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Betsy Nicolson, NE RPB Federal Co-Lead
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Northeast Regional Office
55 Great Republic Drive
Gloucester, MA 01930-2276

Re: Comments on the Draft Northeast Regional Ocean Plan

Dear Ms. Nicholson and RPB Members,

As a Rhode Island-based commercial fishing business, we have concerns with how the Draft Plan has the potential to affect our access to the species we harvest in accordance with federal law and regulations. As such, we would like to see specific language stating that federal fisheries will be managed by the Magnuson Stevens Act only, and that RPB products such as the Plan, or subsequent actions such as the identification of Ecologically Important Areas (EIAs), cannot and will not direct the focus or actions of the Fishery Management Councils nor the NMFS reviews of Council actions. Providing information on fisheries management to other agencies is one thing, directing fisheries management is another. We request that this be explicitly addressed.

Our concerns lie in some of the language of the Plan itself and other supporting RPB documents. Page 31 of the document states that, "This chapter...describes how federal agencies on the Regional Planning Body (RPB) will incorporate data and information developed as part of the Northeast Ocean Plan into performing and accomplishing the crucial tasks involved in managing individual ocean resources and activities within the existing regulatory and management framework." And again, page 32 identifies that "this Plan will guide and inform agency regulatory and management decisions" with each section of the Plan including "Regulatory and management actions identified by the RPB." Although the RPB has repeated time and again that it does not create any new regulations, the Draft Plan clearly states that it will direct new regulations created by signatory agencies. The Draft Plan also acknowledges that the New England Fishery Management Council responsibilities and authority significantly intersects with federal signatory agencies (page 33), and jointly identifies NOAA and the NEFMC as being responsible for marine fisheries management, Essential Fish Habitat, and Habitats of Particular Concern (page 36).

Under current management, EFH, HAPCs, and fisheries-specific management measures, including protective habitat measures, are developed by NOAA and the NEFMC. The Draft Plan's Marine Life and Habitat section states that the RPB's marine life and habitat products (which purportedly characterize abundance, diversity, richness, core abundance/biomass areas) "provide the opportunity to determine whether a potential action or conservation measure could affect concentrations of species or habitats that are regulated under existing law" (page 43; italics added). We do not believe that any conservation measures with regards to fisheries should be determined by the RPB in any way. The New England Fishery Management Council recently completed an 11 year effort in development of its Omnibus /Habitat Amendment, which was developed with extensive scientific analysis and stakeholder

input. In contrast to the RPB process, the Council process is a more thorough and transparent and process in which measures are developed in consultation with Advisory Panels comprised of stakeholders, appropriate Committees, as well as the Council itself. The Council process provides far more opportunity for public comment and engagement than the RPB process, as well as for direct involvement of fishing industry subject matter experts, who have been denied membership on the RPB. Such expertise is crucial to initiation and development of effective fishery management measures, and “conservation” measures if determined by the RPB would bypass this important Council element.

This includes any determinations relative to ecosystem based management. The Draft Plan references “advancing an ecosystem approach to management”, and categorizes birds as “fish eaters”, “squid eaters”, and “crustacean eaters”, and fish as “forage fish”(page 45). Current fisheries management already accounts for these interactions through “natural mortality” in stock assessments of individual species and in various management actions. The NEFMC additionally has an Ecosystem Based Fisheries Management Committee working on ecosystem issues. Adding a layer of RPB involvement in this process would be inappropriate, increase management complexity, and remove the process further from fishery stakeholders. The Council process as established by the Magnuson Stevens Fishery Conservation and Management Act is therefore the appropriate mechanism both to initiate and determine fishery management or conservation actions, not the RPB.

We strongly oppose the Draft Plan’s use of Ecologically Important Areas with regards to fisheries management and request that the Plan specify that areas identified as EIAs shall not be used for fisheries closures or restrictions. Currently, the Plan states that the RPB has considered “how identification of areas of ecological importance could be applied in agency decision making (agencies *must* use all Plan-related maps and information within the existing regulatory context)” (page 52, italics added). However, no other ocean users besides the fishing industry rely directly on harvesting of wild marine species, particularly in “areas of high productivity”, “areas of high biodiversity” and “areas of high species abundance”, which are all elements of EIAs (page 53).

This is particularly problematic, as fishing effort itself is an indicator of productivity, diversity, and species abundance. Additionally, the RPB’s EBM Work Group has utilized work from Oceana in its definition and consideration of EIAs. Oceana’s Discussion Paper “Important Ecological Areas in the Ocean: A Comprehensive Ecosystem Protection Approach to the Spatial Management of Marine Resources” not only defines EIAs almost identically as the RPB, and “requires consideration of data from....fisheries catch, fisheries observers” (page 10), but also seeks official recognition of EIAs by relevant management bodies (such as the RPB agencies/NEFMC) in order to “Secure a Network of Protective Management Measures as Appropriate” (page 9). It explicitly states that the “primary purpose of EIA identification is to guide the development of protective management measures”, in particular, “time/area closures, marine reserves or other forms of marine protected areas (page 11), and singles out “trawling” and “fishing disturbance” as the only defined activity allegedly damaging to the seafloor (page 11). The paper identifies aggregations of “forage species”, “squid” and “herring” and “trawl hangs”, suggesting potential management considerations of “harvest of species” and “bottom contact activities” (i.e., trawling)(page 19). Therefore, an entire set of information that is being utilized by the RPB is directly aimed at fisheries restrictions and closures. This should be the purview of Fisheries Management Councils only, in consultation with fisheries stakeholders, and not the RPB or groups such as Oceana.

Page 11 of the Draft Plan states “beyond regulations, there are numerous nonregulatory government initiatives aimed at conserving, restoring, understanding and maintaining healthy ocean ecosystems” and that “all of these entities, laws and nonregulatory efforts do not operate in isolation from one another”, making collaboration that “not only satisfies legal requirements, but, importantly accounts for the needs and interests of stakeholders” necessary. We do not agree that undefined activities or entities should be included in the Draft Plan, when signatory agencies will be required to

implement RPB and Plan initiatives at later dates. It creates a, unacceptable level of uncertainty as to future regulatory possibilities, particularly for businesses such as ours.

Thank you for the opportunity to comment.

Sincerely,

Meghan Lapp

Fisheries Liaison, Seafreeze Ltd.