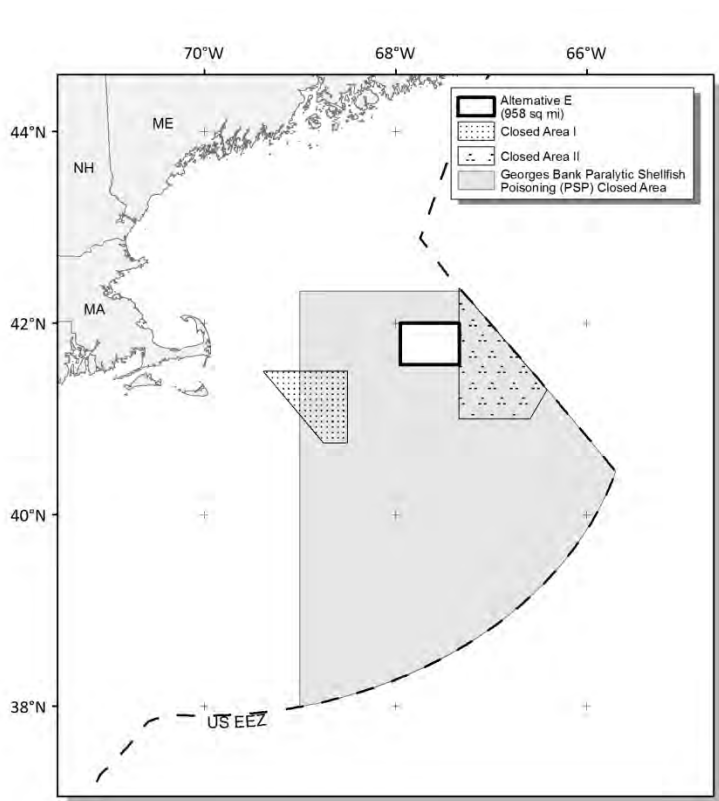


Figure 1 - Map of Proposed Alternative

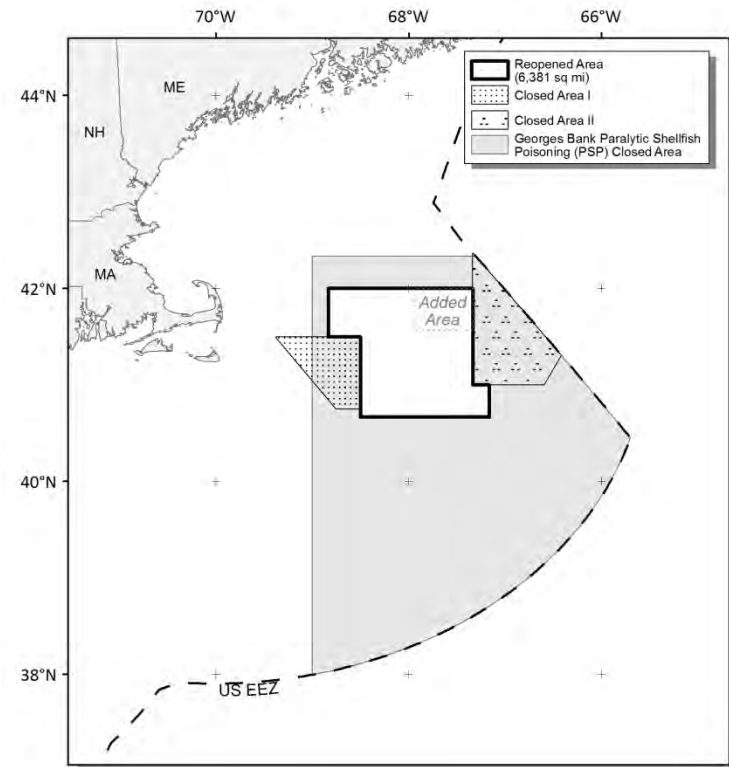


Figure 2 - Previously Reopened Area and the Additional Northeast Portion of the Historic EFP Area (Added Area)

4.2 Alternative D - (Status Quo/No Action)

As mentioned above, the GB PSP Closed Area, including the Alternative E area, has been closed since May 25, 1990, to the harvest of SC/OQ. Thus, the no action alternative would be to leave the Alternative E Area portion of the GB PSP Closed Area closed to the harvesting of SC/OQ. This area encompasses an area approximately equal to 958 square miles (2,481 square km), in the Northeast corner of the GB PSP Closed Area.

5.0 AFFECTED ENVIRONMENT

The description of non-target species, protected species, and human communities can be found in the Final EA (December 2012) in sections 5.3, 5.4, and 5.5, respectively.

5.1 Location/Physical Environment

The additional area being considered for reopening (Area Alternative E) would allow for the commercial harvest of SC/OQ (Figure 1 and Figure 2) and is located on GB in the Northeast corner of the area that was included in the originally proposed area for reopening in August 2012, before the removal of Area Alternative E in the Final EA, in December 2012, in response to public comment on the proposed rule. As described in Section 4.1, Area E is approximately 958 miles (2,481 square km) in size. This portion of GB includes the steeply-sloping northern edge of the bank and the much shallower, highly-energetic top of the bank (Georges Shoals) that is generally characterized by sand waves interspersed by deeper gravel troughs that trend from northwest to southeast, following the direction of the strong tidal currents that transport sand back and forth on top of the bank. Depths in Area E range from less than 20 meters on some of the sand waves to more than 50 or 60 meters between the sand waves (Figure 3). Depth increases gradually to the southeast on the bank as a whole. Substrate types and sediment stability on Georges Bank have been described and mapped by Harris and Stokesbury (2010) and Harris et al. (2012). Overall, there is more gravel (granule-pebble), cobble, and boulder-dominated substrate in the proposed opening area than sand (Figure 5).¹ The coarser non-sandy sediments in Area E (Sx values <1 in blue in Figure 4) are not moved by tidal currents and provide a more stable substrate for attached epifaunal organisms like sponges and bryozoans that provide shelter and food for fish. For a more detailed description of the physical environment on GB and throughout the range of the SC/OQ fishery, see the Affected Environment section of the Final EA. Essential fish habitat (EFH) descriptions for SC/OQ and other federally-managed species in the Northeast region that could be affected by the proposed action can be found in the Final EA and at www.nero.noaa.gov/hcd/list.htm.

¹ The dominant, or most frequently-occurring, substrate type was defined as the mode of the scores from four samples (video images) at a station, where scores were assigned to different sediment types according to their sizes (mud-silt = 1 to boulder = 5). In cases where sediment types were equally frequent (e.g., sand and granule-pebble in all four quadrats), the larger sediment type was considered “dominant.” Shear stress (Sx) was calculated at each station based on the substrate type and model predictions of maximum tidal current velocity. When Sx values matched or exceeded the critical level then the sediments were considered to be unstable (red pixels in Figure 5). These analyses do not account for the occasional effects of storm-generated waves which can also move sand and even coarser sediments around on the bottom.

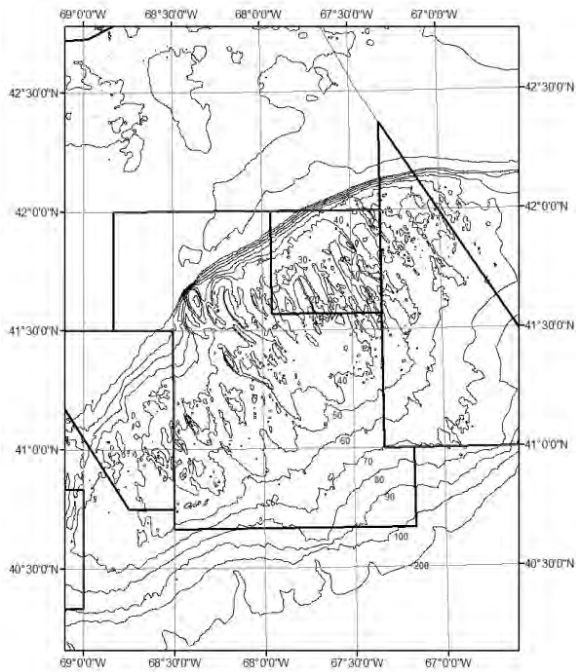


Figure 3 - GB Bathymetry (meters)

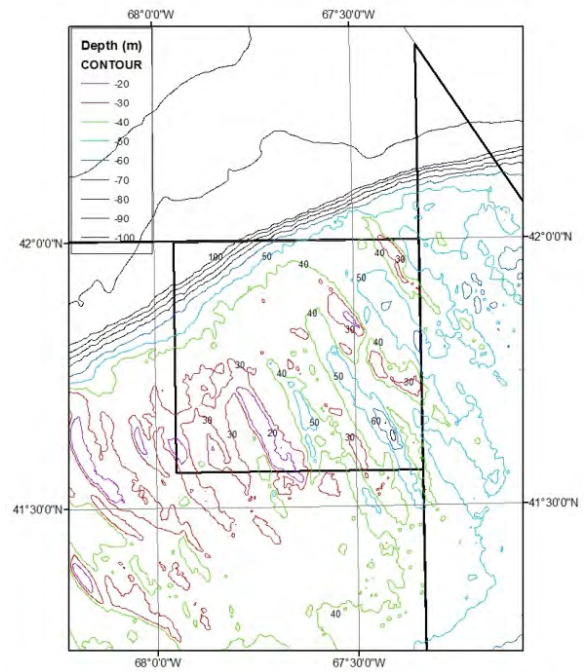


Figure 5 - Area E Bathymetry (meters)

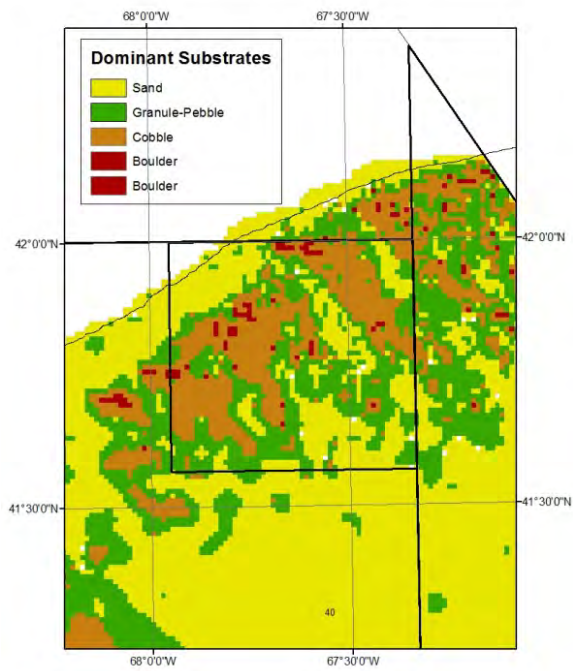


Figure 4 - Dominant Substrates in Area E

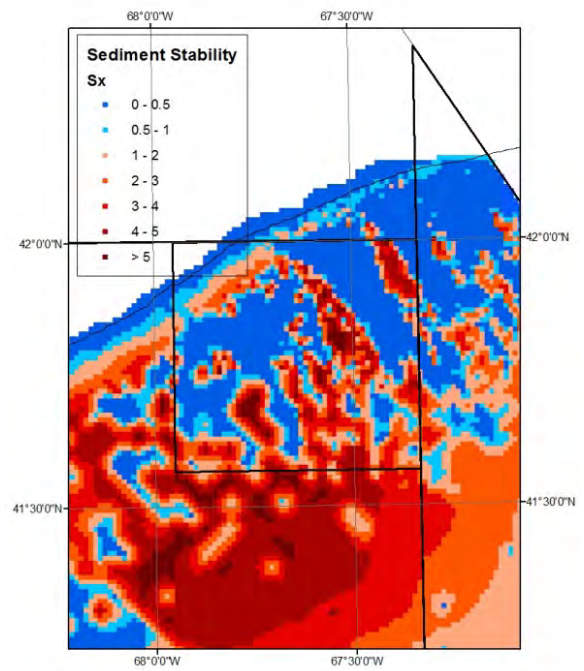


Figure 6 - Sediment Stability in Area E

5.2 Target Species - Atlantic Surfclam/Ocean Quahog

Pertinent biological and habitat-related information for SC/OQ was summarized in the Final EA, including results of the most recent stock assessments which concluded that, in 2008, 48% of the surfclam biomass and 84% of the quahog biomass was in the GB region (east of 69° W. longitude) where it has been protected from fishing by the PSP closure. Figure 7 and Figure 8 show the distribution of the 2008 and 2011 Northeast Fisheries Science Center (NEFSC) survey catch data for both species in Area E and the surrounding area. These results clearly show that there are surfclams in the area that is being proposed for opening, but practically no quahogs. Most of the quahogs on GB are in deeper water on the southern part of the bank. (Despite the difference in catch rates – 10x higher for quahogs – no quahogs were caught in all but one of the tows in Area Alternative E).

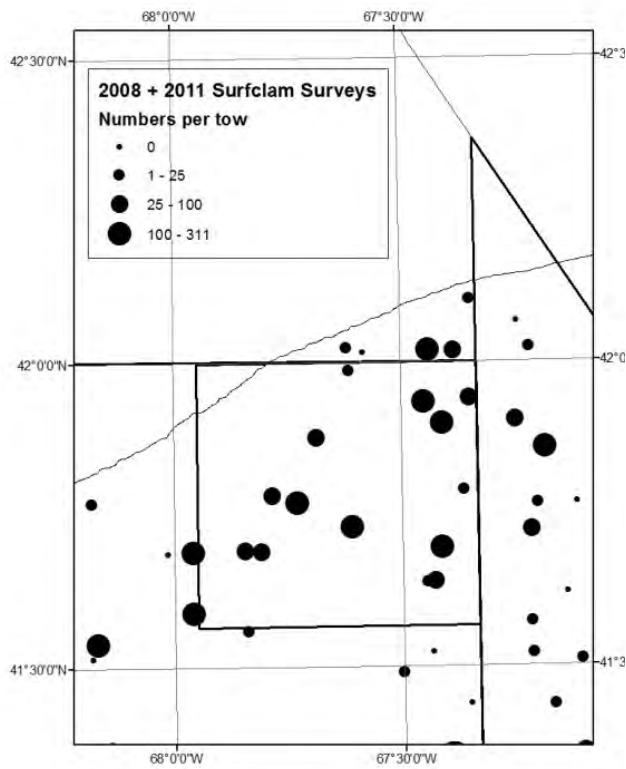


Figure 7 - 2008 and 2011 NEFSC Clam Dredge Survey Data for SC in Area E

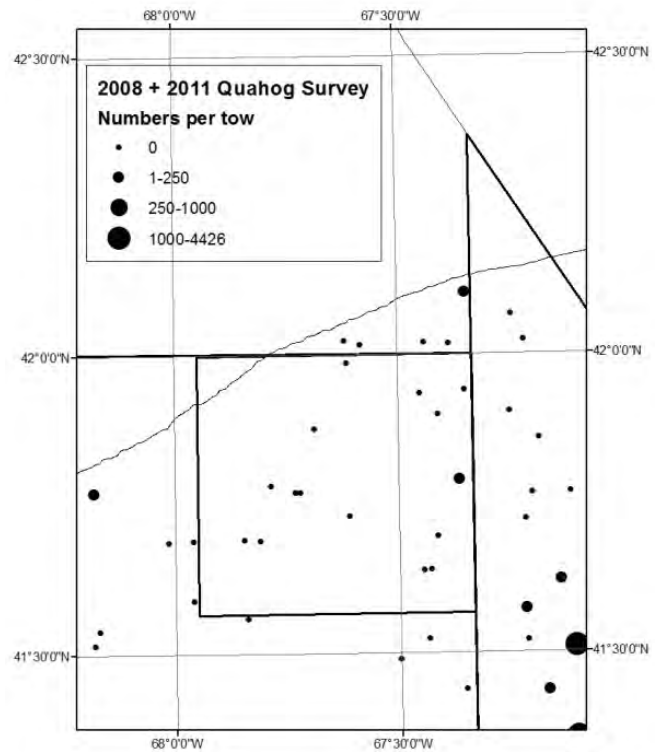


Figure 8 - 2008 and 2011 NEFSC Clam Dredge Survey Data for OQ in Area E

6.0 ENVIRONMENTAL CONSEQUENCES-ANALYSIS OF (DIRECT AND INDIRECT) IMPACTS

6.1 Impacts to Physical Environment, Habitat, and Essential Fish Habitat

The Final EA includes a description of the hydraulic clam dredge, which is the gear that would be used in the proposed area to be reopened, and an evaluation of the general effects of this gear on benthic habitats and, more specifically, the expected effects of clam dredging in the three areas that were considered for reopening on GB. The 2012 habitat impact analysis also included spatially-explicit analyses of the relative vulnerability of benthic habitats on GB to clam dredging and of bottom trawling and scallop dredge activity on the bank in 2011. For the preferred 2012 alternative (the area that would remain open if Area E remains closed to hydraulic clam dredging), the conclusion was as follows:

Due to the extreme natural disturbance caused by bottom currents and storm-generated waves on the predominantly sandy substrate in the shallower portion of this area, EFH impacts would be minimal and/or temporary and not require any mitigation. However, in the deeper portion of this area (60-80 m) to the southeast, where there is less natural disturbance of bottom habitats and where there are existing impacts from bottom trawling and scallop dredging, the additional effects of hydraulic dredging are expected to have adverse impacts on EFH which would likely be more than minimal and not temporary in nature.

The 2012 habitat impact determination also took into account the expected increase in catch rates (numbers or weight of surfclams caught per unit area of bottom towed) on GB compared to the traditional fishing grounds in the Mid-Atlantic where surfclam catch rates have declined dramatically since 2000 and concluded that the displacement of fishing effort onto the bank would reduce the overall amount of area impacted by the gear throughout the range of the fishery. As long as the total harvest remains capped at its present level, this expected reduction in the total amount of area affected by the gear would compensate for any adverse habitat impact of clam dredging in the deeper water on the southern flank of GB such that the overall impacts of opening what is now the No Action Alternative area were considered to be minimal. This SEA addresses whether the reopening of Area E, the area that was excluded from the impact analysis in the Final EA, would result in impacts to EFH for the two target species, or for any other Federally managed species in the area, that are more than minimal and not temporary in nature.

Managed species with EFH that has been determined to be moderately or highly vulnerable to the adverse impacts of hydraulic clam dredges which are found in Area E are winter flounder (adults), red hake (juveniles), silver hake (juveniles), ocean pout (adults), little skate (juveniles and adults), winter skates (juveniles and adults), and yellowtail flounder (juveniles and adults) (Stevenson et al. 2004). For bottom-feeding fish, the habitat vulnerability rankings were based primarily on the fact that clam dredges not only dislodge surfclams and ocean quahogs from sub-surface sediments, but also small invertebrates that are fed on by many species of fish. Once dislodged from the

bottom – when they provide an easily accessible and immediate source of food for fish that follow along behind the dredge – organisms that live in the sediment recolonize dredge paths within a few days to months after the initial disturbance. Thus, recovery times are fairly rapid, especially in shallow environments that are heavily impacted by natural disturbance (see literature review in Final EA). The same is true for the trenches that are created by the dredge: Sediments are re-sorted and settle into the trench according to grain size (largest at the bottom) and are fluidized by the water that is injected into the sediment. In highly-energetic shallow water environments, dredge tracks filled in within a matter of a few days, but in one study the sand was still fluidized 11 weeks after dredging to two-thirds of its original post-dredging depth even though total species abundance and diversity recovered within five days.

Compared to the larger No Action Alternative area (see Figure 5.1.-4 in the Final EA), the Georges Shoals area (Area E) of GB includes a much higher proportion of gravel, cobble, and boulder habitat. Unlike sand, these “hard-bottom” habitats remain in place despite the strong tidal currents that constantly move across the top of the bank (see Figure 4 and Figure 6) and provide stable substrates for a variety of benthic organisms that in turn provide shelter and food for fish.

The literature-based habitat vulnerability assessment for hydraulic clam dredges performed by the NEFMC’s Habitat Plan Development Team was limited to the effects on benthic structure-forming geological and biological habitat features in sand and granule-pebble dominated substrates, the only two substrates where this gear can be operated without risking damage or loss (Wallace and Hoff 2005). The vulnerability of the infaunal (living in the bottom) invertebrate community was not assessed. Thus, for this analysis, the relevant results of this assessment are limited to epifaunal (living on the bottom) organisms and geological habitat features, which included (in sand) sub-surface sediment structure. The results of this evaluation indicate that:

- High energy sand and granule-pebble substrates are much more susceptible to the effects of hydraulic dredges than they are to bottom trawls or scallop dredges, but recovery times are about the same for all three gears;
- In high-energy environments, recovery times for epifauna are slightly longer, on average, on sand than on granule-pebble substrates, but geological features recover faster in sand than in granule-pebble habitats.

For a more detailed explanation of the habitat vulnerability assessment, see NEFMC 2011.

High energy sandy habitats in Area E can be expected to be less vulnerable to the effects of hydraulic clam dredging because geological habitat features (e.g., sand waves and ripples) in sand recover more quickly from disturbance caused by the gear than the coarser granule-pebble (or “gravel”) substrate. Although not as effective as operating in sandy substrates, surfclam dredges are capable of operating in the more vulnerable coarser gravel substrates. In addition, surfclams are typically only found in sandy substrates. Thus, clam dredge vessels operating in Area E would likely avoid the coarser

bottom areas in favor of the sandy areas where there are more surfclams and where dredging is more effective. These sandy areas are highly-disturbed by tidal currents and storms (see Section 5.1) which would greatly reduce the adverse habitat impacts associated with clam dredging and could even exceed them to the point where they would be negligible. The greatest impact of clam dredging is likely to be on the infaunal invertebrate community which provides food for bottom-feeding fish. However, given the fact that studies show that sandy sediments in dredge tracks are re-colonized with a few days to months after the passage of the dredge (see above and full summary of available literature in the Final EA), this impact would be temporary. Overall, the proposed action is only expected to cause minimal and temporary adverse impacts on EFH in Area E, compared to the No Action Alternative, i.e., the effects would be negligible to low negative.

6.2 Impacts to Target Species

Alternative E proposes to reopen an additional portion of the GB Closed Area, which is not expected to displace a significant amount of fishing effort from where it is currently occurring: Either from within the previously reopened portion of the GB PSP Closed Area or over the entire range of the fishery. The requirement to follow the terms and conditions of the testing protocol as well as the cost associated with operating large offshore vessels is cost prohibitive, and as such, it is not expected that reopening an additional portion of the GB PSP Closed Area would increase effort or landings. Since January 1, 2013, when a portion of the GB PSP Closed Area was first reopened, no more than five vessels have operated within the reopened area. Even if the additional Alternative Area E is reopened, it is not expected that the number of participating vessels would dramatically increase and therefore, it is not expected that there will be additional significant impacts to target species.

In the short term, it is possible that landings per unit effort (LPUE) could increase if Area Alternative E is reopened. Based on public comment received on the interim final rule and preliminary analysis, this area has a high biomass of Atlantic surfclams and vessels already fishing in the reopened portion of the GB PSP Closed area may shift to this area to fish areas where surfclam stocks are more abundant. The no action alternative would not reopen any additional areas and, would therefore, not affect LPUE.

Further, with each additional area that is reopened, such as reopening the Alternative E Area, it is likely that the reopening would remove some effort on southern stocks. This could allow southern stocks to rebuild, resulting in long-term positive impacts to the target species.

Both Alternatives D and E are not expected to impact the stock or population size of the surfclam or ocean quahog fisheries or increase effort or overall landings. Both fisheries have been managed under an ITQ since 1990 where annual landings are allocated to the participating vessels based on a combination of performance history and vessel size. Neither species is characterized as overfished, and overfishing is not occurring. As discussed in the Final EA, total stock biomass is relatively high and total fishing

mortality rates are low. The quota is currently set well below a threshold that would represent overfishing.

Alternative D, or the no action alternative, would not reopen any additional areas and would, therefore, have no additional impacts to SC/OQ

6.3 Impacts to Non-Target Species/Bycatch

As discussed in the Final EA, the SC/OQ fishery is considered a “clean” fishery with regards to incidental catch since the target species comprises well over 80% of the catches. Reopening the Alternative E Area will increase opportunities for SC/OQ fishing in areas where SC is of high abundance. As a result LPUE may increase, which may temporarily reduce bycatch for the entire fishery due to the fewer and shorter dredge hauls anticipated in an area of high biomass such as GB. Conversely, Alternative D could also result in a minor reduction to bycatch since hydraulic dredge gear would not be introduced to a new area resulting in additional bycatch. Overall, because the SC/OQ fishery is considered a clean fishery, it is not expected that Alternatives E or D would result in little if any additional impacts to non-target species.

6.4 Impacts to Protected Resources

While listed species may occur near SC/OQ beds, it is likely that there will be no conflict between the fishers of this FMP and these endangered or threatened species because SC/OQ dredges are very slow moving and listed species are capable of moving out of the way and avoiding the gear. The gear used in the SC/OQ fisheries is classified as Category III, which is designated as being unlikely to interact with protected resources. No mortalities or serious injuries of marine mammals have been documented due to use of the hydraulic dredge in the U.S. Mid-Atlantic offshore SC/OQ fisheries. Therefore, the implementation of either Alternatives E or D would have negligible impact upon ESA-listed species.

6.5 Impacts to Human Communities

The implementation of Alternative E is expected to have a positive impact to fishing communities. Higher LPUE is expected in the short term as a result of the higher biomass associated with this region of GB. However, the attractiveness of reopening Alternative E would likely diminish over time as LPUE declines to levels similar to other harvesting areas.

There is potential for long-term economic benefit from the implementation of Alternative E as it would result in a larger area reopened to fishing and provide fisherman with more potentially profitable fishing options. Further, with each additional area that is reopened, such as reopening the Alternative E Area, it is likely that the reopening would remove some effort on southern stocks. This could allow southern stocks to rebuild, resulting in long-term positive impacts to human communities.

Alternative D would likely have no impacts to revenue and social well-being of fishermen and/or associated businesses as there would be no change in fishing effort, areas fished, or harvest.

6.6 Cumulative Effects Analysis

Future Management Actions:

The NEFMC's Habitat Oversight Committee is currently developing EFH Omnibus Amendment 2, which may include potential HMAs that, if implemented, could spatially overlap with the Alternative E Area. However, this area is being considered as a HMA because it contains hard bottom substrates in which hydraulic dredge gear does not fish well. Atlantic surfclams typically inhabit sandy substrates, and hydraulic clam dredge gear is generally only used in such sandy substrates. Therefore, it is not likely that reopening the additional Alternative E Area will have any negative impacts on the hard substrates being analyzed as EFH. Further, if this area was to be closed in the future to mobile bottom-tending gear, which is a common restriction for habitat closures, hydraulic clam dredge gear would likely not be permitted in any future closed areas. Therefore, although this action would reopen an area that is being considered as a potential habitat closure, if it is decided that this area is to be closed in the future, the closure would likely also apply to the SC/OQ fishery. Reopening the Alternative E Area would allow the SC/OQ industry to utilize the resource available within this area while the Habitat Oversight Committee continues to deliberate any potential HMAs.

Summary of Cumulative Effects

Physical Environment/Habitat/EFH:

Reopening the Alternative E area would increase the amount of reopened areas in the GB PSP Closed Area. This would allow fishing effort to be spread over a greater area, which could reduce cumulative effects on the environment and habitats on GB, as well as on the fishery as a whole. However, clam dredges could have localized negative impacts within the Alternative E Area on benthic habitats within the GB PSP Closure Area that have not been subject to clam dredging for almost 20 years. The direct and indirect adverse impacts on the physical environment associated with Alternative E would be temporary since affected habitat features in the highly energetic environment on GB would be expected to recover fairly rapidly from the disturbance caused by dredging. Reopening the Alternative E area would expand the geographic range of the fishery, reopen previously unexploited areas on GB to clam dredging, and, as long as quotas remained the same and the density of clams on the bank exceeds densities in the over-exploited fishing grounds in the Mid-Atlantic, reduce total effort and swept area in the fishery. Therefore, the direct and indirect impacts would likely have a negligible impact on the fishery, EFH, and the physical environment. Overall cumulative impacts resulting from the indirect and direct impacts of the proposed action would likely be negligible as well. As discussed above, reopening additional areas for SCOQ fishing results in more grounds being impacted by dredge gear; however, this could also be beneficial by reducing localized impacts on the heavily fished Mid-Atlantic waters. Therefore, although there may be some direct and indirect impacts as a result of the proposed action, the cumulative

impacts are expected to be negligible. Alternative D does not reopen any additional areas and would, therefore, have no additional impacts to the environment.

Target Species:

Since there would be no change in quotas (i.e., there would be no increase in harvesting permitted) and it is not expected that long-term overall harvest levels will increase, the implementation of Alternative E would have negligible impacts to the SC/OQ species. While there could be localized effects on target species with the Alternative E Area, because this area is being reopened as an addition to a previously reopened portion of the GB PSP Closed Area, it is likely that effort will be spread over the greater entire reopened area which would reduce any potential cumulative impacts to target species within a smaller localized area. In addition, with each additional area that is reopened, such as reopening the Alternative E Area, it is likely that the reopening would remove some effort on southern stocks. This could allow southern stocks to rebuild, resulting in long term positive cumulative impacts to southern stocks of the target species. Other past and present fishing actions have had impacts ranging from negligible to positive, but overall management measures have had a cumulatively positive impact on these species as overfishing has not occurred. Future fishing actions would likely continue this trend of managing the resource in a sustainable manner, in accordance with the management objectives presented in Amendment 8. Non-fishing actions have had negligible impacts on the target species. In summary, cumulative impacts from the proposed action, fishing actions, and non-fishing actions to the target species of the GB Closure Area are low positive. Alternative D does not reopen any additional areas and would, therefore, have no additional impacts to the target species.

Non-Target Species and Bycatch:

As discussed in Section 5.3 of the Final EA, the SC/OQ fisheries are very “clean” in terms of the efficiency with which the dredges select and capture target species over non-target and bycatch species. Since there would be no increase in harvesting permitted, the implementation of Alternative E in addition to the previously reopened area would have negligible impacts to the non-target and bycatch species. Other past, present, and future fishing actions have had negligible impacts on non-target and bycatch species. Non-fishing actions have had negligible impacts on the non-target and bycatch species. In summary, cumulative impacts from the proposed action, fishing actions, and non-fishing actions to the non-target and bycatch species of the GB Closure Area are negligible. Alternative D does not reopen any additional areas and would, therefore, have no additional impacts to the non-target species and bycatch.

Protected Resources:

As discussed in Section 5.4 of the Final EA, the SC/OQ fisheries are considered to be Category III fisheries on the List of Fisheries, meaning that takes of protected resources are minimal. Since there would be no increase in harvesting permitted, overall fishing effort would remain the same, and the implementation of Alternative E would result in negligible impacts to protected resources. Other past, present, and future fishing actions have had negligible impacts on protected resources. Non-fishing actions have had negligible impacts on protected resources. In summary, cumulative impacts from the

proposed action, fishing actions, and non-fishing actions to protected resources of the GB Closure Area are negligible.

Human Communities:

As discussed in Section 5.5 of the Final EA, reopening an additional portion of the GB PSP Closed Area could result in a temporary increase in the LPUE, thereby resulting in greater revenues for fishery participants in the short term. Because the quota is not changing as a result of this action, revenues for ports are not necessarily going to increase; therefore, impacts from Alternative E are expected to be negligible for ports, and could be positive for participants. Harvesting SC/OQ from any reopened area presents a low potential risk that shellfish contaminated with saxitoxins may reach the marketplace. However, based upon the various FDA and state testing protocols with which the proposed action will be subjected, as well as the fact that the proposed action will not increase the number of SC/OQ harvested, the impact of the proposed action on public health is considered to be negligible. Other past, present, and future fishing actions have had impacts ranging from negligible to positive for participants and ports, and negligible impacts to public health. Non-fishing actions have had negligible impacts on human communities. In summary, cumulative impacts from the proposed action, fishing actions, and non-fishing actions to fishery participants would be positive, to ports impacts and public health would be negligible.

Conclusion:

In conclusion, the summary of impacts from Alternative E would be negligible on habitat, non-target species and bycatch, protected resources, and ports; and low positive to target species and fishery participants. The impacts from this action for each VEC, when combined with other past, present, and reasonably foreseeable future actions, would not be significant.

7.0 APPLICABLE LAWS

7.1 Finding Of No Significant Impacts

NOAA Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this proposed action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

1. Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not reasonably expected to jeopardize the sustainability of Atlantic surfclams or ocean quahogs as described in Section 6.0 of this EA. The

proposed action does not alter the continued successful management of surfclams and ocean quahogs or the procedure for setting the annual harvest limit.

2. Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

The proposed action is not reasonably expected to jeopardize the sustainability of any non-target species. The managed species under the groundfish complex, the scallop resource, American lobster, and other fish species captured incidentally are all managed in a manner to prevent overfishing. The proposed action does not alter the existing catch limits for any other managed species. As discussed in Section 6.3, the SC/OQ fishery is considered a clean fishery with regards to incidental catch since the target species comprises well over 80% of the catch. Based upon scientific surveys, bycatch typically consists of minimal amounts of scallops and other benthic invertebrates. The proposed action may temporarily reduce bycatch for the entire fishery due to the fewer and shorter dredge hauls anticipated in an area of high biomass such as GB; thus, sustainability of non-target species is not jeopardized by the action.

3. Can the proposed action reasonably be expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?

High energy sandy habitats in the proposed open area (Area E) are less vulnerable to the effects of hydraulic clam dredging because geological habitat features (e.g., sand waves and ripples) in sand recover more quickly from disturbance than the coarser granule-pebble (or “gravel”) substrate which makes up most of the area. Hydraulic clam dredges are capable of operating in the more vulnerable coarser gravel substrates, but not as effectively as they do in sand. In addition, surfclams are typically only found in sandy substrates. There are very few ocean quahogs in this area of Georges Bank. Thus, clam dredge vessels operating in Area E would likely avoid the coarser bottom areas in favor of the sandy areas. These sandy areas are highly-disturbed by tidal currents and storms which would greatly reduce the adverse habitat impacts associated with clam dredging and could even exceed the effects of dredging to the point where they would be negligible. The most significant impact of clam dredging is likely to be on the infaunal invertebrate community which provides food for bottom-feeding fish. However, given the fact that studies show that sandy sediments in dredge tracks are re-colonized with a few days to months after the passage of the dredge, this impact would be temporary.

Therefore, it is not expected that the proposed action would allow substantial damage to the ocean and coastal habitats and/or EFH. Sections 5.0 and 6.0 of the Final EA discuss hydraulic clam dredge gear at length and contain a thorough analysis of the impacts to the physical environment, habitat, and EFH.

4. Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

It is not reasonably expected that the proposed action will have a substantial adverse impact on public health or safety. The FDA, the industry, and NMFS developed the Protocol for Onboard Screening and Dockside Testing of Molluscan Shellfish to test and verify that clams harvested from the GB Closed Area are safe. The protocol has been used and developed over the past several years and was formally adopted in 2011. The action includes the requirement that all harvesting in the area be conducted under the terms and conditions of the testing protocol. Further, the proposed action includes additional permitting and reporting requirements that will help to ensure that harvesting is being conducted under the terms and conditions of the protocol to prevent any substantial adverse impact on public health and safety. Based on comments received on this action, the industry is in full support of these additional requirements; therefore, NMFS is expecting that the industry compliance with these additional requirements will be high.

5. Can the proposed action be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

The proposed action is not expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat for these species. The interaction between protected species and the gear used in these fisheries is minimal.

6. Can the proposed action reasonably be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

This proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area. The affected area has been impacted by fisheries for many decades, yet continues to be a productive environment for target and non-target species.

7. Are significant social or economic impacts interrelated with natural or physical environmental effects?

No, this proposed action does not pose any significant social or economic impacts interrelated with significant natural or physical environmental effects. The proposed action reopens an additional portion of the GB Closed Area to SC/OQ harvesting. Since this was not anticipated to have significant social or economic impacts interrelated with significant natural or physical environmental effects, none are expected to result from the proposed action.

8. Are the effects on the quality of human environment likely to be highly controversial?

No, the effects on the quality of the human environment are not likely to be highly controversial. This action is being taken in response to a request from the industry, the NEFMC, and the MAFMC. On June 30, 2010, NMFS published a similar proposal in the Federal Register (75 FR 37745). This proposed rule was later withdrawn due to comments in opposition of reopening the GB Closed Area without a testing protocol in

place. Now that the protocol has been formally adopted, the primary controversial element of the previous proposed rule has been addressed. Some health concerns may remain because red tide blooms can vary inter-annually; however, there have been no recent PSP toxin levels recorded above regulatory limits, and PSP toxin monitoring will be conducted under the terms of the protocol for all trips into the area. Further, NMFS has the authority to close any area to harvesting of surfclams and ocean quahogs to prevent contaminated shellfish from entering the market. Therefore, it is not expected that the proposed action will have effects on the quality of human environment that would be highly controversial.

9. Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

The proposed action would reopen an additional portion of the GB Closed Area to SC/OQ harvesting. Other types of commercial fishing already occur in this area and although it is possible that historic or cultural resources such as shipwrecks could be present, vessels try to avoid fishing too close to wrecks due to the possible loss or entanglement of fishing gear. Therefore, it is not likely that the proposed action would result in substantial impacts to unique areas.

10. Are the effects on human communities likely to be highly uncertain or involve unique or unknown risks?

This proposed action is not expected to alter fishing methods or activities in this fishery. Therefore, measures contained in this action are not expected to have highly uncertain, unique, or unknown risks on the human environment.

11. Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

No, the proposed action is not related to other actions with individually insignificant but cumulatively significant impacts. Section 6.6 describes fishing and non-fishing past, present and reasonably foreseeable future actions that occurred or are expected to occur in the affected area, and no significant impacts are expected as a result of the action.

12. Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Although there are shipwrecks present in areas where fishing occurs, including some registered on the National Register of Historic Places, vessels try to avoid fishing too close to wrecks due to the possible loss or entanglement of fishing gear. Therefore, it is not likely that the action would adversely affect the historic resources.

13. *Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?*

This proposed action would not result in the introduction or spread of any nonindigenous species. There is no evidence or indication that these fisheries have ever resulted in the introduction or spread of nonindigenous species. The proposed action is not expected to alter fishing methods or activities. Therefore, it is highly unlikely that the action would be expected to result in the introduction or spread of non-indigenous species.

14. *Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?*

No, the proposed action is not likely to establish precedent for future actions with significant effects. Opening and closing areas for fishing activity occur regularly in fisheries management. This proposed action is not significantly different than past fishery spatial openings or closings and would not, therefore, set a precedent for future actions that would have significant effects or represent a decision in principle about a future consideration.

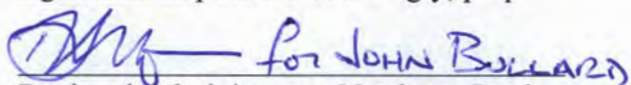
15. *Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?*

The proposed action would not threaten a violation of Federal, state, or local law or requirements to protect the environment. The action complies with all applicable laws as discussed in section 7.0 of this analysis.

16. *Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

As specified in the responses to the first two criteria of this section, the action is not expected to result in cumulative adverse effects that would have a substantial effect on target or non-target species as discussed in section 6.6 of this document.

DETERMINATION: In view of the information presented in this document and the analysis contained in the supporting EA prepared for this action, it is hereby determined that the proposed action to reopen an additional portion of the GB Closed Area to the harvesting of SC/OQ would not significantly impact the quality of the human environment as described above and in the supporting EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.


Regional Administrator, Northeast Region

7/22/13
Date

7.2 Magnuson-Stevens Fishery Conservation Management Act

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the proposed action is consistent with the Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

7.3 Essential Fish Habitat Assessment

Description of Action:

The proposed action would reopen an area of 958 square miles within the GB PSP Closure Area to the harvesting of surfclams and ocean quahogs, subject to a request from the industry, the NEFMC, and the MAFMC. Any or all portions of this area would be subject to seasonal or annual PSP reopenings or closings based on action taken by NMFS or a recommendation from the FDA.

Potential Adverse Effects of the Action on EFH:

High energy sandy habitats in the proposed open area (Area E) are less vulnerable to the effects of hydraulic clam dredging because geological habitat features (e.g., sand waves and ripples) in sand recover more quickly from disturbance than the coarser granule-pebble (or “gravel”) substrate which makes up most of the area. Hydraulic clam dredges are capable of operating in the more vulnerable coarser gravel substrates, but not as effectively as they do in sand. In addition, surfclams are typically only found in sandy substrates. There are very few ocean quahogs in this area of Georges Bank. Thus, clam dredge vessels operating in Area E would likely avoid the coarser bottom areas in favor of the sandy areas. These sandy areas are highly-disturbed by tidal currents and storms which would greatly reduce the adverse habitat impacts associated with clam dredging and could even exceed the effects of dredging to the point where they would be negligible. The most significant impact of clam dredging is likely to be on the infaunal invertebrate community which provides food for bottom-feeding fish. However, given the fact that studies show that sandy sediments in dredge tracks are re-colonized with a few days to months after the passage of the dredge, this impact would be temporary. Overall, the proposed action is only expected to cause minimal and temporary adverse impacts on benthic habitats and EFH in Area E.

Proposed Measures to Avoid, Minimize, or Mitigate Adverse Impacts of This Action:

No such measures are required because the adverse impacts of this action are no more than minimal and are temporary in nature.

Conclusions:

The proposed action would adversely impact EFH within the 958 square miles that would be reopened to surfclam and ocean quahog harvesting. However, because most of the area is subject to a high degree of natural disturbance and because any affected benthic habitat features in shallower water (less than 60 meters) are expected to recover within a few days or months, the impacts would be minimal and/or temporary and not require any mitigation.

7.4 Endangered Species Act

Section 7 of the ESA requires agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. The impact of the proposed action on protected species is considered in Sections 5.4 of the Final EA and 6.4 of this SEA. This action is not expected to have a direct or indirect impact on protected resources, including endangered or threatened species or their habitat.

7.5 Marine Mammal Protection Act

The impact of the proposed action on protected species is considered in Sections 5.4 of the Final EA and 6.4 of the SEA. This action is not expected to have any direct or indirect impacts on marine mammals, is consistent with the provisions of the MMPA, and would not alter existing measures to protect the marine mammal-listed species that are likely to inhabit the management units of the subject fisheries.

7.6 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) of 1972, as amended, provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. It is recognized that responsible management of both coastal zones and fish stocks must involve mutually supportive goals.

NMFS must determine whether the FMP or regulatory action will affect a state's coastal zone. If it will, the FMP must be evaluated relative to the state's approved CZMA program to determine whether it is consistent to the maximum extent practicable. The states have 60 days in which to agree or disagree with NMFS evaluation. If a state fails to respond within 60 days, the state's agreement may be presumed. If a state disagrees, the issue may be resolved through negotiation or, if that fails, by the Secretary.

NMFS has determined that this action is consistent to the maximum extent practicable with the enforceable provisions of the approved coastal management programs as understood by NMFS. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Letters were sent to each of the following states within the management unit reviewing the consistency of the NMFS-proposed action relative to each state's Coastal Zone Management Program: Maine; New Hampshire; Massachusetts; Rhode Island; Connecticut; New York; New Jersey; Pennsylvania; Delaware; Maryland; Virginia; and North Carolina. To request a copy of the letter or a list of the CZM contacts for each state, contact Jason Berthiaume at NOAA National Marine Fisheries Service, Northeast Region, Sustainable Fisheries Division, 55 Great Republic Drive, Gloucester, MA 01930, Telephone: (978) 281-9177, Fax: (978) 281-9135.

7.7 Administrative Procedure Act (APA)

Section 553 of the Administrative Procedure Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate opportunity for comment. NMFS plans to waive the requirements under APA to allow the SC/OQ industry to access the area as soon as practicable. Since the industry is already fishing under the terms and conditions of the protocol and is anticipating this reopening, there is no benefit to delaying implementation.

7.8 Section 515 (Information Quality Act)

Pursuant to NOAA guidelines implementing section 515 of Public Law 106-554 (the Information Quality Act), all information products released to the public must first undergo a Pre-Dissemination Review to ensure and maximize the quality, objectivity, utility, and integrity of the information (including statistical information) disseminated by or for Federal agencies. The following sections address these requirements.

Utility of Information Product

The information presented in this document is helpful to the intended users (the affected public) by presenting a clear description of the purpose and need of the action, the measures and the impacts of those measures. A discussion of the reasons for selecting the action is included so that intended users may have a full understanding of the action and its implications.

The proposed rule informs the public that NMFS proposes a change in the regulations that would reopen a portion of the GB Closed Area to the harvest of SC/OQ for human consumption under the terms of the testing protocol. This proposed action was developed in response to a request from the industry, the NEFMC, and the MAFMC.

Until a proposed rule is published, this document is the principle means by which the information pertaining to this action will be made available to the public. The information provided in the proposed rule is based on the most recent information available from relevant data sources. The information contained in this document and includes detailed and relatively recent information on the surfclam and ocean quahog resource and, therefore, represents an improvement over previously available information. The information product will be subject to public comment through proposed rulemaking, as required under the Administrative Procedure Act and, therefore, may be improved based on comments received.

The proposed rule prepared for this action is available in several formats, including printed publication, and online through the Northeast Regional Office web page (www.nero.noaa.gov). The Federal Register notice announces that the proposed rule will be made available in printed publication, on the website for the Northeast Regional Office (www.nero.noaa.gov), and through the Regulations.gov website.

Integrity of Information Product

Prior to dissemination, information associated with this action, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information.

The information product meets the standards for integrity under the following types of documents:

Other/Discussion (e.g., Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

Objectivity of Information Product

The category of information product that applies for this product is “Natural Resource Plans.”

The proposed rule, adheres to the published standards of the Magnuson-Stevens Act; the Operational Guidelines, Fishery Management Plan Process; the Essential Fish Habitat Guidelines; the National Standards Guidelines; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act.

This information product uses information of known quality from sources acceptable to the relevant scientific and technical communities. Several sources of data were used in the development of the regulatory amendment. The data sources included, but are not limited to, surfclam and ocean quahog logbook reports and commercial dealer databases, and Northeast Fisheries Science Center (NEFSC) and Council prepared documents. In addition to these sources, additional information is presented that has been accepted and published in peer-reviewed journals or scientific organizations.

The management measures proposed for this action were selected based upon the best scientific information available. The analysis conducted used information from the most recent fishing years through 2011. Specialists who worked with the data are familiar with the available data and information relevant to the SC/OQ fishery.

The policy choices are clearly articulated in the proposed rule and all supporting materials, information, data, and analyses within this document have been, to the maximum extent practicable, properly referenced according to commonly accepted standards for scientific literature to ensure transparency.

The review process used in preparation of this document involves the NEFSC, the Northeast Regional Office, and NMFS Headquarters. The Center’s technical review is conducted by senior level scientist with specialties in population dynamics, stock

assessment methods, demersal resources, population biology, and the social sciences. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of any proposed regulatory action, including any implementing regulations, is conducted by staff at NMFS Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

7.9 Paperwork Reduction Act (PRA)

The purpose of the PRA is to control and, to the extent possible, minimize the paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by or for the Federal Government. The authority to manage information and recordkeeping requirements is vested with the Director of the Office of Management and Budget. This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications. This regulatory amendment contained collections previously approved under PRA family of forms 0202 and 0240. The approved collection of information requirements contained the following:

- Submission of application for a letter of authorization
- Completion and submission of materials as required under the terms of the protocol

7.10 Impacts of the Plan Relative to Federalism/Executive Order (E.O.) 13132

This specifications document does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

7.11 E.O. 13158 (Marine Protected Areas)

The Executive Order on Marine Protected Areas (MPA) requires each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA to identify such actions, and, to the extent permitted by law and to the maximum extent practicable, in taking such actions, avoid harm to the natural and cultural resources that are protected by and MPA. The E.O. directs Federal agencies to refer to the MPAs identified in a list of MPAs that meet the definition of MPA for the purpose of the Order. The E.O. requires that the Department of Commerce and the Interior jointly publish and maintain such a list of MPAs. As of the date of submission of this document, the list of MPA sites has not been developed by the departments. No further guidance related to this E.O. is available at this time.

7.12 Environmental Justice/E.O. 12898

This E.O. provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” E.O. 12898 directs each Federal agency to analyze the environmental effects, including human health, economic, and social effects of Federal actions on minority populations, low-income populations, and Indian tribes, when such analysis is required by NEPA. Agencies are further directed to “identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices.”

Due to data constraints, the means for conducting this analysis in detail are not available at this time. It is unknown if any of the participants in the SC/OQ fishery come from lower income and/or ethnic minority populations. Nonetheless, because the management of the SC/OQ fishery is managed under an ITQ and this action would not increase the quota, the proposed action is not expected to affect the participants in a negative social or economic manner. This action would increase the fishing grounds available to the fleet, resulting in a positive impact on fishing communities. This action could cause fishing efforts to shift north, but is not expected to have a significant impact to the fleet or processors (Section 6.5).

7.13 E.O. 12866

Background

In compliance with Executive Order (E.O.) 12866, NMFS requires the preparation of a Regulatory Impact Review (RIR) for all regulatory actions or for significant policy changes that are of public interest. E.O. 12866 was signed on September 30, 1993, and established guidelines for Federal agencies promulgating new regulations and reviewing existing regulations.

An RIR is a required component of the process of preparing and reviewing FMPs or amendments and provides a comprehensive review of the economic impacts associated with the proposed regulatory action. An RIR addresses many of the concerns posed by the regulatory philosophy and principles of E.O. 12866. An RIR also serves as the basis for assessing whether or not any proposed regulation is a “significant regulatory action” under criteria specified in E.O. 12866. According to the “Guidelines for Economic Analyses of Fishery Management Actions,” published by NMFS in August 2000, an RIR must include the following elements: (1) A description of the management objectives of the regulatory action; (2) a description of the fishery affected by the regulatory action; (3) a statement of the problem the regulatory action is intended to address; (4) a description of each selected alternative, including the “no action” alternative; and (5) an economic analysis of the expected effects of each selected alternative relative to the baseline.

The MAFMC has managed the SC/OQ fishery since the implementation of the first FMP on November 25, 1977. The FMP established quotas; effort limitations; permit and logbook provision; and placed a moratorium on the surfclam fishery. The SC/OQ has been amended several times since the original FMP. Amendment 8, approved by NMFS on March 23, 1990, was one of the most significant amendments because it replaced the allowable fishing time system with ITQs. The objective to implementing ITQs were to

improve conservation and management of the SC/OQ resources, provide the opportunity for the industry to operate efficiently and consistent with the conservation efforts, and build a management system that would meet the objectives and long-term goals of the plan. The fishery continues to operate under the ITQ system and Section 5.5 of the Final EA presents a detailed description of the past and current participation in the SC/OQ fishery.

Statement of the Problem and Management Objectives of the Regulatory Action

This action is needed to reopen an additional portion of the GB PSP Closed Area based on request from the NEFMC, the MAFMC, and members of the SC/OQ industry. The additional area being reopened was included in the preferred alternative in the DEA, but based on comments received from the NEFMC, this portion of the area was rejected in the EA. Now that the NEFMC has had more time to consider the reopening, they have withdrawn their previous comment and instead requested that NMFS reopen additional portions of the GB PSP Closed Area. Based on this request, this action is needed to reopen the additional 958 square mile Northeast portion of the GB PSP Closed Area that was previously considered, but was withdrawn.

The purpose of this action is to reopen an additional portion of the GB PSP Closed Area for the harvest of SC/OQ at the request of the NEFMC, MAFMC, and members of the SC/OQ industry. NMFS published a similar rule in the Federal Register (December 19, 2012; 77 FR 75057) that reopened a portion of the GB PSP Closed Area. Based on comments received on that action, NMFS is now reopening an additional 958 square mile portion of the GB PSP Closed Area.

Description of the Affected Fishery

A complete description of the ports and communities affected by this action is found under Section 6.5 of the Final EA.

Description of the Alternatives

Alternative D – Status Quo/No Action

As mentioned in Section 4.0 of the SEA, the GB PSP Closed Area, including the Alternative E area, has been closed since May 25, 1990, to the harvest of SC/OQ. Thus, the no action alternative would be to leave the Alternative E area portion of the GB PSP Closed Area closed to the harvesting of SC/OQ. This area encompasses an area approximately equal to 958 square miles (2,481 square km), in the Northeast corner of the GB PSP Closed Area.

Alternative E – Reopen Additional Northeast Portion of the GB PSP Closed Area

This alternative would reopen an additional portion of an area defined under previously issued EFPs, and fished pursuant to the protocol. The preferred alternative in the DEA included this area, but was withdrawn due to public comment on the proposed rule. However, additional comments were received on the interim final rule and NMFS is now reopening the additional Northeast portion that was previously rejected. The additional area encompasses approximately 958 square miles (2,481 square km), and the east side is adjacent to the groundfish Closed Area II.

This alternative would limit harvesting of SC/OQ to areas determined to be safe for human health consumption by the FDA. Any or all portions of the Alternative E, and other areas, may be reopened or closed based upon PSP monitoring levels and requested by the FDA and approved by NMFS. The size and area definition of any reopenings or closures would be based on results of the PSP testing protocol or other testing and environmental conditions. Should samples of surfclams test positive for toxins that cause paralytic shellfish poisoning it is likely that the area where the positive results were found would be closed. Harvesting SC/OQ for research purposes has been occurring within the GB Closed Area using the testing protocol since 2008, and to date, no positive results have been recorded that would have led to a reclosure.

Expected Economic Effects of the Alternatives

Alternatives E would not have an adverse impact on the economy. These alternatives would provide a larger area reopened to the harvest of SC/OQ. In addition, SC/OQs are managed under an ITQ, and this action does not change the quota. Furthermore, the amount of SC/OQ harvested is largely driven by market demand.

The entire allocated quota available for surfclams has not been harvested since 2001 and the available quota available for ocean quahogs came close to being fully harvested in 1997 (99 percent). In fishing year 2011, the quota harvested for SC/OQ was the lowest to date, 71 percent and 52 percent, respectively. This is another indicator that the harvest of SC/OQ is market limited. Overall, Alternative E would provide a positive economic impacts due to increased area and target species biomass available to harvest SC/OQ. Additionally, reopening part of this area may decrease fishing pressure on the southern SC/OQ stocks that are experiencing localized depletions.

Status quo regulations produce no habitat degradation in the closed areas and some amount of habitat degradation in the rest of the ecosystem. If these levels of habitat degradations could be quantified in dollars, then summing these figures for the entire ecosystem (closed and open areas) represents the status-quo habitat degradation costs.

Under alternatives E, harvesting effort will shift into newly opened areas. Therefore, there is a shift in damages into these newly opened areas from the rest ecosystem. If these habitat degradations could be quantified into dollars, then summing these figures for the entire ecosystem represent the habitat degradation costs for Alternative E. At this time, it is not possible to quantify these effects into dollars. The SASI model does not allow for computation of damages to the habitat in terms of dollar values. However, it can give insight into the persistence of these damages (recovery times). However, it is still possible to make some qualitative statements about these effects.

If the damages-per-unit-effort in area E is particularly high relative to damages-per-unit-effort in areas which are currently open to the SC/OQ fishery, then it is possible for the opening of these areas may have net negative habitat effects, even if the total amount of effort declines substantially.

If the damages-per-unit-effort to the pristine habitat are similar to, or low relative to damages-per-unit-effort in areas which are currently open to the SC/OQ fishery, then opening these areas are likely to have positive habitat effects, which are potentially large. Alternative D is the status quo and does not reopen any additional areas. Therefore, this alternative would have no economic effects. It could potentially have some negative effects because areas would not be open, but the amount is likely to be insignificant.

7.14 Determination of Significance Under E.O. 12866

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be significant. A “significant regulatory action” is one that is likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, safety, or state, local, or tribal Governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

A regulatory program is “economically significant” if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be “economically significant.”

NMFS has determined that, based on the information presented above, this action is expected to have an annual effect on the economy of \$100 million. Because none of the factors defining “significant regulatory action” are triggered by this action, the action has been determined to be not significant for the purposes of E.O. 12866.

7.15 Regulatory Flexibility Act (RFA)

The purpose of the RFA is to reduce the impacts of burdensome regulations and recordkeeping requirements on small businesses. To achieve this goal, the RFA requires Federal agencies to describe and analyze the effects of proposed regulations, and possible alternatives, on small business entities. For the purpose of this action, NMFS has determined that this action would not have a significant economic impact on a substantial number of small entities and therefore an initial regulatory flexibility analysis is not required and none has been prepared. NMFS has submitted a request for certification under section 605(b) of the RFA. Factual basis for the certification is described below.

Objective and legal basis for the action

The purpose and need for this action is described in Section 3.0 of the SEA. The regulations implementing the GB Closure Area (50 CFR 648.76(a)(4)) to the harvest of SC/OQ were implemented in response to the presence of PSP toxin levels and its associated health risks. NMFS is implementing this action in response to a request from the NEFMC, the MAFMC, and industry members. Under 50 CFR 648.76(c)(1) the RA

has the authority to reopen or close an area due to PSP. When reopening an area this also included the authority to impose additional harvesting restrictions. Since red tide events can vary inter-annually, NMFS will require the use of the now approved testing protocol for all trips into the area.

Description and estimate of the number of small entities to which the rule applies

The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing activity, as a firm with receipts (gross revenues) of up to \$4.0 million. The SC/OQ fishery is managed under an ITQ, where annual landings are allocated to the industry based on catch history and vessel size. The proposed measure would affect any vessel which actively fishes and holds a current federal surfclam/ocean quahog permit. In 2011 there were 683 SC permits and 717 OQ permits, however, the majority of SC/OQ permit holders hold permits in both fisheries, so it is likely that the number of unique individual entities holding either a SC or OQ permits is likely much lower than the sum of all SC plus OQ permits. Of these permit holders 46 non-Maine vessels landed surfclams and/or ocean quahogs in 2011. All of these vessels fall within the definition of a small business. This analysis is based on an individual vessel being treated as the relevant entity; however, the SC/OQ fishery is, in part, vertically integrated. Many vessels are controlled by single business entities which can include numerous permit holders, dealers, and/or processors being owned by one single business entity. Currently, it is not possible to determine the exact level of consolidation and it may be possible that the sum of gross receipts from vessels operated by a single owner or corporation could exceed \$4.0 million, in which case that entity would be characterized as large. It is also possible that the relevant small business size standard is not the \$4.0 million gross receipts standard for fishing vessels, but the 500 employee employment standard of the integrated processor and vessel.

Economic impacts to affected small businesses

The proposed action is not expected to have an adverse impact on small business. The action only proposes to re-open an area of water that has previously been closed. Since the area is farther offshore, it is likely that offshore capable vessels (>90 feet) would target the SC/OQ from the GB area. The SC/OQ fishery, however, is managed under an ITQ system, and since the quotas are not being changed as a result of this action, there would be no net change in fishing effort and participating vessels would still be able to fish in any of the existing areas open to the harvest of SC/OQ. Those vessels that would fish in the area proposed to be reopened would experience increased operational costs. These costs, however, may be offset due to increased productivity in effort because of greater abundance of SC/OQ in the GB Closed Area. In addition, given their high value, it is likely that surfclams would be targeted over ocean quahogs. Vessels that target ocean quahogs are generally offshore capable vessels (>90 feet) because ocean quahogs are farther offshore and thus these vessels are likely to fish in the GB Area and are likely to target surfclams to offset the increase in operational costs (e.g., fuel and labor). Due to the seasonal variability of PSP toxin levels, it is likely that any or all of the areas associated with this action may reopen or close based on PSP conditions. Given this uncertainty for the area to remain reopen, it is not anticipated that there would be an increase in participation in the fishery.

The Economic impacts associated with this action are discussed in more detail in section 6.5 of the Final EA and this SEA.

Analysis of Significant Economic Impact

Profitability

The analysis presented in Section 6.5 of the SEA indicates that the proposed regulation would increase profitability of vessels in the fishing fleet. The proposed action would provide a larger area available to harvest SC/OQ. The biomass on the GB Closed Area represents 48 percent of the total biomass for surfclams and 45 percent of the total biomass for ocean quahogs, and reopening a small portion of the GB Closed Area would provide some of this abundance to the SC/OQ fleet.

Disproportionality

There are no large businesses involved in the SC/OQ fishery. All vessels are considered to be small entities under the SBA approved size definition of “small entity”. Since the area is farther offshore, it is likely that the offshore capable vessels would target the SC/OQ from the GB area. The SC/OQ fishery, however, is managed under an ITQ system and since the quotas are not being changed as a result of this action, there would be no net change in fishing effort, and participating vessels would still be able to fish in any of the existing areas open to the harvest of SC/OQ. As well, the SC/OQ is largely market limited, as the total quota available for SC/OQ, in most years, are not fully harvested.

Substantial number criterion

All vessels that actively fish in the SC/OQ fishery will be affected by this rule. The offshore capable vessels of the total vessels engaged in the fishery will primarily be affected.

8.0 LIST OF PREPARERS AND PERSONS/AGENCIES CONSULTED

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9.0 REFERENCES

- Harris, B.P. and K.D.E. Stokesbury. 2010. The spatial structure of local surficial sediments on Georges Bank, USA. *Cont. Shelf Res.* 30:1840-1853.
- Harris, B.P., G.W. Cowles, and K.D.E. Stokesbury. 2012. Surficial sediment stability on Georges Bank, in the Great South Channel, and on eastern Nantucket Shoals. *Cont. Shelf Res.* 49:65-72.
- NOAA's NMFS. August 2012. Re-Opening A Portion of the Georges Bank Closed Area to Surfclam and Ocean Quahog Harvesting: Draft Environmental Assessment and Regulatory Impact Review.
- NOAA's NMFS. December 2012. Re-Opening A Portion of the Georges Bank Closed Area to Surfclam and Ocean Quahog Harvesting: Final Environmental Assessment and Regulatory Impact Review.
- New England Fishery Management Council (NEFMC). 2011. The Swept Area Seabed Impact Model (SASI): a tool for analyzing the effects of fishing on essential fish habitat. New England Fishery Management Council, draft dated February 9, 2011.
- Stevenson, D., L. Chiarella, D. Stephan, R. Reid, K. Wilhelm, J. McCarthy, and M. Pentony. 2004. Characterization of the fishing practices and marine benthic ecosystems of the northeast U.S. shelf, and an evaluation of the potential effects of fishing on essential fish habitat. NOAA Tech. Memo. NMFS-NE-181. 179 p.
- Wallace, D.H. and T.B. Hoff. 2005. Hydraulic clam dredge effects on benthic habitat off the northeastern United States. Pp. 691-693 *in*: P.W. Barnes and J.P. Thomas (eds.), *Benthic habitats and the effects of fishing*. Amer. Fish. Soc. Symp. 41