



# Northeast Regional Planning Body

## Summaries



# Public Meeting Summary



# Northeast Regional Ocean Planning: Public Meetings October 2014

Prepared by the:



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## TABLE OF CONTENTS

<b>I. INTRODUCTION</b>	<b>1</b>
PUBLIC MEETING PROCESS AND OVERVIEW	1
PUBLIC MEETING STRUCTURE	2
<b>II. OCEAN PLANNING CONTEXT &amp; WORK TO DATE</b>	<b>3</b>
<b>III. FEEDBACK ON KEY ISSUE #1: OPTIONS FOR EFFECTIVE DECISION-MAKING</b>	<b>5</b>
COMMENTS ON OPTIONS FOR INCORPORATING PLAN DATA AND INFORMATION INTO EXISTING PERMITTING AND LEASING DECISIONS	6
COMMENTS ON OPTIONS FOR ENHANCING AGENCY COORDINATION AND PREDICTABILITY OF REGULATORY PROCESSES	7
<b>IV. FEEDBACK ON KEY ISSUE #2: OPTIONS FOR IDENTIFYING IMPORTANT ECOLOGICAL AREAS</b>	<b>9</b>
COMMENTS ON OPTIONS FOR IDENTIFYING IMPORTANT ECOLOGICAL AREAS	10
COMMENTS ON OPTIONS TO CONDUCT OTHER TYPES OF ASSESSMENTS	13
<b>V. SUMMARY OF NEXT STEPS</b>	<b>14</b>
<b>APPENDICES</b>	<b>15</b>
APPENDIX A: SAMPLE MEETING AGENDA	15
APPENDIX B: SAMPLE PRESENTATION SLIDES	16
APPENDIX C: OPTIONS FOR THE NORTHEAST REGIONAL OCEAN PLAN, SEPTEMBER 29, 2014	22
APPENDIX D: INFOGRAPHIC ON OPTIONS FOR IDENTIFYING ECOLOGICALLY-IMPORTANT AREAS	28

## I. Introduction

The Northeast Regional Planning Body (RPB) is one of nine regional planning bodies created by the National Ocean Policy, an executive order signed by President Obama in 2010. Pursuant to the executive order, the RPB is in the process of creating an ocean plan for the Northeast region of the United States. The Northeast RPB includes representatives from each coastal New England state, ten federally recognized Tribes, ten federal agencies, and the New England Fishery Management Council.<sup>1</sup> Since it first convened in 2012, the RPB has made significant progress in identifying overall goals, a work plan, and a timeline for the Northeast ocean plan.<sup>2</sup> In October 2014, the RPB hosted a series of five public meetings across New England to solicit feedback from the public on options it is considering to pursue its ocean planning goals. This report provides a summary of the five meetings.

### Public Meeting Process and Overview

The primary goals of the October public meetings were to: 1) create informal dialogue between RPB members and the public; 2) collect public feedback on draft documents describing options for two of the Northeast ocean plan goals specifically related to effective decision-making and identification of ecologically important areas, in advance of an RPB meeting scheduled for November 13-14, 2014; and 3) describe the RPB's activities over the last nine months and preview next steps. This summary will be delivered to RPB members and will be available publicly in advance of the November 13-14 RPB meeting.

The meetings took place in Portsmouth, New Hampshire on October 6; Belfast, Maine on October 8; Narragansett, Rhode Island on October 15; New Haven, Connecticut on October 20; and Boston, Massachusetts on October 27. State RPB members helped organize the meetings and employed a number of tools to enhance turnout: convening existing entities, providing advance notice online and through various existing groups and list-serves, engaging in media outreach, and offering invitations at other forums leading up to the meetings.

The meetings attracted members of the public from a variety of backgrounds, including government (~22% of participants), universities (~15%), non-profits (~25%), industry (~10%), and unaffiliated citizens and others (~8%), as well as a number of members of the RPB (RPB members and staff were ~20%). The number of participants in each meeting ranged from 25 at the Rhode Island meeting to 37 at the Connecticut meeting, including ocean planning staff and RPB members. Some people attended multiple meetings.

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<sup>1</sup> See <http://neoceanplanning.org/about/northeast-rpb/> for background.

<sup>2</sup> See <http://neoceanplanning.org/about/> for more information.

In response to a request from stakeholders, the RPB also hosted an all-day Forum to discuss these same ocean planning issues in more depth in Durham, New Hampshire on October 21. A summary of the October 21 Forum has been prepared separately and is available on the Northeast RPB's website: <http://neocceanplanning.org/events/fall-2014-public-meetings/>

The Consensus Building Institute (CBI) assisted with the design, facilitation, and documentation of the public meetings.<sup>3</sup> This summary, developed by CBI staff, is intended to distill public comment into primary themes for RPB consideration. This includes recommendations, ideas, and questions related to the RPB's upcoming decisions at its November 2014 meeting. The summary will be made available to the public and incorporated into the RPB meeting materials.

### Public Meeting Structure

The meetings were generally about 2.5 hours long and focused on gathering feedback on two key topics: options for effective decision-making and options for identifying important ecological areas. Each of the meetings opened with a welcome and brief remarks from an RPB member or other representative from the state hosting the meeting. At each meeting, state RPB members were typically present, along with at least one other federal RPB representative. A member of the RPB then offered a presentation providing background on the ocean planning effort in New England, and a staff member provided more details on ocean planning work to date.

Next, the meeting turned to a discussion of a set of specific options being considered by the RPB for the two key topics identified above. For each of these key issues, ocean planning staff first presented some details on the set of specific options being considered by the RPB, and then invited participants to ask questions and provide feedback on the options. Each of the meetings then concluded with a summary of next steps and an invitation to attend the November 13-14 RPB meeting, and in most cases the October 21 Forum.<sup>4</sup> A sample meeting agenda is attached below as Appendix A.

The remainder of this report provides further details on the three main sections of each meeting:

- The presentation and discussion on the northeast ocean planning context and work to date;

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<sup>3</sup> CBI has been contracted to support public outreach for ocean planning on behalf of the Northeast Regional Planning Body. It is a nonprofit organization that empowers public, private, government and community stakeholders to resolve issues, reach better, more durable agreements and build stronger relationships.

<sup>4</sup> The Massachusetts state meeting occurred after the Forum and therefore did not include such an invitation.

- Feedback on options for effective decision-making; and
- Feedback on options for identifying important ecological areas.

## II. Ocean Planning Context & Work to Date

As discussed above, each meeting began with a brief background presentation. The presentations described the ocean planning process in New England, noted where the state meetings fit into that process, and provided an overview of the work that the RPB had accomplished to date. A sample slide presentation from one of the meetings is attached below as Appendix B.<sup>5</sup>

The presentations noted the timeline and scope of the Northeast Ocean Planning Process. Key points included the following:

- The ocean is ripe for improved coordination and planning – it is regulated by multiple federal agencies with overlapping authorities and more than 140 federal laws;
- The Northeast Regional Ocean Plan will address waters from the coast out to 200 miles, and from Long Island Sound to the Canadian border;
- The RPB is focusing its efforts on “salty” ocean waters;
- The National Ocean Policy does not change any existing laws; the question for the RPB is therefore how to do a better job within existing authorities;
- The RPB includes members from each of the New England states, ten federal agencies (each of whose work touches on ocean planning in one form or another), ten federally recognized Tribes, and the New England Fishery Management Council;
- The RPB first met in 2012 and adopted its “Framework” document in January 2014;
- The January 2014 Framework laid out high level goals, concrete objectives, and a timeline for developing an ocean plan by mid-2016;
- The RPB has been implementing its work plan to engage stakeholders and develop information, data, and tools in a variety of subject areas (e.g., the Northeast Ocean Data Portal: [www.northeastoceandata.org](http://www.northeastoceandata.org)); and
- The present state meetings are taking place near the mid-point of the development of the Northeast ocean plan and are intended to inform the specific ocean planning options that the RPB will decide upon at its November 13-14 meeting.

Following the presentations on these issues, participants had an opportunity to ask questions and offer reflections on the overall progress and scope of the northeast

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<sup>5</sup> The slide presentations varied slightly by meeting. The slides in Appendix B were used in the New Hampshire meeting.

regional ocean planning process.<sup>6</sup> A number of participants sought clarity on whether the plan would be binding on states and agencies or whether it would be purely voluntary. For example, a participant in New Hampshire asked which agencies would make decisions about new uses under the ocean plan, while a participant in Connecticut asked whether the ocean plan might be compared to a city plan or municipal zoning regulations. In each case, RPB members and NROC staff were careful to emphasize that the ocean plan will not change existing laws and agency mandates, but that it will ideally result in durable, formal agreements that will inform and guide agency and state decisions over time.

Participants in Connecticut had a number of questions about the scope of the plan and about participation from non-New England states. Some Connecticut participants asked for clarification on whether the plan's "salty" focus would preclude it from addressing estuaries and watersheds that may impact ocean natural resources. Those participants recommended that the RPB expand its focus or at least offer further clarity on the extent of its engagement with freshwater- and watershed-related issues. Connecticut participants also sought clarity on the involvement of New York State in addressing issues related to Long Island Sound. RPB members and staff noted that New York representatives have been involved in an *ex officio* capacity and in working groups developing baseline data and information through outreach to specific stakeholder groups in New York as needed (*e.g.*, the 2012 recreational boating survey included participants from Long Island).

Participants in both Maine and Connecticut noted that formal public meetings are not an effective way to reach certain stakeholders who may face challenges taking the day off work, and suggested that the RPB approach these stakeholders directly at their places of work. Staff noted that the state meetings are only one type of engagement that the RPB is currently using in support of ocean planning, and that other strategies have been used to obtain input from industry stakeholders (*e.g.*, for the work to characterize commercial fishing in New England, extensive input has been obtained from fishermen, fishery scientists, and managers).<sup>7</sup>

Participants in Massachusetts sought clarity on whether the RPB would entertain proposals on enhancing public participation at its November meeting. An RPB member noted that the RPB planned to look at the existing process and examine the evaluations from the state meetings and the forum to help inform its approach for public engagement moving forward.

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<sup>6</sup> Participants also offered general reflections on the progress and scope of the northeast regional planning process at other points during the meetings. To simplify the organization of this summary document, all general comments on progress or scope of the ocean planning process are recounted in this section of the summary.

<sup>7</sup> See <http://neoceanplanning.org/projects/commercial-fishing/> for more information.

In addition, a number of participants in each of the meetings offered comments suggesting that the RPB should take a measured approach overall, and not try to accomplish more than is realistically possible in the next year and a half. One participant made the opposite suggestion, recommending that the RPB extend the timeline for completing its work beyond one and a half years so that it could accomplish a more robust set of goals. Another participant suggested that the RPB keep the momentum for long-term change by engaging new stakeholders, such as youth, through marketing and educational programs.

### III. Feedback on Key Issue #1: Options for Effective Decision-Making

Each meeting included a discussion of options for advancing the RPB's work on effective decision-making. At the outset of the discussions, staff described the effective decision-making goal and some of the specific options under consideration.<sup>8</sup> Their descriptions touched on the following issues:

- The phrase "effective decision-making" refers to existing federal and state agency decisions within existing review processes, particularly the National Environmental Policy Act (NEPA) review process and various, primarily federal, permitting and leasing processes. All of these federal and state agency decisions involve lead agencies (primarily responsible for issuing a final decision, such as a permit or a lease) as well as coordinating agencies (for example, natural resource agencies which consult on impacts to particular species and/or habitats);
- The greatest opportunity for regional data and guidance is early in the NEPA review and permitting processes because that is when regional scale information is most relevant;
- The options for effective decision-making were generated through multiple consultations with agencies, industry, and NGOs about potential improvements in agency coordination and the use of data and information in the decision-making process; and
- The options are not mutually exclusive – many of them inform and build on each other.

Each of the discussions referenced a summary document prepared by the RPB, which was distributed to participants at the beginning of the meeting and which is attached below as Appendix C. The summary document describes options for effective decision-making on pages 3-6 and includes numbered options within two sub-categories: 1) incorporating plan data and information into existing permitting and leasing decisions

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<sup>8</sup> In the New Hampshire meeting, Ted Diers from the NH Department of Environmental Services also offered descriptions of the goal and options.

(p. 4), and 2) enhancing agency coordination and predictability of regulatory processes (pp. 5-6). The options are referenced herein by both sub-category and number. This summary presumes a basic familiarity with the options described in the summary document, and readers are advised to review it if they have not done so already.

### Comments on Options for Incorporating Plan Data and Information into Existing Permitting and Leasing Decisions

A number of themes emerged from the discussions on options for incorporating plan data and information into existing permitting and leasing decisions. Generally speaking, participants endorsed the idea of improved data collection and identification as a means to improve agency decision-making and efficiency, and encouraged the RPB to make the data usable and accessible for a variety of stakeholders. Some participants also requested additional clarity from the RPB on the type of data that will be collected.

A common theme stressed by participants at each of the meetings was the importance of keeping data up to date. Participants stressed that with changing ocean conditions due to factors like climate change, data may have a relatively short shelf life and the RPB should try to secure agency commitments to continually update their data. Participants in New Hampshire expressed concern that the costs of keeping data up to date might cause agencies to abandon the effort.

Participants offered a variety of comments on the scope of the data effort. A common theme among many of the comments was that the RPB should cast a wide net in collecting data, for example by including data that does not qualify as “best available” but is still useful, by including data from informal or under-represented sources, or by including “controversial” data that may be important for decision-making even if there is not yet consensus on it. Similarly, a participant noted that it could be helpful to provide detailed descriptions of data layers, explaining the source of data and associated limitations/utility, so that users can judge for themselves how much weight to put on the data or how appropriate it might be for specific purposes.

Another suggestion involved the importance of including historical information in the data. A participant noted that data based exclusively on the current degraded environmental state ignores the potential for future improved environmental states and limits the scope of agencies’ inquiry. For example, knowledge of historical data might encourage agencies to consider no damage alternatives in the NEPA review process, or the potential value of environmental restoration.

Additional data-related suggestions included the following:

- The RPB should manage expectations about the impact of improved data; use of the same data will not necessarily lead to better coordination or more predictable decision-making where agencies have different values and goals;

- Data collection and identification efforts should involve universities, given the prominent role they play in influencing legislative priorities and research requirements in the permitting process;
- The plan should include data used in federally-funded research for permitting applications; the plan could encourage agencies to require that such research be submitted to the data portal;
- The RPB should develop guidance on how data should and will be used, for example by creating a system for flagging when a dataset is inappropriate for informing certain types of decisions;
- The RPB should prioritize the collection and identification of data that is most immediately relevant to issues and questions that agencies face today; and
- The RPB should put in quality assurance and control measures to ensure that when agencies apply standards such as “best available,” the underlying data is scientifically sound.

In addition, some participants from the Maine meeting expressed dissatisfaction with the manner in which regulatory processes may discount certain stakeholders’ informal data and fail to consider it in decision-making.

Participants also had some pointed comments about the second numbered option on page 4 addressing “compatibility analyses.” A number of participants stressed that such analyses are complex, and that it would be important not to try to make them too detailed. Similarly, these participants argued that the RPB should recognize that measuring the “cumulative impact” of particular interactions may be extremely challenging, and cautioned that the RPB should be realistic in its goals for this option.

### **Comments on Options for Enhancing Agency Coordination and Predictability of Regulatory Processes**

A variety of themes also emerged from the discussion of options related to enhancing agency coordination and predictability of regulatory processes. Overall, participants expressed support for the RPB seeking to improve agency coordination and predictability. Another common refrain was that the plan should include guidance from agencies on when and how the public can weigh in on the agency approval process.

Participants offered specific suggestions for a number of the individual options on the table within this sub-category, which appear on pages 5 and 6 of the summary document, as outlined below.

#### ***Option 1: Enhance pre-application procedures by developing standardized information about the process and use of ocean plan data and information for initial review of proposed projects***

For Option 1, a participant suggested that the RPB provide applicants with standardized guidance on how to engage stakeholders productively. The participant cited the BOEM best practice guide for engaging with fisheries producers, which provided stakeholders

with opportunities to negotiate common benefit agreements or local mitigation options, as a potential model.

***Option 2: Develop guidance for the public that explains how agencies will work together to use information in the ocean plan for environmental review under NEPA and other laws***

For Option 2, a number of participants suggested that guidance should be developed for multiple audiences, including both industry and the interested public. One participant argued that the guidance should include details not just on how agencies will work together to use information, but also on how each agency will use the information itself. Other participants suggested that the guidance should be both ongoing – in the sense that it is updated over time to reflect evolving agency collaboration – and continuous – in the sense that it is available to stakeholders throughout the lifespan of a given review process.

As noted above, many participants encourage the RPB to provide guidance not just on how agencies are working together, but also on when and how the public can best weigh in on agency decision-making. Specific comments on this issue included the following:

- Guidance for public engagement during the pre-application stage may be especially impactful, because this is when the public is first learning about potential projects and has a limited time to respond before the project reaches the next stage of review;
- The RPB should support processes and guidance designed to facilitate input by local communities and Tribes; and
- Some participants in Maine expressed general dissatisfaction with agencies' lack of responsiveness to public hearings and other forms of public engagement, and expressed skepticism that the ocean planning process could improve matters.

***Option 4: Identify opportunities for enhancing the efficiency and effectiveness of the CZMA consistency review process***

With respect to Option 4, a number of participants expressed optimism that the Coastal Zone Management Act (CZMA) could be used as a tool for states to create forward-looking policies in pursuit of regional goals, and recommended that the RPB prioritize this option. This feedback included one participant in Massachusetts describing regional data and agency guidance through the ocean plan as an opportunity for states when considering potential effects to their interests. Participants in Rhode Island recommended that the RPB move beyond merely “identify[ing] opportunities” for improving CZMA consistency review, and go so far as to implement concrete actions in pursuit of this goal. However, a participant in Connecticut warned that improved collaboration among states could be challenging in an environment where states may manipulate agency rules to obstruct other states’ interests.

***Option 5: Establish interagency groups to address policy and management issues regarding offshore, deep-water aquaculture and sand and gravel extraction for beach nourishment as new, emerging issues in the ocean environment***

A number of participants expressed enthusiasm for the use of interagency groups on the emerging topics outlined in Option 5, while others recommended caution. Participants in Massachusetts voiced concern that the RPB might be presupposing approval of deep-water aquaculture and sand and gravel extraction projects. One participant expressed a specific concern about leasing to deep-water aquaculture companies, and suggested that deep-water aquaculture should not be permitted to go forward absent additional legal clarity.

Similarly, a participant from Maine questioned whether sub-regions like Maine would have a voice in helping determine the direction of the plan's guidance on these emerging uses, while a participant from Connecticut expressed concern that agencies' actions with respect to these uses thus far have lacked transparency.

During the Massachusetts meeting, an RPB member clarified that the goal of Option 5 is to initiate a conversation on possible future uses, not to presuppose the outcome of permitting processes on these uses. In addition, the RPB member noted that conversations on Option 5 could encompass potentially unknown uses not specifically mentioned in the summary document.

#### **IV. Feedback on Key Issue #2: Options for Identifying Important Ecological Areas**

Each meeting also included a discussion of options for advancing the RPB's work on identifying important ecological areas. The relevant options appear on pages 1-2 of the summary document, attached as Appendix C.

As with the discussions on options for effective decision-making, staff described the goal and the specific options under consideration at the outset of the discussions on options for identifying ecological areas. Their descriptions touched on the following issues:

- The options under consideration represent a progression in terms of complexity and effort required, and are not mutually exclusive;
- The first option involves simply summarizing areas that have been identified through existing authorities;
- Efforts are already underway on the second option in collaboration with the Duke Marine Geospatial Ecology Lab and the National Oceanic and Atmospheric Administration (NOAA), and are scheduled to be completed within a year;
- The third option involves both technical decisions around identifying the threshold for species "hot spots" and a capacity decision as to whether it is possible to identify "hot spots" for a large number of species;

- The fourth option involves technical challenges around weighting species so that the outcome is not biased towards protecting certain species or taxonomic groups because they have the best data or greatest number of species;
- The fifth option represents a different way of thinking about and approaching the issue of ecologically important areas; it may require further defining the various components of ecological importance and identifying appropriate technical approaches and research methodologies.

In all but one of the meetings, the presenters used an infographic alongside their presentation of these options as a descriptive aid.<sup>9</sup> The infographic is attached below as Appendix D.

### Comments on Options for Identifying Important Ecological Areas

The discussion on options for identifying important ecological areas touched on several key subjects. Generally speaking, most participants' comments suggested that they believed each of the five options within this sub-category made good sense, but also recognized the challenges associated with pursuing each of the options within the short planning timeline. As discussed below, the importance of Option 5 – “explore options for an ecosystems-based approach to identifying important ecological areas” – was a focus of the discussion in all five meetings. Some participants also focused in on the question of how the RPB might sequence the options or decide among them, and encouraged the RPB to be both ambitious in its vision and realistic about time and resource constraints.

#### *Option 5: Explore options for an ecosystem-based approach to identifying important ecological areas*

Many participants in each of the state meetings stressed the importance of Option 5. Participants acknowledged the difficulties of pursuing such an approach, but suggested that it should still be treated as a priority and a long-term goal. Some participants suggested that the RPB should make Option 5 its “starting point,” and argued that the RPB is uniquely positioned to spearhead such an approach because of its regional reach. Other participants wondered aloud whether the five options within this sub-category needed to be pursued sequentially, and whether it might be possible to pursue certain options, such as Option 5 while continuing work on Options 1 and 2. Participants also reflected on a lack of consensus in the scientific and advocacy communities about the definition of various terms related to the ecosystem-based approach, such as “resilience,” and suggested that the RPB would need to achieve clarity on these definitions before making significant progress on this option. People also noted that species may change over time, so enhanced understanding about habitat and environmental conditions will remain helpful regardless of individual species use.

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<sup>9</sup> The infographic had not yet been developed at the time of the first meeting in New Hampshire, but was used in all the others.

Participants in the Connecticut meeting reflected on actions they could take as stakeholders to help make Option 5 more of a realistic possibility. Suggestions included providing outside pressure on agencies to follow through on their commitments, deciding to agree on specific definitions for ecosystem-related terms, providing specific and consistent feedback on potential approaches, and continuing to participate in public meetings.

The Massachusetts meeting included an especially strong focus on Option 5. Participants exhibited a clear preference for beginning work on Option 5 immediately. They provided a number of detailed suggestions and comments on the goals of the option and the ideal approach for implementing it, including the following:

- The RPB should set up an additional working group specifically designated to explore a framework for an ecosystems-based approach to ocean resource management, suggesting that the charge to the working group be broader than merely identifying ecologically important areas;
- The species distribution and abundance maps generated by the team from Duke and NOAA could provide information on some key drivers and parameters relevant to the ecosystems-based approach; however, it is not necessary to wait for the Duke/NOAA data to be completed before convening a working group on the ecosystems-based approach;
- Conversely, the conversation on the ecosystems-based approach could feed into the conversation on species distribution and abundance;
- The new working group should include a diverse group of thinkers involved in “systems thinking,” some experts involved with the species distribution and abundance maps, some experts familiar with broader processes in the northeast ocean, and possibly some outside experts as well; and
- The working group could also provide advice on the optimal governance structure for ecosystems-based ocean resources management.

There was some difference of opinion on the scope of any initiative towards ecosystems-based management. One participant suggested that ecosystems-based management reflected a paradigm shift for agencies, that the RPB’s current approach towards ocean planning risked becoming an exercise in zoning for the extraction of ocean resources, and that the RPB has room to examine fundamental questions about the governance structure for ocean resources and, potentially, to make recommendations grounded in the public trust doctrine. Other participants suggested that ecosystems management is already a fundamental goal of the ocean plan and a priority for many agencies, and that the RPB may not have the mandate to address larger questions of ocean governance absent additional legislation.

### *Data quality and scope*

A wide variety of comments focused on the nature of the data that would be collected and used to identify ecologically important areas. Participants stressed that the Northeast ocean plan should use only the highest quality, most verifiable data, and that it should be no more complex than necessary so as to facilitate ease of use. Participants also noted the critical importance of data management, data upkeep, and long-term data collection. Since data upkeep is challenging, participants suggested that the RPB strive to make it clear which agency or organization is responsible for which data set, and be proactive about identifying ongoing future data collection needs. Participants also recommended that the RPB recognize the intrinsic limits of certain data techniques, such as sampling, be clear with users on the limits of the data, and acknowledge the added value of anecdotal evidence. One participant noted that even the “best available data” is still rough and cannot pinpoint specific, finely delineated hotspots; nor would it be appropriate to use such data as evidence that certain areas are *not* ecologically important.

At the same time, participants stressed the importance of including various types of data beyond those explicitly mentioned in the summary document. For example, participants recommended that the RPB include historical data in order to understand trends in species distribution and abundance, forecast changes that may result from climate change, and help identify factors that may lead to hot spots that are persistent over time. One participant noted that contemporary data measures species distribution and abundance in a highly degraded state, and the resulting “hot spots” for species like cod that emerge as part of Option 3 may therefore be very small compared to what is optimal for the species’ health and sustainability. Another participant suggested that the RPB should take advantage of data collection techniques involving sonar. Participants also stressed that it may be important to collect seasonal data; staff responses clarified that seasonal data was a component of the data collection effort but may not be possible for all species.

### *Other Comments on the Options for Identifying Important Ecological Areas*

Participants suggested the RPB focus not just on charting select species’ distribution and abundance, but also on determining important habitats. Participants noted that key geographic areas or habitats may serve new species of marine mammals and fish moving up the coast as a result of climate change, and the RPB should take note of these areas. In some cases, geographic features like topography are already well-known and are not likely to change dramatically over the years, so including them in the data could be relatively easy. One participant suggested that the RPB could build on work done by the New England Fishery Management Council on habitats for certain fish, but noted that nobody had looked at habitats for all ocean wildlife in the northeast region and that the RPB could fill this gap. Another participant noted that multiple key areas or habitats may be linked in important ways, and the data should recognize these linkages and seek to make them a part of the permitting process. And another participant suggested that the RPB could focus on identifying collections of characteristics that are ecologically

important, instead of geographic areas, since the areas will change in coming years as the ocean warms.

Additional comments focused on the need to understand differences in species vulnerabilities and differences in agency interpretation of data. One participant noted that different species may exist in particular “hot spots” for different reasons, and therefore be vulnerable to entirely different things. The data should make note of these different vulnerabilities. Similarly, the RPB should recognize that different agencies may have different opinions on the same species’ health depending on the agencies’ areas of focus. The RPB should consider how to reconcile and manage these differences across agencies.

#### ***Accounting for human uses***

A number of participants argued that identification of important ecological areas should account for human uses and human values. Participants recommended that humans be considered part of the ecosystem, and that the analysis of “hot spots” account for areas of social and cultural importance to the community. One participant noted that stakeholders should be able to “see themselves in the data,” and described a number of examples of how this could be accomplished such as by making parts of the data open source or adding oral histories. The participant noted that it might be important, for example, for a wind farm applying for a permit to know if there are fishermen who place a special value on a particular area.

#### ***Comments on Options to Conduct Other Types of Assessments***

In some of the meetings, the discussion turned to the options on pages 2 and 3 of the summary document addressing other types of assessments, such as existing regional efforts to measure ocean health (Option 1) and customizing the Ocean Health Index for use in the northeast region (Option 2). Although the discussion of these options was shorter and did not go into as much depth as the discussions recounted above, participants offered a number of concrete reflections and suggestions.

A number of participants suggested that if the RPB could develop a measure of ocean health tailored to the northeast region, this would send a powerful message, have practical utility for assessing long-term trends, and be a good responsibility for the RPB embrace. However, some cautioned that because the data is not yet available to develop these measures on a regional scale, it would be very difficult for the RPB to accomplish this feat within the next year and a half. One participant suggested that the ocean health index be worked on in collaboration with other regional planning bodies, or even organized at a national level, so that comparisons could be made across regions.

Participants offered conflicting perspectives on specific measures the ocean health index should focus on. One participant suggested that the index focus on the kinds of ocean health that are most relevant to the areas of the RPB’s work – measures of health that are affected by sand and gravel mining and wind, for example – rather than issues like

climate change and toxicology that may be important but that do not relate directly to the RPB's goals. Another participant suggested that the RPB include measures of ocean health parameters impacted by increasing ocean temperature like plankton and salinity, because these factors may change where species are located and may therefore be relevant to determining areas of ecological importance.

Lastly, a participant in the Massachusetts meeting expressed opposition to revisiting the topic of "tradeoff analyses" (Option 3), and suggested it be removed from the list.

## V. Summary of Next Steps

Each of the meetings concluded with a brief summary of next steps, including the October 21 Ocean Planning Forum and the November 13-14 RPB meeting, and an invitation for participants to provide feedback on the state meetings. The presenters then thanked participants and concluded the meetings.

## APPENDICES

### Appendix A: Sample Meeting Agenda

# Public Meetings on Ocean Planning

October 6, 2014

NH Department of Environmental Services  
222 International Drive, Suite 175 Room A  
Portsmouth, NH

### Meeting Objectives

- Create informal dialogue between Northeast Regional Planning Body (RPB) members and the public.
- Collect public feedback on draft documents about effective decision making and identification of ecologically important areas in advance of the November RPB meeting.
- Describe activities in last nine months and preview next steps.

**4:30pm      Registration and Light Refreshments**

**5:00           Welcome and Introductions**

*Tom Burack, NH DES*

**5:10           Ocean Planning Context & Work to Date**

*Betsy Nicholson, NOAA*

**5:30           Key Issue #1: Options for Effective Decision-making**

Presentation on recent work to identify options for enhanced state and federal agency coordination related to ocean planning activities

*Ted Diers, NH DES and group discussion*

**6:20           Key Issue #2: Options for identifying important ecological areas**

Presentation on recent work to identify options identifying important ecological areas

*Ted Diers, NH DES and group discussion*

**7:10           What's Next?**

Summary of next steps

*Betsy Nicholson, NOAA*

**7:30           Adjourn**

## Appendix B: Sample Presentation Slides



## Overview

- Northeast Regional Planning Body first met in late 2012
- Ocean plan for the Northeast US (LI Sound-GOM):
  1. “Salty”—marine waters are focus
  2. Be scientifically-based
  3. Public involvement is paramount
  4. Principled and practical

OCEAN PLANNING  
IN THE NORTHEAST

## Northeast Regional Planning Body

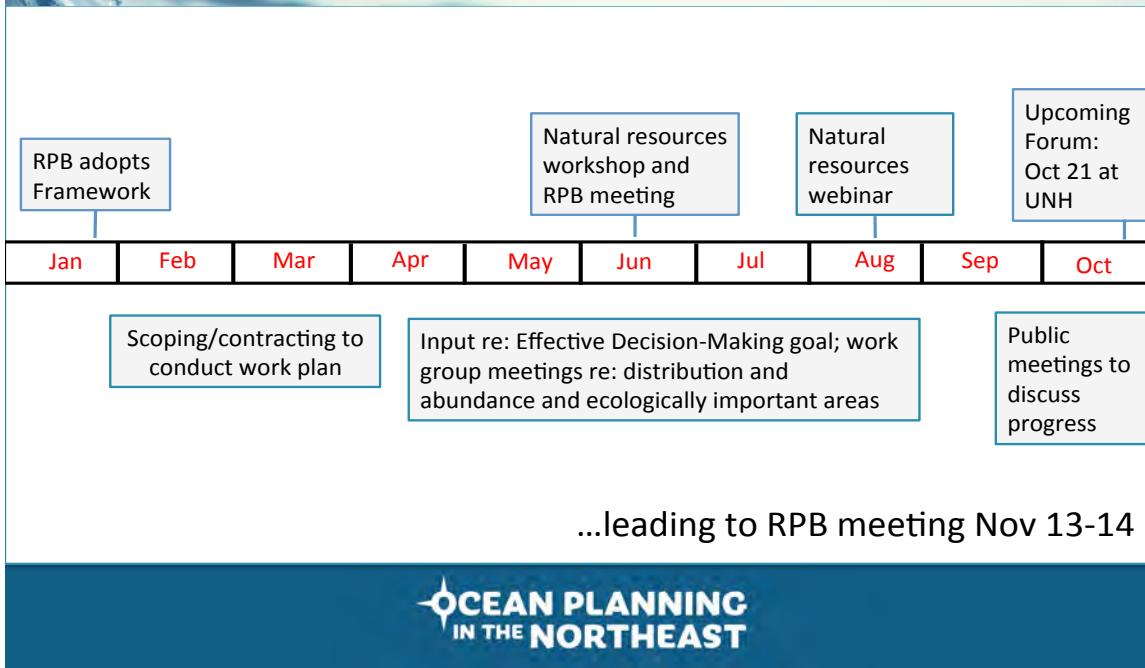


## The Framework

NE RPB approved “Framework” document in January

- Goals - aspirational high level statements
- Objectives - “how to meet goals”
- Outcomes - results
- Public engagement, tasks, and capacity to achieve objectives
- Principles - key elements to guide process and outcomes
- Timeline

## Timeline: Jan 2014 to current



## Timeline: Jan 2014 to current

### Additional work:

- Baseline assessment (including economic overview, summary of “what we know”- in addition to spatial data)
- Additional mapping of commercial fisheries
- Characterization of recreational activities, building on boating study
- Northeast Ocean Data Portal ([www.northeastoceandata.org](http://www.northeastoceandata.org))
- Updates to web site ([www.neoceanplanning.org](http://www.neoceanplanning.org))
- Stakeholder engagement, including scoping of project to develop information (future trends) related to Compatibility of Uses goal



## Nov 13-14 RPB meeting

- One focus will be options for Effective Decision Making goal
  - Use of plan data and information in regulatory decisions
  - Other potential enhancements (coordination, public participation) to existing regulatory processes
- Second focus will be options for Healthy Ocean and Coastal Ecosystems goal
  - Use of marine life distribution and abundance data
  - Defining and how to move forward with “ecologically important areas” and other potential ecological assessments

## Focus: Effective Decision-making goal

### Objectives:

- I. Enhance inter-agency coordination
- II. Implement specific actions to enhance public participation
- III. Incorporate products into existing decision-making  
(i.e. data, maps, data portal)
- IV. Improve respect for tribal customs and traditions in decision-making
- V. Improve coordination with local communities in decision-making

## Very generally:

NEPA review

permitting/leasing

Increasing understanding of project (siting, impacts, potential mitigation)

- General/broad information at early stages: identify and review alternatives; initial identification of potential issues
- Specific studies to better understand potential impacts; lead to specific siting.
- Importance of engagement early in review process

## Focus: Healthy Ocean and Coastal Ecosystems

### Objectives:

- I. Characterize the ecosystem, economy and cultural resources
  - Baseline data/maps, report, other info
  - Maximize utility of tools/info for management applications
  - Approaches to identifying “ecologically important areas”, and other assessments, and management applications
- II. Support existing restoration and conservation programs
  - Enhanced coordination of such programs to achieve regional goals
- III. Develop regional ocean science plan
  - Priority data and science needs identified and measures taken to meet those needs



## Marine life distribution and abundance

### Marine Life Distribution and Abundance

1. Marine mammals & sea turtles:
  - Products from existing models that use observations from surveys combined with environmental variables
  - Current considerations: Use of North Atlantic Right Whale Consortium and other local datasets; Additional products to supplement model outputs
  - Result in products for individual species; some potential combinations (sea turtles)
2. Birds:
  - Products derived from models using Avian Compendium data and appropriate environmental covariates
  - Additional considerations: Other products for on shore and near shore areas (SHARP, Natural Heritage); Additional products to supplement model outputs
  - Potential outputs for a lot of species (100+); consideration of combinations
3. Fish:
  - Products derived from NMFS, MA, and NEAMAP trawl surveys
  - Additional considerations: Other local trawl data (LIS, Narragansett Bay); How to address important species not always well characterized by trawl alone (lobster, scallop, salmon, herring, sturgeon)

## Appendix C: Options for the Northeast Regional Ocean Plan, September 29, 2014

### Options for the Northeast Regional Ocean Plan September 29, 2014

The Northeast Regional Planning Body (RPB) is responsible for developing the Northeast Ocean Plan (ocean plan), as called for in the [National Ocean Policy](#), which President Obama established by Executive Order in 2010. The RPB has established three goals for the ocean plan: 1) Healthy Oceans and Coastal Ecosystems; 2) Effective Decision Making; and 3) Compatibility Among Past, Current, and Future ocean uses.

At its November 13-14, 2014 meeting, the RPB will discuss and decide on options for proceeding with further work under the Healthy Ocean and Coastal Ecosystems Goal and the Effective Decision Making Goal. This document summarizes these options, which are based on public comments and discussions with federal and state agencies and tribes to date.

The RPB's decisions related to these options will help determine the ocean plan's content, as briefly described for each of the options below. The RPB is requesting public comment on these options to inform its decision in November. Public comment can be provided at public meetings, a day-long public forum in Durham, New Hampshire on October 21, or through the Northeast Ocean Plan web site. See [www.neoceanplanning.org](http://www.neoceanplanning.org) for more information.

#### I. Healthy Ocean and Coastal Ecosystems Goal

This section summarizes options for advancing work under *Objective 1. Characterize the Region's Ecosystem, Economy and Cultural Resources*, that focus on potential approaches to identifying “areas of ecological importance” and measuring ocean health. A practical consideration for each of these options is determining whether and how regulatory and resource management agencies will develop and use information developed under these options.

**Issue:** Resource managers and members of the public have expressed the need for better understanding of species, habitats, and other ecological factors to help ensure healthy ocean and coastal ecosystems. Key considerations include:

- Establishment of a panel with pertinent expertise may be needed to ensure that methods are scientifically and technically sound and achievable in light of anticipated funding and technical capacity-related constraints.
- Agencies need to identify how to implement options under existing regulatory and resource management authorities and programs
- Ocean and coastal environments, and thus species and habitats, appear to be changing in many ways (warming water temperatures in certain areas and trends in increasing ocean acidification for example), which need to be considered as such changes will affect species habitats, behaviors, and abundance.

#### Options to identify “areas of ecological importance”:

1. Summarize management areas currently designated under existing authorities, such as Critical areas under the Endangered Species Act and Essential Fish Habitat under the Magnuson-Stevens Act (partially underway)

**Outcome:** Ocean plan includes maps and other information on areas currently designated for specific management purposes

**Practical considerations:** Areas are often designated for different management purposes

2. Develop distribution and abundance maps for marine life species (partially underway)

**Outcome:** Ocean plan includes information on species distribution and abundance and likely habitat areas

**Practical considerations:** Application in regulatory decisions- use of data and maps; a significant effort needed to integrate available science and disparate data sets in the coming year

3. Identify abundance “hot spots” and other core habitat and occurrences (migratory corridors, spawning areas, etc.) for individual species

**Outcome:** Ocean plan identifies hot spots for protected, socio-economically and culturally important species

**Practical considerations:** Need to complete Option 2 first; need for an RPB-approved methodology for identifying “hot spots” and other key habitat areas; need agency agreement to incorporate outcomes into regulatory processes

4. Overlay abundance “hot spots”, core habitats and other occurrence areas

**Outcome:** Ocean plan includes maps that identify areas important to multiple species

**Practical considerations:** Need methodology for combining maps of “hot spots” and other habitats for multiple species; need to identify potential application(s) in regulatory processes.

5. Explore options for an ecosystem-based approach to identifying important ecological areas

**Outcome:** Important ecological areas are defined in terms of the different ecological components beyond species distribution, abundance and core habitat; technical approaches to measuring the different components are identified; existing regulatory authorities are researched for potential implementation opportunities

**Practical considerations:** Agreement on scientific definition and approaches will be challenging; will require extensive effort to conduct and implement analyses; need to complete option 2 and possibly option 3 first.

**Options to conduct other types of assessments:**

1. Coordinate with existing regional efforts to measure ocean health, such as the Northeast Regional Ocean Council’s Sentinel Monitoring for Climate Change, the Gulf of Maine Council’s Ecosystem Indicator Partnership, and others

**Outcome:** Ocean plan includes indicators from existing programs to inform regional baseline of ecosystem health

**Practical consideration:** Existing indicators were developed for different purposes; funding and technical capacity needs; RPB will need to define the purpose and use

2. Consider customizing the Ocean Health Index ([www.oceanhealthindex.org](http://www.oceanhealthindex.org)) for ocean waters in the Northeast

*Outcome:* Ocean plan includes indicators of ocean health specific to the Northeast region's ocean planning goals and a baseline is developed to measure future progress

*Practical consideration:* Funding and technical capacity needs; RPB will need to define the purpose and use

3. Revisit the topic of "tradeoff analyses" (i.e., attempting to simultaneously determine multiple effects of making a decision: for example, effects on existing human activities and natural resources from siting a new activity). Consider this topic after developing reference data on human activities and natural resources, deciding on whether and how to identify ecological areas or measure ocean health, and determining the uses of ocean plan data and information under existing authorities.

## II. Effective Decision Making Goal

This section summarizes options for advancing work under the following three objectives:

- *Objective 1. Enhance Inter-Agency Coordination*
- *Objective 2. Implement Specific Actions to Enhance Informed Public Input in Decision-making*
- *Objective 3. Incorporate Maps and Other Products into Existing Agency Decision-making Processes*

The options for these three objectives are presented in two general categories intended to demonstrate (1) the range of potential alternatives for using data to inform permitting and leasing decisions, including the protection of sensitive resources; and (2) the range of alternatives for agencies to enhance the agency coordination and predictability of regulatory processes, including public participation and the use of data and information in regulatory decisions.

### Incorporate plan data and information into existing permitting and leasing decisions (primarily addresses Objective 3)

Issue: When an ocean-based project is proposed, better, readily available public information is needed to:

- Provide context: "What do we know about the proposed site: existing uses, natural resources?"
- Understand potential for impacts: "What are the issues?"
- Address potential conflicts: "Whom do we need to talk to?"

The regional scale of this effort and dynamic nature of the ocean environment leads to:

- Focus on information needs of early stages of development review
- Need to maintain and update data

Agency commitments are needed to implement solutions.

1. Using existing map-based data in the ocean plan, improve the efficiency and effectiveness of review of and decisions on permit and lease applications for ocean-based activities by:
  - A. Identifying the best available information that characterizes human activities (shipping, fishing, etc.) and natural and cultural resources for use in the early stages of the NEPA process, including selection of alternatives to be analyzed and issues and potential impacts to be assessed (scoping), and also for use in initial review of applications for related regulatory approvals (e.g., U.S. Army Corps of Engineers permitting).

*Outcome:* Ocean plan contains data representing best available science; enhanced efficiency and transparency through public availability of such information

*Practical considerations:* potentially extensive effort to agree on methods and approve final data, maps, and other ocean plan information.
  - B. Creating ocean plan content (for example, maps, other non-spatial information, data regarding temporal trends) to facilitate and support statutorily-required consultations with federal resources agencies. Examples include the United States Fish and Wildlife Service or National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA) regarding threatened and endangered species and NMFS under the Magnuson-Stevens Fisheries Management Act regarding “essential fish habitat.”

*Outcome:* Ocean plan contains information that supports such consultations (e.g., life history descriptions of particular species)

*Practical considerations:* agency effort to agree on ocean plan content; need to identify appropriate responsibilities for developing and approving materials
2. Develop “compatibility analyses” for potential development activities and related guidance for cumulative impact and other assessments under NEPA, and other laws as applicable

*Outcome:* Ocean plan improves understanding of interactions and related natural resource impacts

*Practical considerations:* Recognizing the need to build on results of Option 1 above; is there sufficient data and information to successfully complete such analyses for each of the potential interactions?
3. Institutionalize use of the ocean plan’s data and guidance through existing regulatory review and guidance documents. Possible examples include the U.S. Army Corps of Engineers’ New England Programmatic General Permit and BOEM guidance on studies needed for proposed wind energy development.

*Outcome:* Ocean plan identifies specific agency documentation where such linkages will be made

*Practical consideration:* agency effort to agree on linkage; requires long-term support for ocean plan data and information (and tools such as the Northeast Ocean Data Portal)

**Enhance agency coordination and predictability of regulatory processes (primarily addresses objectives 1 and 2)**

**Issue:** Need for improved agency coordination and clarification of agency review processes, including those involving use of ocean plan data

- Must operate within existing regulatory programs.
- Ocean plan will provide public information on natural resources and human uses.
- Need agency commitments to implement solutions.

**Options to address the issue:**

1. Enhance pre-application procedures by developing standardized information about the process and use of ocean plan data and information for initial review of proposed projects

**Outcome:** Applicants, agencies, and interested parties understand the regulatory process and related use of ocean plan data and information

**Practical consideration:** balancing need for flexibility with commitment to standardizing procedures

2. Develop guidance for the public that explains how agencies will work together to use information in the ocean plan for environmental review under NEPA and other laws

**Outcome:** Understanding of how the ocean plan informs decisions; ocean plan contains guidance language

**Practical consideration:** Opportunity to do more than provide “guidance?”

3. Institutionalize use of ocean plan data (in NEPA reviews and related permitting and leasing processes) through Memoranda of Agreement or comparable expressions of agencies’ commitments, development of a regionally standard inter-agency agreement to facilitate collaboration and cooperation in NEPA reviews, and implementation of “programmatic approaches” (general agency agreements to work collectively to address specific issues, not specific to individual development proposals). These options could focus on ESA, “essential fish habitat” and other statutorily-required interagency consultations. See Option 1(B) under Healthy Ocean and Coastal Ecosystems goal, above.

**Outcome:** Formal agency commitments to use ocean plan data to inform decisions; ocean plan describes commitments

**Practical consideration:** Need to consider agencies’ level of effort (and comfort) to implement; agencies ultimately responsible for developing and implementing commitment

4. Identify opportunities for enhancing the efficiency and effectiveness of the CZMA consistency review process, such as :

- Identifying and using CZMA consistency review options designed for minor, routine federal agency activities that are compatible with state and federal CZMA policy interests .
- Improving how state CZM programs receive notice of federal actions

- Developing and using plan data and information to enhance understanding of projects' potential effects on specific state interests.

*Outcome:* "Ocean plan facilitates consistency with state enforceable policies that relate to management of ocean and coastal resources and activities; use of general consistency provisions, plan information and data to support projects' consistency with state enforceable policies

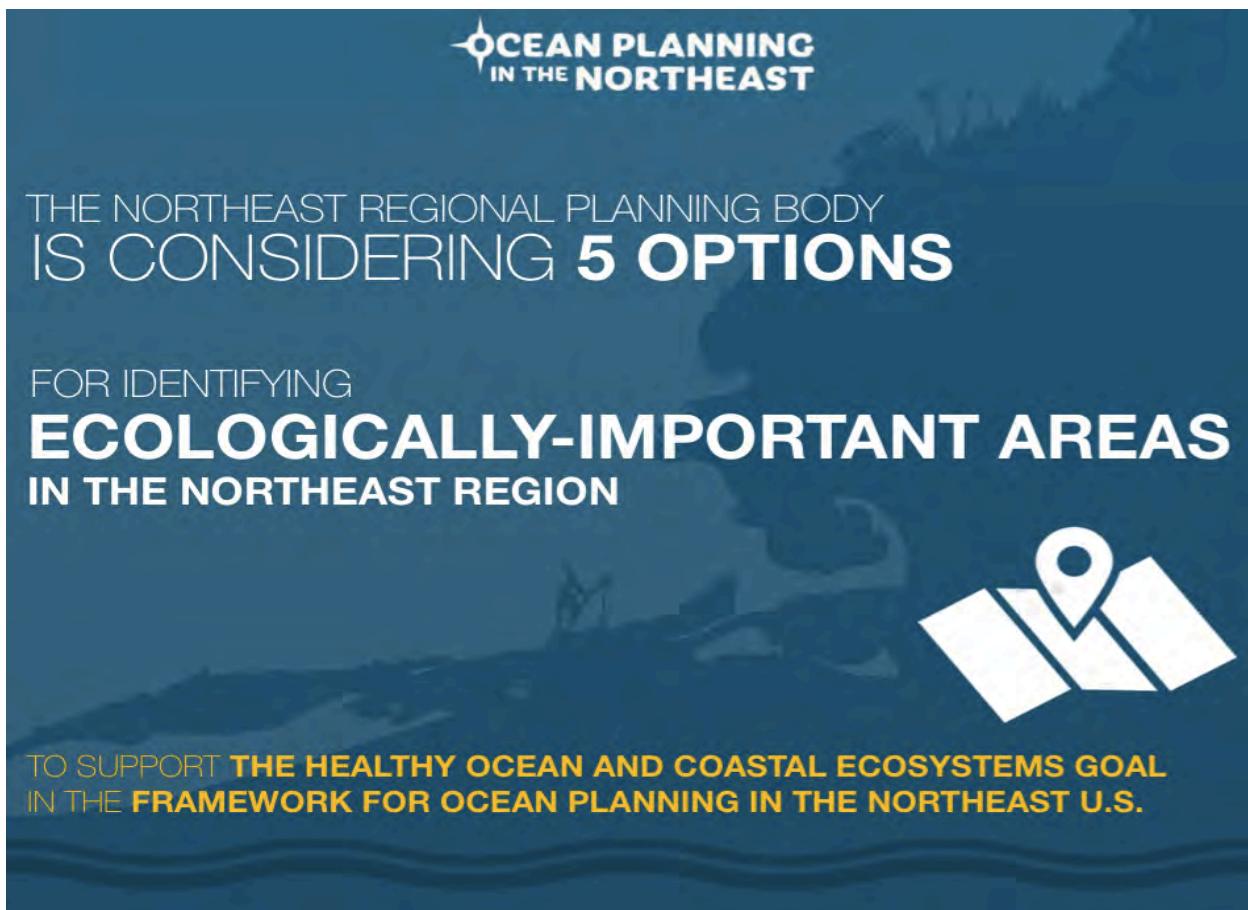
*Practical consideration:* State-by-state differences in program structures and policies; need to ensure states are involved with development and use of ocean plan data, maps, and non-spatial information

5. Establish interagency groups to address policy and management issues regarding offshore, deep-water aquaculture and sand and gravel extraction for beach nourishment as new, emerging issues in the ocean environment. For example, the interagency group could develop pre-application and siting guidance.

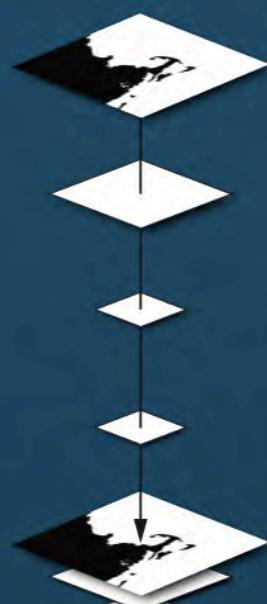
*Outcome:* Increased clarity in regulatory processes for emerging activities in federal waters

*Practical considerations:* Focus on certain aquaculture species, considering technologies, markets, and other issues, and specific areas that have potential need for sand and gravel.

Appendix D: Infographic on Options for Identifying Ecologically-Important Areas



OPTION 1: DEFINE AREAS USING  
**EXISTING MAPS**  
THROUGH EXISTING AUTHORITIES



Some examples of existing areas

Endangered Species Act (1973)  
Critical Habitat

Magnuson-Stevens Act (1976)  
Essential Fish Habitat

Massachusetts Ocean Management Plan (2009)  
Special, Sensitive or Unique areas

Rhode Island Ocean  
Special Area Management Plan (2010)  
Areas Designated for Preservation  
& Areas of Particular Concern

The Northeast Ocean Data portal team,  
with input from relevant agencies, is  
already compiling areas identified by  
these authorities and planning efforts.

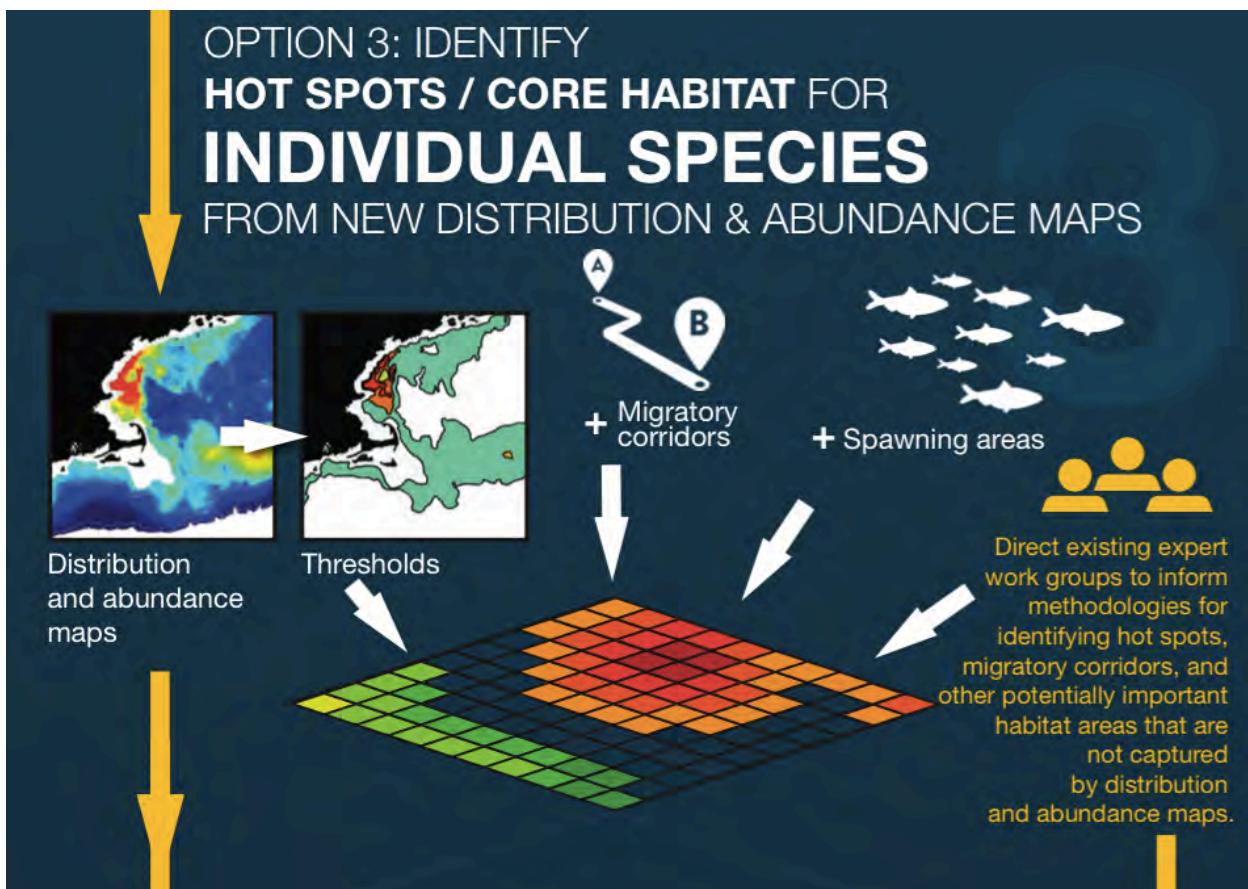
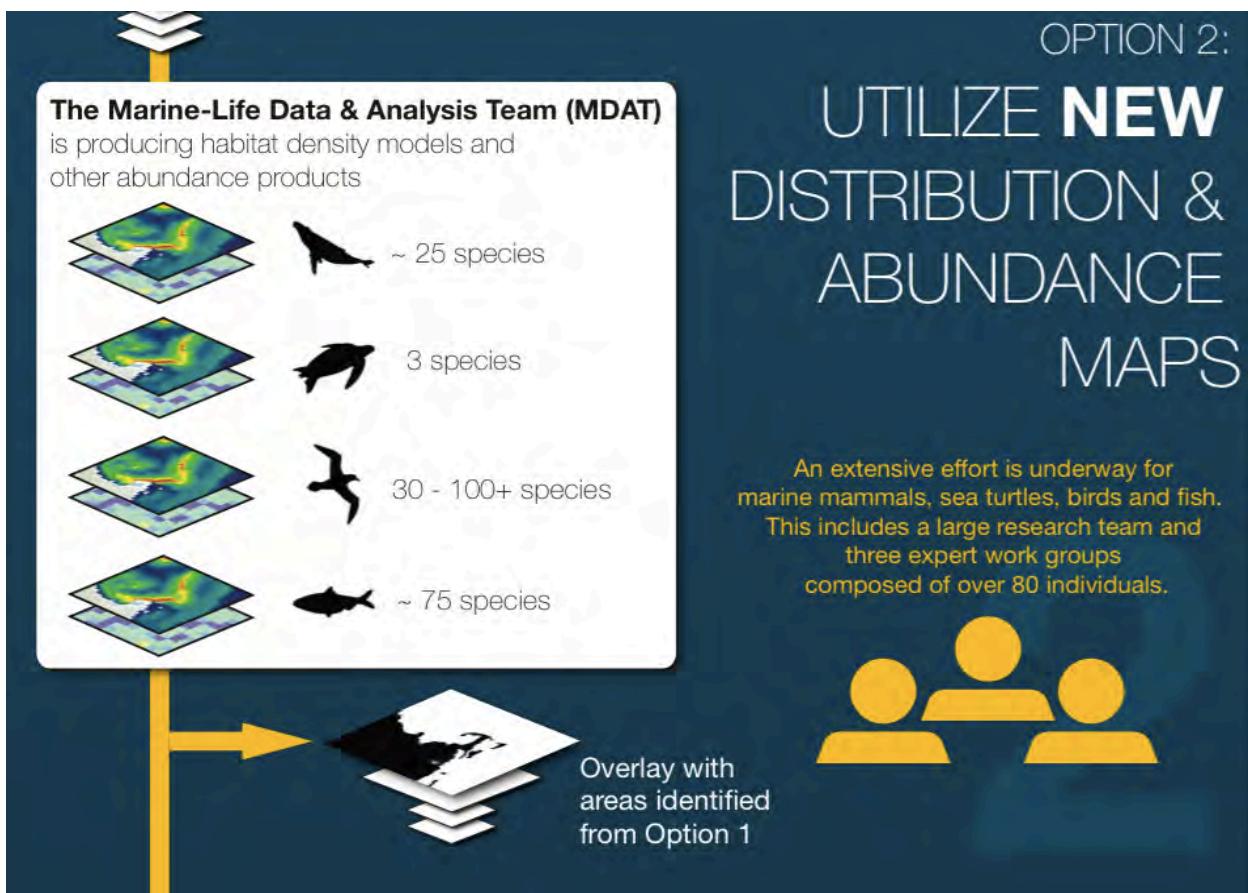


x 48 species

x 3    x 11    x 22

x 5

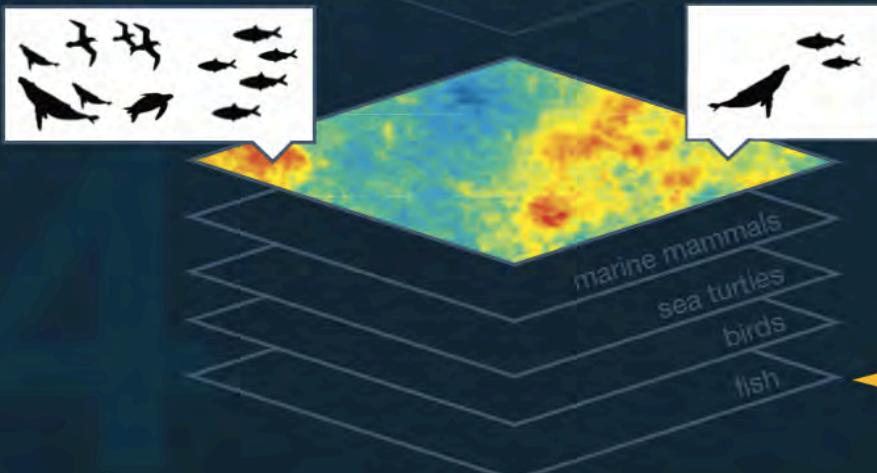
# OCEAN PLANNING IN THE NORTHEAST



OPTION 4: **OVERLAY** ABUNDANCE HOTSPOTS,  
CORE HABITAT, AND OTHER OCCURRENCE AREAS FOR

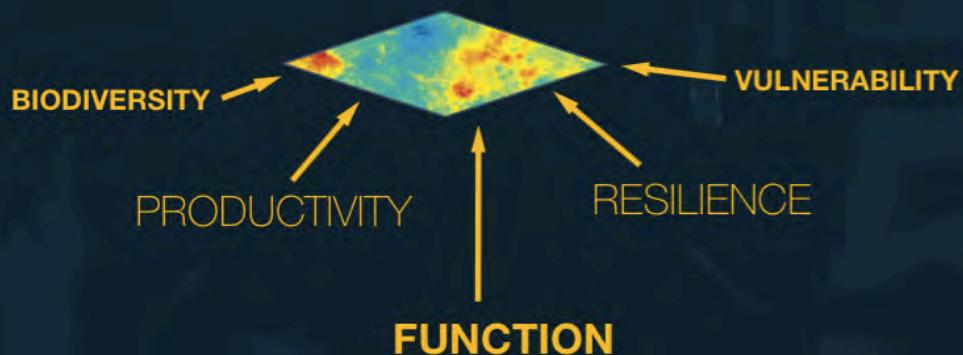
## PROTECTED & IMPORTANT MARINE SPECIES

Combine maps indicating regional abundance hot spots and other core habitat developed in OPTIONS 2 and 3 to identify areas important to multiple marine life species.



OPTION 5: **EXPLORE** OPTIONS FOR ADVANCING AN  
**ECOSYSTEM-BASED APPROACH**  
TO IDENTIFYING ECOLOGICALLY-IMPORTANT AREAS

 What is ecological importance?



# Forum Summary



# Northeast Regional Planning Body

## Fall 2014 Stakeholder Forum

October 21, 2014  
University of New Hampshire, Durham, NH

## MEETING SUMMARY

Prepared by the:



and



October 31, 2014

## Table of Contents

I.	Workshop Background, Workshop Objectives, and Introductions.....	3
II.	Ocean Planning Context and Work to Date .....	4
III.	Options for Identifying Important Ecological Areas (Goal 1) .....	5
IV.	Small Table Discussion Feedback on Options for Identifying Important Ecological Areas .....	8
V.	Effective Decision Making (Goal 2) .....	13
VI.	Breakout and Subsequent Full Group Discussions.....	17
VII.	Closing Remarks .....	23
	APPENDICES .....	24
	Appendix A: Forum Participants .....	24
	Appendix B: Ocean Plan Outline .....	27
	Appendix C: Timeline .....	28
	Appendix D: Natural Resource Characterization Infographics .....	29
	Appendix E: Effective Decision-Making Infographics.....	32

## I. Workshop Background, Workshop Objectives, and Introductions

The Northeast Regional Planning Body (RPB) hosted a one-day stakeholder forum to discuss options for identifying important ecological areas and effective decision-making prior to their (fifth) RPB meeting to be held on November 13 – 14, 2014. Approximately 60 participants from tribes, federal and state agencies, industry groups, academic institutions, nonprofit organizations, and interested citizens attended the workshop. See Appendix A for a full list of participants. Participants provided input on the characterization of natural resources that will inform future ocean planning work under the RPB's Healthy Ocean and Coastal Ecosystem's goal, as well as on options for use of data and agency coordination, which inform work under the RPB's Effective Decision Making goal. The intent of the workshop was to build on the information and discussions on the same two topics in state-based meetings held in the month of October throughout New England and to provide a forum where RPB members and stakeholders could interact extensively to explore understanding, options, and possible priorities.

The specific objectives of this workshop were to:

- Engage RPB state, federal and tribal members and stakeholders in dialogue about key upcoming RPB decisions at the upcoming November RPB meeting.
- Increase understanding of options for Characterizing Natural Resources and Effective Decision Making and identify where further clarifications are needed.
- Gain advice and input on various options, practical considerations, and other related questions.

Staff from the Consensus Building Institute (CBI) facilitated the workshop and CBI staff and SeaPlan staff drafted this workshop summary.<sup>1</sup> Presentation slides and other materials from the workshop are available at the following URL: <http://neceanplanning.org/events/>

Betsy Nicholson, the National Oceanic and Atmospheric Administration (NOAA) Northeast Lead for the Coastal Services Center, welcomed participants and introduced the RPB members present at the workshop.<sup>2</sup> She also noted that the meeting was planned in response to stakeholder requests and gave a general overview of meeting goals, which included discussing two topics that will be decided upon at the upcoming RPB meeting in November by having a discussion with stakeholders from across the region. RPB objectives for the meeting included

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<sup>1</sup> Consensus Building Institute Staff: Ona Ferguson, Patrick Field, Eric Roberts, Toby Berkman, and Doug Thompson. SeaPlan staff: Kate Longley-Wood.

<sup>2</sup> See Appendix A for list of participants and RPB members present.

engaging all participants in a dialogue, increasing stakeholder understanding of options and giving the RPB a better understanding of what needs additional clarification, and obtaining advice and input on proposed next steps.

## II. Ocean Planning Context and Work to Date

Ms. Nicholson provided a brief overview on the impetus for the RPB's formation and on the work completed to date on the RPB draft goals, the timeline for ocean planning, the formation of a regional ocean plan, and the goals of the upcoming November RPB meeting. Her comments are summarized in the following paragraphs.

The RPB has been meeting since 2012 and is now mid-way through the process. The RPB was formed in response to the National Ocean Policy (NOP) and with it came an opportunity to develop a marine plan that is science based, "salty" (focused on marine environments), reflects principles decided on by the RPB, and that can be implemented under existing authorities. The RPB is made up of individuals that represent New England states, ten federally-recognized tribes, ten federal agencies, and the Northeast Fishery Management Council.

The RPB is in the middle of the ocean plan development process. It has set up a number of technical committees and work groups, is undertaking data analysis, implementing its work plan, and driving toward more clarity as to the final plan's shape and form, and the remaining efforts needed to complete the plan by 2016.

In its work to-date, the RPB has established three goals for the ocean plan, each of which includes a number of objectives:

*Goal 1 – Healthy Oceans and Coastal Ecosystems* –characterize the ecosystem, economy, and cultural resources via available data, and identify data gaps. Identify regional criteria for restoration opportunities.

Objectives of this goal include:

- I. Characterize the ecosystem, economy and cultural resources
  - Generate baseline data/maps, reports, and other information
  - Maximize the utility of tools/information for management applications
  - Identify approaches for identifying "Important Ecological Areas", and other assessments and management applications
- II. Support existing restoration and conservation programs
  - Enhanced coordination of such programs to achieve regional goals
- III. Develop a regional ocean science plan
  - Priority data and science needs identified and measures taken to meet those needs

*Goal 2 – Effective Decision Making* – enhance interagency coordination and implement specific actions to aid this coordination. The tribes are currently working on a parallel effort to develop best practices for tribal consultations.

Objectives of this goal include:

- I. Enhance inter-agency coordination
- II. Implement specific actions to enhance public participation
- III. Incorporate products into existing decision-making (i.e. data, maps, data portal)
- IV. Improve respect for tribal customs and traditions in decision-making
- V. Improve coordination with local communities in decision-making

*Goal 3 – Compatibility Among Past, Current and Future Ocean Uses* – develop future planning scenarios and trends for incorporation into ocean management decisions framework; develop a planning framework or best practices for determining compatibility.

Ms. Nicholson provided a general overview of a preliminary outline for the regional ocean plan<sup>3</sup>, and described several specific projects that are underway, providing context for current work.<sup>4</sup> This overview included a brief discussion of the timeline leading into the November RPB meeting.<sup>5</sup>

Following Ms. Nicholson's' introduction, Patrick Field, Managing Director of CBI introduced the meeting's discussion-based format and objective of making the upcoming RPB meeting more thorough and informed.

### **III. Options for Identifying Important Ecological Areas (Goal 1)**

Nick Napoli, ocean planning staff, introduced five options developed by an RPB work group for identifying Important Ecological Areas (IEAs). These options were informed by ongoing work by the Northeast Ocean Data Portal and the Marine-Life Data Analysis Team (MDAT) that is developing marine life abundance and distribution products. He noted that overall these

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<sup>3</sup> See Appendix B: Ocean Plan Outline

<sup>4</sup> See Overview of Northeast Ocean Planning at <http://neoceanplanning.org/events/>

<sup>5</sup> See Appendix C: Timeline – January 2014 to current

options are related and build on one another, and that they require increasing capacity and resources. Options 1 and 2 are now partially underway. The options are as follows:<sup>6</sup>

1. **Summarize management areas currently designated under existing authorities**, such as Critical Habitats under the Endangered Species Act, Essential Fish Habitat under the Magnuson-Stevens Act, designated Special, Sensitive or Unique habitats (SSUs) from the Massachusetts Ocean Plan, and Areas of Particular Concern (APCs) and Areas Designated for Preservation (ADPs) in the RI Ocean Special Area Management Plan . Identify other existing authorities and other species and areas that are designated. In doing so, the RPB will need to consider the specific management purposes for which each area was created.
2. **Develop distribution and abundance maps for key species.** The MDAT team, led by Duke University is currently undertaking this effort via a contract with the Northeast Regional Ocean Council (NROC). A team from Duke is leading marine mammal mapping, NOAA National Center for Coastal Ocean Science (NCCOS) is leading bird mapping and the National Marine Fisheries Service (NMFS)/Northeast Fisheries Science Center Ecosystem Assessment Team (NEFSC EcoAP) is leading fish mapping. The project also includes three expert work groups including over 80 individuals from industry, academia, and NGOs to advise the team. The team is now looking at how many species can actually be modeled. This option comes with the opportunity to overlay final products with products from Option 1. Draft data products will be available next spring, and final products will be ready next summer.<sup>7</sup>
3. **Identify abundance hot spots and other core habitat and occurrence areas.** This will depend on products from Option 2. Once there is agreement on Option 2 maps, the RPB would need to consider how to set a threshold to identify a hot spot and recognize that while distribution and abundance maps are based largely on habitat observations, they still might not capture important areas such as migratory or spawning areas. Additional analysis would be necessary to capture other types of important locations not tied directly to distribution and abundance mapping. The RPB has not budgeted for this option at the time; however, some of these issues are being discussed in expert work groups.

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<sup>6</sup> See Goal 1 In the *Options for the Northeast Regional Ocean Plan* Summary Report located at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>. See also see Appendix E for summary infographic.

<sup>7</sup> See <http://neoceanplanning.org/projects/marine-life> for project materials and list of subcommittees on this effort.

4. **Overlay abundance hot spots, core habitat, and other occurrence areas for protected and important marine life species.** This will depend on products from Options 2 & 3, will be increasingly complex and will require increased capacity in terms of scientific expertise and advisory input. This option could entail overlaying areas from Options 2 & 3 to identify areas that are important to multiple species. The RPB would also need to consider how to weight different species and maps, recognizing that the product would depend on how the inputs were weighted. This would present a major challenge.
5. **Explore options for advancing an ecosystem-based approach to identifying ecologically important areas.** While the other options would be key components of this option, this approach takes a different perspective by advancing more of an ecosystem-based approach. The RPB would need to start by defining what it means by ecological importance, going beyond distribution or abundance. It would also need to define an approach, which would require extensive stakeholder and scientific input to better define potential components ecological importance, such as: high productivity and biological diversity, species rarity, persistence, vulnerability, function, and resilience. However, the RPB would need to decide how to bring together these components into a cohesive map to identify IEAs. If the RPB is to go forward with this option, it would need to determine what budget and capacity needs exist, as well as consider the implications of legal and policy implementations.

Before breaking up into small table discussions, the group had the following questions and comments.

- Question: Are we supposed to pick a specific option?  
*Response: The four options are mostly on a continuum, while the fifth option may offer a different approach. It would be helpful to hear discussion of how far the RPB can progress along the continuum, not necessarily focusing on just one option.*
- *RPB Member Comment:* The first four options could set the stage for option five, but would require increased capacity considerations for the third and fourth option. Discussions on Option 5 now will help inform whether this option is pursued down the road.
- Question: What is meant by statement that Options 1 & 2 are “partially underway”?  
*Response: For Option 1, the RPB is acquiring information on existing areas identified through existing authorities, but they would have to identify additional authorities and programs to add to what we know. For Option 2, the project is underway with the MDAT team to have final products by next summer. There is still some uncertainty as to how much of this task will be*

*completed within the year, however. For example, it has not been determined how data on past conditions will factor into the final data products.*

- *RPB member comment:* Essential Fish Habitat (EFH) is designated as areas that contain all four life stages for a fish, but if you were to take distribution data on each individual life stage and layer them all on top of each other, they would cover the entire region. The RPB should consider areas that are particularly critical for certain life history stages when thinking about important ecological areas.
- Comment: An ecosystem-based approach to management is based on thinking systemically, in terms of interconnectedness, and that this is very different from identifying ecologically important areas. You can't advance an ecosystem-based approach by talking about whether one geographic feature is important.

#### IV. Small Table Discussion Feedback on Options for Identifying Important Ecological Areas

In small table groups, participants reflected on the five options and identified concerns, issues, and questions raised by the presentation. Following these smaller discussions, each table offered a question or comment gleaned from the table's conversation. This was followed by a discussion with the full group. Comments from individual tables as well as the full group discussions are summarized by theme below.

*The importance and challenge of moving forward on Option 5*

- Many participants who spoke backed the RPB pursuing Option 5. Several participants felt strongly that Option 5 represents the true spirit of the National Ocean Policy. Another participant echoed this sentiment by noting that Option 5 should be the end game, and should result in a healthy ocean for subsequent generations. He asked that that goal of creating a healthy ecosystem be a component of any and all of the options under consideration. One participant noted that without Option 5 as the focus, further degradation of the ocean could occur by focusing too much on components, parts, and impacts, not overall health. Another participant pointed out that NOAA has been sued in the past for not using ecosystem-based approaches to manage herring and shad as forage fish. Litigation and subsequent recalculation of catch limits caused NOAA to invest additional time and resources and hindered timely agency action. He also noted that management approaches should be ecosystem based and built locally, from the ground up based on substantial local interests and knowledge.
- Other participants noted that while there might be value in Option 5, the notion of important ecological areas and its components needs to be clearly defined so that we

know when the task has been accomplished. Others noted that the amount of work needed to complete this task wouldn't fit into the current 18 month timeline. These commenters noted that there needs to be more effort to define the initiative and work with scientists, technical experts and stakeholders. In the meantime, the RPB should focus on pragmatically addressing Options 1 & 2 and doing them well before tackling the next options.

- One table suggested rewording Option 5 as: "Explore options for an adaptive ecosystem based approach for managing healthy ocean ecosystems", but expressed concern over prioritizing certain areas over others through protected areas. Another participant wanted to better understand the reason behind assigning ecological importance. She suggested that how we pursue this option will depend on whether it's done for management and extractive purposes or whether the RPB believes that it has intrinsic value.
- Another participant argued that the RPB should aim higher than Option 5 and strive for ecosystem-based management (EBM). She urged the RPB to work on defining what EBM is, and what would need to be done to statutory authorities to move towards that goal.
- Another participant stressed that although Option 5 was not defined as presented, the RPB must not think of it is an abstract task to complete in the future. Even though it will be challenging, the RPB should begin the process now by convening experts, allocating resources, and putting in the effort necessary to better define and refine how Option 5 could proceed. Given that Options 1 & 2 are underway, now would be a good time to pull together a scientific advisory group to give more defined advice as to how to move forward in this iteration of the plan. This convening idea was supported by other commenters
- One participant suggested that Options 1-4 represented a phased approach that will naturally inform Option 5, and that the results from Options 1-4 would be useful in deciding how to bring in human elements in Option 5. Other participants noted that Option 5 is not necessarily an extension of Options 1-4 but is instead a separate task that requires separate expertise and input on how to do ecosystem-based management. Another participant wondered whether Options 1-4 would actually inhibit Option 5 if the desired outcome of Option 5 is ocean health not minimizing or mitigating impact.

#### *Comments on other Options*

- One participant expressed hesitance to pursue the hot spot approach (Option 3) because of the limitations of available data. Another cautioned against ignoring what is already

known: if there is already knowledge of a hot spot, we should identify it, rather than waiting for complete data availability.

- Other participants argued that Options 3 & 4 were both valuable. One table felt that while Option 4 was probably more useful in the long-term, in the short term, Option 3 could be useful in addressing “emergency cases”, noting that some individual species data is also valuable.
- One participant commented via a note card that there has already been substantial work done in the region towards Options 1-3 that would put the RPB in a good position to pursue Option 4.
- Another table had questions about what criteria would be used to identify hot spots in Option 3. They wondered whether a hot spot analysis would include all species or just priority species. Other options included basing it on management authority, abundance of data, vulnerability or overall role in the ecosystem.
- There was also a question as to how the options were informed to begin with, whether scientists have already weighed in on this topic, and whether more scientific input is necessary in developing these options.
- One comment noted that the RPB should strive to at least get to Option 4.
- One table urged the RPB to not overlook benthic habitat and community data in the options presented. They noted that there have been good modeling and habitat suitability studies which may be useful; however, they have not necessarily been ground-truthed. Physical oceanographic features and temporal elements will also be important to identifying significant areas. Another participant urged the RPB to consider deepwater coral habitats, and noted that Northwestern Atlantic canyons have been mapped by NOAA with modeling of deep sea corals have been done by Brian Kinlan of the NOAA National Center for Coastal Ocean Science. One participant pointed out that there are existing synthesis (e.g. TNC’s NAMERA) and modeling tools (e.g. MARXAN, SeaSketch, CMECS) that could be helpful.

#### *Role of human uses and values*

- Many participants questioned how human uses and values are factored into these options, particularly Option 5. One participant noted that the planning process for the Stellwagen Bank National Marine Sanctuary was driven by a consideration of human uses due to the role of humans in an ecosystem. Others reiterated that human uses should be a component of the end product, and that ecosystem-based approaches by necessity incorporate socioeconomic factors and human uses. Another participant

pointed out that the data are likely to be driven by socioeconomic and human use patterns and that it is hard to dissociate those influences. Another participant noted that Option 5 as presented may identify important ecological areas, but it is a misnomer to call it an ecosystem-based approach in the absence of human use data. Another participant urged the RPB to recognize that these analyses will incorporate human values, and that these values are likely to change over time.

- Ocean planning staff responded to these concerns by saying that there is currently work being done to characterize human elements (commercial fishing, recreational fishing, etc.), and that Option 5 is the most open-ended in terms of defining what topics it could include.

*Lessons learned from previous planning efforts*

- Deerin Babb-Brott responded to a question about lessons learned during the Massachusetts ocean planning process by noting that Massachusetts did not embrace zoning, in part out of a recognition of the paucity of data and the lack of understanding of the ecosystem. Another participant wondered if lessons learned from the Massachusetts and Rhode Island Ocean Planning processes could inform whether and how we can do ecological valuation on a regional scale.

*Influences on and Implications of data use by state and federal agencies*

- One participant stressed that understanding resources within and outside state waters is important to the states because it will enable them to apply federal consistency pursuant to the Coastal Zone Management Act. For states, it is not only important to identify important areas, but to make the linkages to states' policies.
- One table made the broad point that there needs to be better definition of how the data will be used by state and federal agencies, and improved clarity on the potential impacts of the plan once it is put in place.
- There was agreement among participants that any data products would need to be easily understood and available to all of the agencies. Another participant wanted a better understanding of what industry could and could not do using the information from the plan.

### *Ocean health and tradeoffs*

Several comments alluding to the issue of assessing ocean health led to a discussion of the options for such assessments under consideration. The options include:<sup>8</sup>

1. **Coordinate with existing regional efforts to measure ocean health** -- there are many indicator-like programs throughout New England with an ocean health component. This option would look at these programs and think about how they might be coordinated to support ocean planning. One consideration is that some programs are very local and that they've been developed for a specific management purpose.
2. **Consider customizing the Ocean Health Index (OHI) or similar analysis for ocean waters in the Northeast** – the RPB could develop a new, customized system that is more aligned to RPB goals. For example, the Ocean Health Index was developed on a global scale, but can be downscaled. It includes both socioeconomic and ecological goals, and was developed (and has been implemented) with an ocean ecosystem focus.
3. **Revisit the topic of “tradeoff analysis”** – Though not necessarily related to ocean health, in considering these options the topic of tradeoff analysis has arisen. The RPB work group has suggested that we revisit the topic later in the process, once there has been more data development.

Comments on these options included the following:

- One participant recognized the opportunity to capitalize on existing fragmented efforts, but that the real value would be in rolling these efforts up into an overarching framework, whether it is OHI or other.
- Another participant suggested that before moving forward with this option, there would need to be a better understanding of exactly which of these efforts the RPB would want to engage.
- One participant asked the RPB to consider that the OHI has never before been used in a regulatory context.
- Many participants expressed concern about the trade-off option. One participant cautioned against using this option without a neutral and impartial party analyzing and presenting the data due to inherent biases that will naturally surface. Another participant was also wary of this option, expressing concern that work done so far on this topic has not been thoroughly vetted and has focused on maximizing profit, further stating that trade-off analyses should only move forward if expert groups were to

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<sup>8</sup> See *Options for the Northeast Regional Ocean Plan Summary Report* <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>

convene and consider the broader interplay of natural and human uses. Another participant noted that agencies would be more likely to use data generated during the RPB process as they see fit, and less likely to use an analysis developed by an outside group to inform their decisions.

- The RPB should move forward with an approach to monitor and assess ocean health as a fundamental aspect of the ocean plan, as this as an opportunity to inform ocean management in the future.
- One table cautioned the RPB that “healthy” is not a defined scientific term what it comes to describing ocean conditions, but that it is helpful language to motivate the public to take actions to improve the state of the ocean.

## V. Effective Decision Making (Goal 2)

Deerin Babb-Brott, Senior Partner at SeaPlan, presented options for the effective decision making goal based on the draft report prepared for NROC entitled *Northeast Regional Ocean Plan: Options for Effective Decision Making*.<sup>9</sup> His presentation is summarized in the following paragraphs.<sup>10</sup>

The analysis focused on identifying opportunities to use data and information and agency coordination to enhance National Environmental Policy Act (NEPA) review and federal permitting processes (such as those led by the United Army Corps of Engineers USACE). Challenges and opportunities associated with data and regulatory practices have implications across many agencies and sectors, and are applicable to a range of uses. A key purpose of this effort is to use data more effectively and transparently through a coordinated inter-agency approach, thereby enhancing the ability of all participants – agencies, proponents, stakeholders, and the public—to participate more effectively in environmental review and permitting processes. The options are designed to enhance the operation of existing authorities and do not require or produce new authorities or legislation.

The options were developed to help agencies make the best use of the data that will be available to agencies and others through the Northeast Ocean Data Portal (data portal)—which will largely characterize resources and human activities at a regional scale. Therefore, use of the data portal is well suited to initial elements of NEPA review, which initially considers a range of potential alternatives, and then narrows its focus to a preferred alternative through an impact

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<sup>9</sup> Available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision-Draft-Report-Sept-29.pdf>

<sup>10</sup> Also see Appendix E for summary infographic.

evaluation process. NEPA is the primary initial opportunity for the public and stakeholders to be informed about a proposed project and its impacts and for the agencies to bring their issues to the table for project proponent and agencies. Because these NEPA elements involve analysis of data and information through a public review process, it lends itself to using a resource like the data portal. Under the NEPA process, public input influences the nature and location of the project; once a preferred alternative under NEPA goes into the permitting phase under the appropriate federal (e.g., USACE) permitting process, the focus shifts to site-specific considerations.

Consistent with the National Ocean Policy guidance documents<sup>11</sup> and the RPB charter<sup>12</sup>, the Regional Ocean Plan will be a consensus document that represents agreement among agencies about how to go forward with each of the options and potential actions presented in the report.<sup>13</sup> Therefore, the options that have been developed were based on initial discussions among agencies, and include the following:<sup>14</sup>

**Option: Incorporate plan data and information into existing permitting and leasing decisions**

**1A. Identify best available information that characterizes human activities and natural and cultural resources.** Developing this data would include agency review to identify existing datasets on uses or resources (i.e., data found in the data portal) that the agencies agree represent the best currently-available science.

**1B. Create ocean plan content (e.g. maps, non-spatial information, temporal data) to facilitate and support regulatory consultations with federal resources agencies.** The data portal can support regulatory consultations with resource agencies that are part of the permitting process. Consultations can also be developed programmatically to apply to a class of activity that is likely to be repeated over time within a discrete geography. This can provide agencies, stakeholder, and the public with an up-front understanding about areas where certain activities can be permitted.

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<sup>11</sup> See *Marine Planning Handbook* at

[http://www.whitehouse.gov/sites/default/files/final\\_marine\\_planning\\_handbook.pdf](http://www.whitehouse.gov/sites/default/files/final_marine_planning_handbook.pdf)

<sup>12</sup> Found at [http://www.northeastoceancouncil.org/wp-content/uploads/2012/11/Charter-without-signatories\\_FINAL.pdf](http://www.northeastoceancouncil.org/wp-content/uploads/2012/11/Charter-without-signatories_FINAL.pdf)

<sup>13</sup> See Goal 2 In the *Options for the Northeast Regional Ocean Plan* Summary Report available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>

<sup>14</sup> See the report *Northeast Regional Ocean Plan: Options for Effective Decision Making*, for a more detailed discussion. Report found at: [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf)

**2. Develop “compatibility analyses” for potential development activities and related guidance for cumulative impact and other assessments under NEPA, and other authorities as applicable.** A compatibility analysis could range from being general and descriptive to a formalized matrix. A compatibility analysis can inform decision-making by describing interactions between uses and among uses and resources, and help identify where and what kind of additional information may be necessary to support review and permitting decisions. Data on a regional scale could also help address the issue of determining cumulative impacts throughout a region. For example, while the permitting process looks at the impact of one wind farm, this analysis could analyze the impact of numerous wind farms. There are many different ways of approaching this methodology, and the plan provides an opportunity to provide better information and guidance to develop a more consistent process while being flexible so that agencies can apply their own protocols.

**3. Institutionalize use of the ocean plan’s data and guidance through existing regulator review and guidance documents.** Through the ocean planning process, agencies will be coming to agreement about how data can best represent resources and human activities for particular management purposes. Existing guidance materials for the USACE Programmatic General Permit program and BOEM’s survey guidelines specific to offshore wind development are examples of specific opportunities to maximize the use of ocean plan data and information.

**Option: Enhance agency coordination and predictability of regulatory processes**

**1. Enhance pre-application procedures by developing standardized information about the process and use of ocean plan data and information for initial review of proposed projects.** This could take the form of a template that identifies sources of information, key stakeholder groups that could be affected and thus need to be engaged, process considerations such as how state and federal environmental reviews could be coordinated, and other issues. This option would enhance the existing pre-application process by giving agencies, proponents, and stakeholders a flexible roadmap that identifies key information early in the process. In short, project applicants would have a better sense of regulatory requirements and thus more complete initial project materials to enable earlier, better-informed project evaluation. Additionally, the states want the opportunity to better coordinate state and federal reviews, rather than having the processes run separately. This could allow for more effective stakeholder and public engagement, and provide states with opportunities to more effectively coordinate with their federal colleagues in the assessment of proposed projects.

2. **Develop guidance for the public that explains how agencies will work together to use information in the ocean plan to support environmental review and permitting processes.** External guidance for the public that describes how the individual agencies will implement the ocean plan is important to clarify the legal and practical relationship of the ocean plan to existing authorities and the National Ocean policy, and will provide transparency and predictability to the operation of the ocean plan.
3. **Institutionalize use of ocean plan data through Memoranda of Agreement or comparable expressions of agencies' commitments.** The Executive Order establishing the National Ocean Policy requires that federal agencies conduct their activities consistently with the ocean plan. If that authority is vacated, an MOA or similar agreement would memorialize a commitment by the agencies to continue to implement their existing authorities consistent with the agreements about the use of data and agency coordination on which the plan will be based.

**Option: Identify opportunities for enhancing the efficiency and effectiveness of the CZMA consistency review process**

The plan can provide information and guidance to help states and federal agencies achieve objectives under Coastal Zone Management Act (CZMA). In concert with their existing coastal program policies, states have the opportunity to use the plan to address specific activities in federal waters. If states choose to do so, plan data and information can be used to identify areas where similar federal activities can be addressed similarly by each state. Similarly, federal and state agencies can identify activities that can be addressed by programmatic review, such that activities with minimal impacts would not have to undergo individual, detailed state review.

**Option: Establish interagency groups to develop siting and permitting guidance for deep water aquaculture and guidance on regional access to federal sand and gravel resources**

Agencies could work together to develop guidance for siting and permitting deep water aquaculture for unmanaged species (i.e. blue mussels). The aquaculture industry has also expressed interest in discussing site ownership beyond permit authorization. BOEM has asked for support in thinking about how to allocate sand among states. The RPB could develop principles or guidance to inform future regional policy to help BOEM manage federal sand and gravel resources.

Participant questions and comments are provided below with answers to questions from RPB consultants or members italicized:

- Can you clarify that a compatibility analysis or pre-permit process guidance would not bind agencies if such products would be deemed to be inconsistent with existing authorities?

*Response: That is correct. These approaches wouldn't create any new authorities, and are only intended to inform decisions.*

- Existing authorities already call for best use of existing information under NEPA, but this is an opportunity to make these existing datasets better known?

*Response: Every interested party wants to use data more efficiently, and this is a better way to establish specific practices to do so.*

- When you get into permitting and leasing, there are many more authorities that apply to project review and permitting than those on which the options are based; for example, there are Clean Air Act components that a need to be complied with and those developers need to know that up front.

*Response: The report emphasizes that point.*

- For deep water aquaculture, what does "unmanaged" mean?

*Response: Species not currently managed by a fishery management plan.*

- The RPB should think about incorporating recommendations and information from the National Academy of Sciences "Green Book" which reviews how to bring systems thinking and ecosystem-based management into NEPA. Concern was expressed with the interest of some in the aquaculture community to assume ownership rights, suggesting the privatization of ocean resources.

*Response: The statement was specific to aquaculture, stemming from the need to provide a clear statement of certainty or right to a bank for financing future operations. There is no current way to establish that for aquaculture leases since there is no leasing system in place.*

- If there are data in the ocean plan, there should be agreement that they aren't static. There should be a description in the plan describing who is committing to maintaining the data.

*Response: There needs to be more discussion about how to define and continue to establish, manage and update the best available data.*

## VI. Breakout and Subsequent Full Group Discussions

In the afternoon, the participants split up into three separate breakout sessions, organized to provide a diversity of geographic and sectoral voices in each. While the agenda blocked out two

separate time periods in the afternoon to discuss separate topics (#1A- “Use of Plan Data and Information”; #1B-“Enhanced Coordination and Public Participation”), the breakout sessions tended to move between topics in their discussions. Topics and discussions from the three breakout groups and the full group discussion at the end of the breakouts are summarized by theme in the following paragraphs.

*Best available data*

Many discussions centered on defining and maintaining the “best available data” to be used in the plan. There was strong consensus that the plan needed to describe how the data would be kept up-to-date and how the plan would actively allow for new information. One participant stressed that since the plan essentially uses retrospective data to create forward-looking products, the RPB would have to acknowledge changing conditions and information.

Participants agreed that it was important to remain flexible to update and incorporate new datasets.

This led to discussions on data management and quality assurance/quality control (QA/QC) procedures. Some participants wondered who would be responsible for maintaining the timeliness and accuracy of datasets included in the plan. Others added that the plan should include language on specific screening procedures and QA/QC protocols that would be applied consistently across datasets, recognizing that different agencies may differ in data curation and management standards and protocols.

Some participants requested that the RPB approach the use of data broadly and use all available data, while others responded that it would be important to define authoritative information. There was agreement that in either case, the RPB should be transparent about its process and criteria for selecting the best available data.

There was some concern that the process would create bias by favoring datasets from certain agencies while ignoring other important datasets. One participant noted that some agencies are slow to adopt new models and incorporate new thinking. Another participant warned against “perimeter bias” – the tendency of data to accrue along an established project perimeter and the tendency to assign higher values to data found within a “known” area.

There were several sector and region-specific comments about the data use and management:

- *Energy:* a participant stated that agencies are honing the regulatory processes they will use to manage ocean energy projects since ocean energy development is relatively new. The participant suggested the RPB agencies identify future project leasing needs from a

data standpoint to help further facilitate priority data needs during the ocean planning process.

- *Traditional knowledge:* a participant said that fishermen are more likely to trust data that is reputed to be the best available if they contribute to the generation of that data. The participant suggested the RPB take advantage of opportunities to collect and utilize data from traditional knowledge sources.
- *Small island communities:* a participant urged the RPB not to forget about the island communities and the impact that regional planning may have on them.

#### *Pre-application procedures*

There was a general sense of support in creating consistent pre-application procedures to reduce the amount of “regulatory ping pong” that tends to occur during this process, and that this would be welcomed by project proponents as well as state and federal agencies. However, participants noted that both agency commitment and transparency during the process would be required. One participant expressed general support for the idea of a pre-application template or set of best practices, but noted that they are two different things used somewhat interchangeably in the report.

Several participants offered suggestions for the RPB in moving forward with this option:

- The RPB should consider how formal public engagement during the pre-NEPA application phase might occur and how any adjustments would meet the needs and interests of both stakeholders and project proponents.
- The RPB should consider creating advisory boards that allow proponents to reach specific stakeholder groups more easily and enable stakeholder groups to collectively address issues (rather than provide different individual perspectives) during pre-application engagement.
- This process could be accomplished by encouraging applicants to use plan-defined best available data as part of a “common application”. This application could be shared across agencies, ensuring that agencies were involved from the beginning and sparing applicants the need to fill out multiple applications.
- A common pre-application system that respects agency standards could be embedded across agencies. Requiring answers to very simple questions – such as “who, what and where?” – could reduce redundant work for everyone involved, although “where” might be avoided to avoid initial conflict about specific locations.

- Should a common pre-application template prove too ambitious, the RPB could create a roadmap laying out the application steps and information needs for various agencies.

*Continued discussion of options for identifying IEAs*

Many participants reiterated their support towards moving towards the ecosystems-based approach for defining areas of ecological importance (Option 5), but one participant noted that the group as a whole did not seem to be sure of "how to get there." Another participant expressed concern that rare or vulnerable species might not receive sufficient attention in the planning process.

*Compatibility and cumulative impacts analyses*

One group expressed general support for a compatibility analysis option to incorporate planning data and information into existing permitting and leasing decisions. Several participants identified it as the link between the work completed during the past 18 months and the work to be finished in the next 18 months of the ocean planning process. The group suggested the RPB consider using the format of the compatibility analysis used in the Massachusetts Ocean Plan. Others suggested including narrative approach to such an analysis. Participants also recommended that such an analysis include NEPA-related considerations.

Another group was more wary of the compatibility analysis option, noting that in many compatibility analyses, the tendency is for projects to be in the middle of a range of compatibility values, which is not ultimately useful. Another participant noted that the compatibility analysis process follows the permitting process too closely and avoids the holistic "systems" thinking necessary in moving towards a goal of ocean health. Other participants raised several questions about such an analysis would be developed, including who would do the work, how it would be funded, and what data would be used. Ocean planning staff replied that responses to those questions would depend on the scale of analysis and the issues involved.

Commenting on the cumulative impacts option, a participant suggested the RPB consider how to coordinate agency decision-making on cumulative impacts. The participant said this approach would be challenging in the short-term, but necessary for long-term. Another participant commented that cumulative impacts analyses haven't been used to date to support ocean management decisions.

*Legal implications of plan*

Several group discussions touched on the legal implications of the plan. In one group, a participant commented that environmental groups that in the future do not want specific data

to be used for decision making will attempt to challenge the plan based on data quality or the application of data at the programmatic level. Referring to Option 1, letter A, the participant suggested the RPB—and perhaps agency general councils—identify and plan for potential areas of litigation risk related to data quality. The participant also stated that creating standardized content for NEPA analysis (under Option 1, letter B) may have a high risk of litigation since groups will challenge a project's use of data at the programmatic level as too general for site-specific considerations. Another participant warned the RPB to be cognizant of the effects of trying to institutionalize plan-derived process and products on statutory processes, and the potential unintended consequences of doing so.

A participant in another group expressed fears that the plan's goal to align agency actions would confer a superior legal status to the group of agencies that would make it more difficult to sue and win against projects which "followed" the plan. Some RPB members commented that the plan wouldn't impact the legal status of any agency, noting that the court would still regard an agency as a singular power and could challenge that agency to prove that it was using its authority appropriately.

Some RPB members noted that the executive order confers authority for agencies to recognize the plan, and that there would also be approval of the plan through the National Ocean Council and via Memoranda of Understanding and/or Agreement. These actions will include descriptions of how to use the plan, including descriptions of how to do so in a manner consistent with appropriate statutes and regulations.

#### *Challenges associated with Memoranda of Agreement and/or Understanding*

Several discussions centered on the challenges related to supporting and encouraging agency Memoranda of Agreements and/or Understanding. One participant noted that agencies often have conflicting missions, and that the agencies will want to retain the ability to disagree with other agencies to protect their jurisdiction and authorities. However, Memoranda of Agreement may hinder an agency from doing so. Another participant cautioned that the plan should be careful about seeking to inform the public of how agencies will work together before agencies have actually arrived at formal Memoranda of Agreement. Other participants noted that it can take a long time to arrive at formal Memoranda of Agreement, but that significant coordination benefits can accrue beforehand. For example, merely by working on ocean planning with staff from other agencies, agency heads and middle managers may cooperate more effectively. The RPB should look for examples of cooperation and promote them to help keep the momentum in the ocean planning process without tying it up in bureaucratic procedures. Participants also suggested that if agencies commit to changing their practices in accordance with what is

developed through the RPB, the precise timing of any formal agreements may be less important.

*Establishment of interagency groups (Option 5 under enhanced agency coordination)*

Several participants brought up the need to address issues such as overlapping jurisdictions, regulatory gaps, or other inadequacies resulting from current government processes. One participant suggested that this should be explicitly required in the plan, and suggested the group could use the ocean planning process to identify how to improve those issues.

Several participants had concerns about the wording of this option, noting that specifying topics for interagency focus (deep water aquaculture and sand and gravel mining) was too prescriptive and didn't leave room for future, unforeseen uses. They instead suggested replacing these with the general term "emergent uses". Another participant also requested that gravel be removed from the wording since gravel habitats have specific management implications that aren't applicable in this case. RPB members and moderators noted that stakeholder input had resulted in the specific focus on deep water aquaculture and sand and gravel extraction.

*Public and stakeholder participation*

One group emphasized the need to enhance public participation in the plan development process and to have a very concrete, clear public engagement strategy that is specifically written into the plan. Some participants requested that the RPB create a formal, structural mechanism for stakeholders and the user group community to be providing guidance.

*Other*

The following were additional comments made.

- The RPB shouldn't let the perfect be the enemy of the good. The process is messy and there will be challenges, but the plan will represent significant progress.
- The RPB should take steps to institutionalize the use of best available data to ensure that the ocean planning process has a durable impact. One way to do this would be to encourage agencies to create shared permitting standards that incorporate data from the portal. This would incentivize applicants to use this data when submitting permit applications.
- The RPB should involve agencies early in the drafting the ocean plan's language to ensure that the data and guidance use agencies' vocabulary and comport with their

“culture.” In doing so, it would be helpful at this stage for agencies to agree on a common set of terms and definitions to be included in the plan.

- The RPB should explore opportunities to improve data and coordination beyond the regulatory context, such as weighing government investment opportunities or restoration efforts.
- Despite its “salty” focus, the RPB should ensure that its data collection and coordination efforts link to coastal and upstream issues.
- The RPB should consider using a “score card”, like an ocean health measurement, to track how the region is performing over time, noting applicable caveats related to accurate implementation.
- The RPB should apply real world examples to the coordination options to identify potential modifications that would make the options more useful.
- There is an absence of tribal participants from the Options document; the RPB should add Tribes where references are made to state and federal agencies. The Tribal Consultation Best Practices document is being developed in parallel and could also inform the pre-application stakeholder engagement elements.
- The group should consider whether the time and money spent on this process could have been better allocated towards advancing the goal of ocean health. Will all of this be worth it at the end of the day?
- A number of participants expressed excitement at the ocean planning work accomplished to date and appreciation for the work that had gone into it. The group as a whole was optimistic about the regional planning process and its potential impact.

## VII. Closing Remarks

Betsy Nicholson provided brief comments to close the meeting and invited Beth Kerttula, recently appointed Director of the National Ocean Council, to reflect on the meeting. Ms. Kerttula expressed admiration for the process in the Northeast. Ms. Nicholson stated that although these are challenging processes, there is optimism about the fact that what we’re doing is important and that we will look back on this as a huge accomplishment. She thanked everyone for participation and closed the workshop.

## APPENDICES

### Appendix A: Forum Participants

Category	First Name	Last Name	Affiliation
RPB consultant	Deerin	Babb-Brott	SeaPlan
Public Participant	Priscilla	Brooks	Conservation Law Foundation
Public Participant	Michael	Chambers	UNH School of Marine Science and Ocean Engineering
Public Participant	Rebecca	Clark Uchenna	Island Institute
Public Participant	Susan	Conant Wilson	Blue Ocean Society for Marine Conservation
Public Participant	Sarah	Farady	University of New England
Public Participant	Jennifer	Felt	Conservation Law Foundation
Public Participant	Melissa	Gates	Surfrider Foundation
Public Participant	Tammy	Getchell	MicMac/All Nations Consulting
Public Participant	Brent	Greenfield	National Ocean Policy Coalition
Public Participant	Jenny	Helmick	ERG
Public Participant	Molly	Holt	NOAA Office of General Council
Public Participant	David	Kaiser	NOAA
Public Participant	Beth	Kerttula	National Ocean Council
Public Participant	Allison	Lorenc	UNH School of Marine Science and Ocean Engineering
Public Participant	Wendy	Lull	Seacoast Science Center
Public Participant	Regina	Lyons	The Nature Conservancy



# OCEAN PLANNING IN THE NORTHEAST

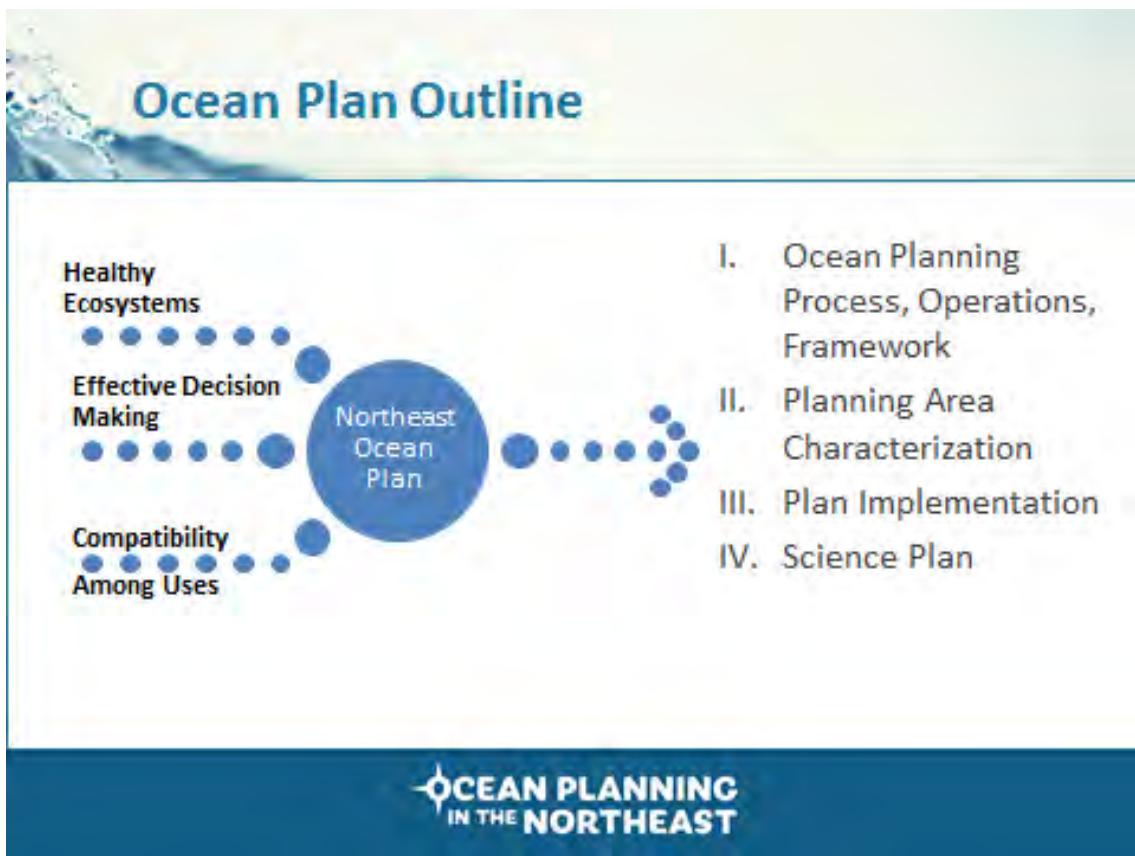
Public Participant	Sally	McGee	The Nature Conservancy
Public Participant	Chris	McGuire	The Nature Conservancy
Public Participant	Anne	Merwin	Ocean Conservancy
Public Participant	Ivy	Mlsna	US EPA
Public Participant	Robert	Moir	Ocean River Institute
Public Participant	James	Monroe	Blue Water Dynamics
Public Participant	Ru	Morrison	NERACOOS
Public Participant	Stephanie	Moura	SeaPlan
Public Participant	Bill	Needelman	City of Portland, Maine
Public Participant	Valerie	Nelson	Water Alliance
Public Participant	Jonathan	Pennock	New Hampshire Sea Grant
Public Participant	Tracy E.L.	Poured	Qualia Incorporated
Public Participant	Whitley	Saumweber	White House Council on Environmental Quality
NROC Consultant	Emily	Shumchenia	NROC
Public Participant	Patrick	Siebenlist	SeaPlan
Public Participant	Derek	Sowers	NOAA Office of Ocean Exploration and Research
Public Participant	John	Williamson	Sea Keeper Fisheries
Public Participant	Sarah	Winter Whelen	American Littoral Society
Public Participant	Crawford	Zetterberg	Surfrider Foundation
RPB-Federal	Melville	Cote	US EPA
RPB-Federal	Daniel	Hubbard	USCG
RPB-Federal	Robert	LaBelle	BOEM
RPB-Federal	Betsy	Nicholson	NOAA Office of General Council

# OCEAN PLANNING IN THE NORTHEAST

RPB-Federal	Chris	Tompsett	US Navy
RPB-New England Fishery Management Council	Doug	Grout	New Hampshire Fish and Game
RPB-Staff	Michele	DesAutels	USCG
RPB-Staff	Mary	Krueger	National Park Service
RPB-Staff	Matt	Nixon (alternate for Kathleen Leyden)	Maine Coastal Program
RPB-Staff	Emily	Norton	Maine Coastal Program
RPB-Staff	Christian	Williams	New Hampshire Coastal Program
RPB-State	Ted	Diers (alternate for Thomas Burack)	NH DES
RPB-State	Kathryn	Ford (alternate for Paul Diodati)	MA Division of Marine Fisheries
RPB-State	Grover	Fugate	RI Coastal Management Council
RPB-Tribal	Richard	Getchell	MicMac/All Nations Consulting
Support Staff	Toby	Berkman	Consensus Building Institute
Support Staff	Dory	Dinoto	Consensus Building Institute
Support Staff	Ona	Ferguson	Consensus Building Institute
Support Staff	Patrick	Field	Consensus Building Institute
Support Staff	Kate	Longley-Wood	SeaPlan
Support Staff	Katie	Lund	NROC
Support Staff	Nick	Napoli	NROC
Support Staff	Eric	Roberts	Consensus Building Institute
Support Staff	Douglas	Thompson	Consensus Building Institute
Support Staff	John	Weber	NROC

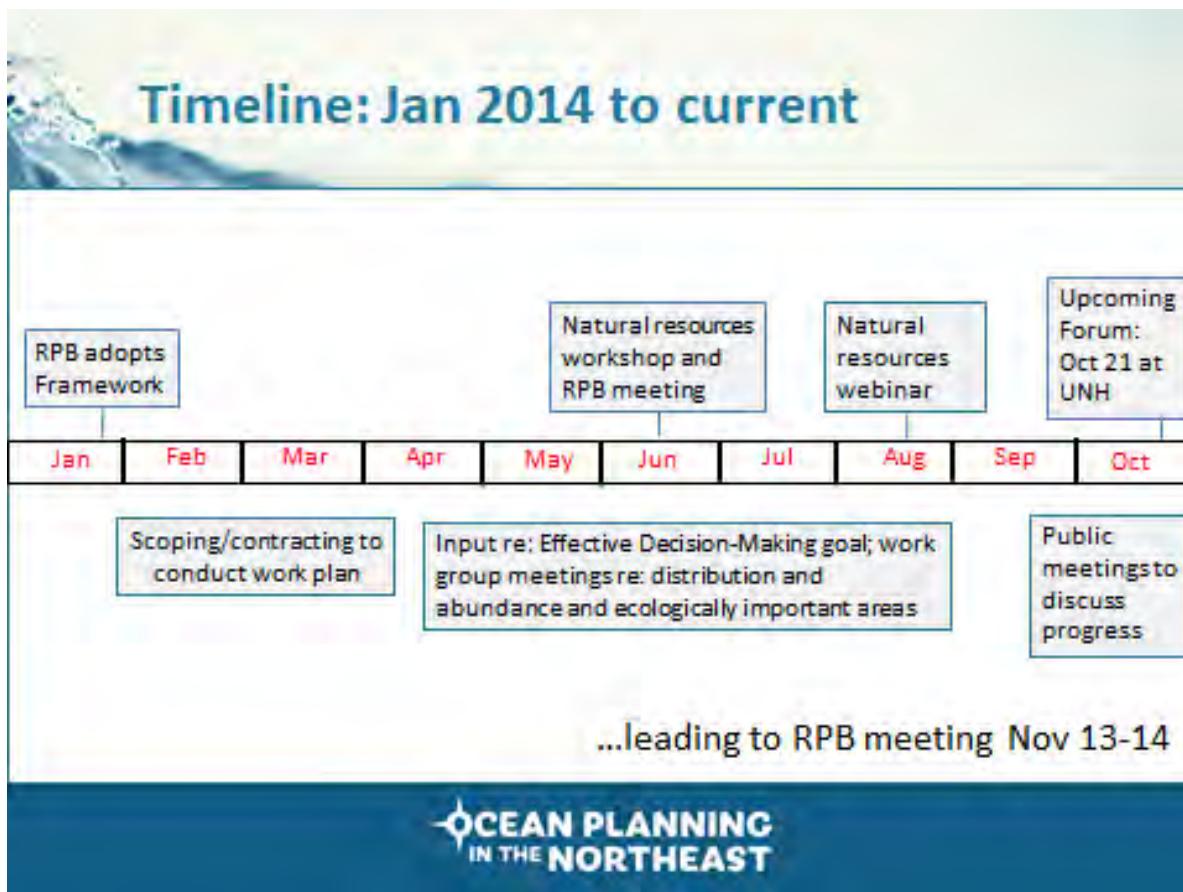
# OCEAN PLANNING IN THE NORTHEAST

## Appendix B: Ocean Plan Outline



# OCEAN PLANNING IN THE NORTHEAST

## Appendix C: Timeline



Appendix D: Natural Resource Characterization Infographics



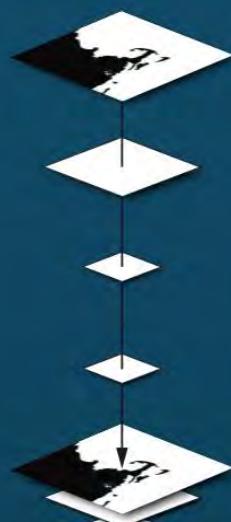
THE NORTHEAST REGIONAL PLANNING BODY  
IS CONSIDERING **5 OPTIONS**

FOR IDENTIFYING  
**ECOLOGICALLY-IMPORTANT AREAS**  
IN THE NORTHEAST REGION



TO SUPPORT **THE HEALTHY OCEAN AND COASTAL ECOSYSTEMS GOAL**  
IN THE **FRAMEWORK FOR OCEAN PLANNING IN THE NORTHEAST U.S.**

**OPTION 1: DEFINE AREAS USING  
EXISTING MAPS  
THROUGH EXISTING AUTHORITIES**



Some examples of existing areas

Endangered Species Act (1973)  
Critical Habitat

Magnuson-Stevens Act (1976)  
Essential Fish Habitat

Massachusetts Ocean Management Plan (2009)  
Special, Sensitive or Unique areas

Rhode Island Ocean  
Special Area Management Plan (2010)  
Areas Designated for Preservation  
& Areas of Particular Concern

The Northeast Ocean Data portal team,  
with input from relevant agencies, is  
already compiling areas identified by  
these authorities and planning efforts.

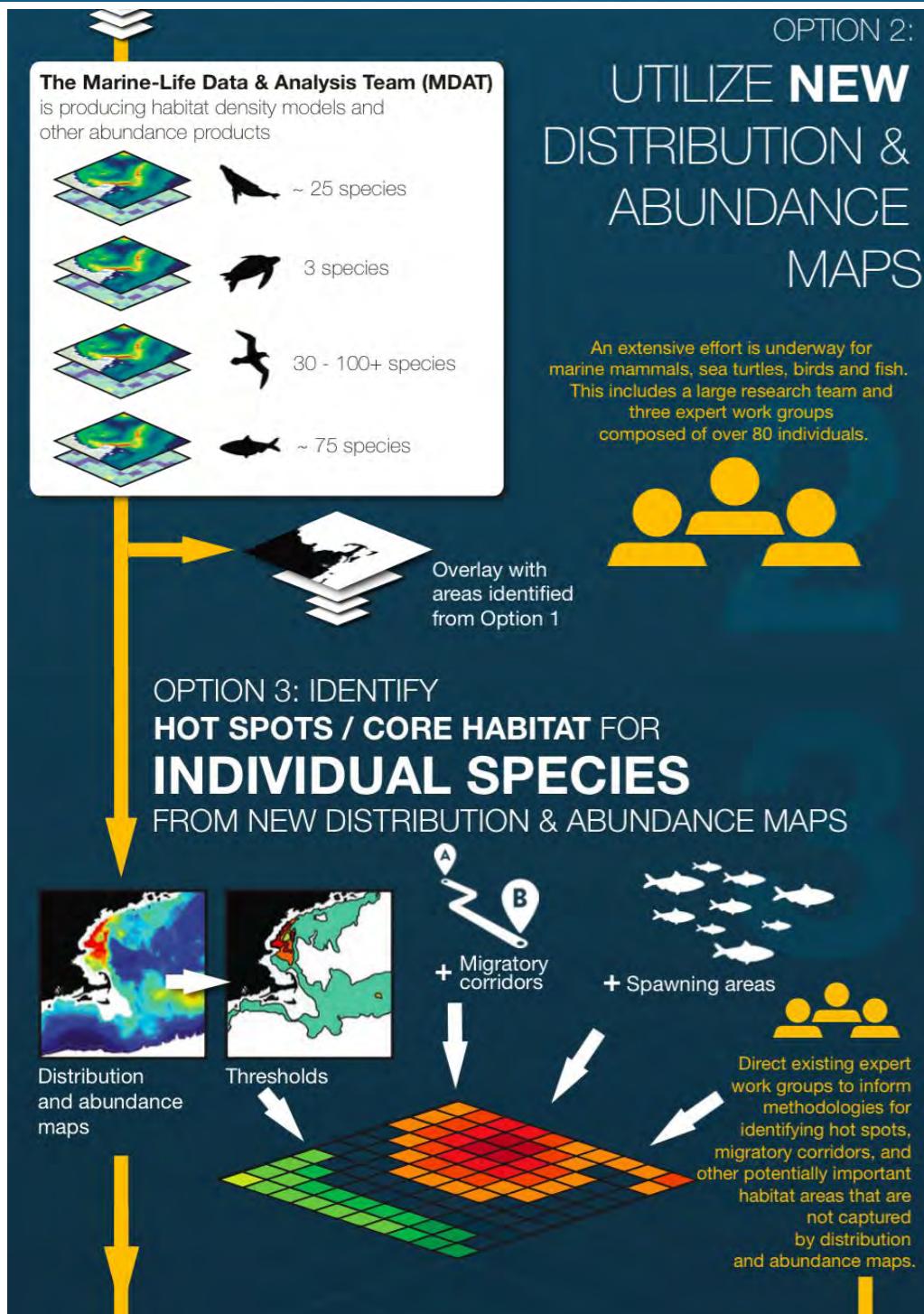


x 48 species

x 3    x 11    x 22

x 5

# OCEAN PLANNING IN THE NORTHEAST

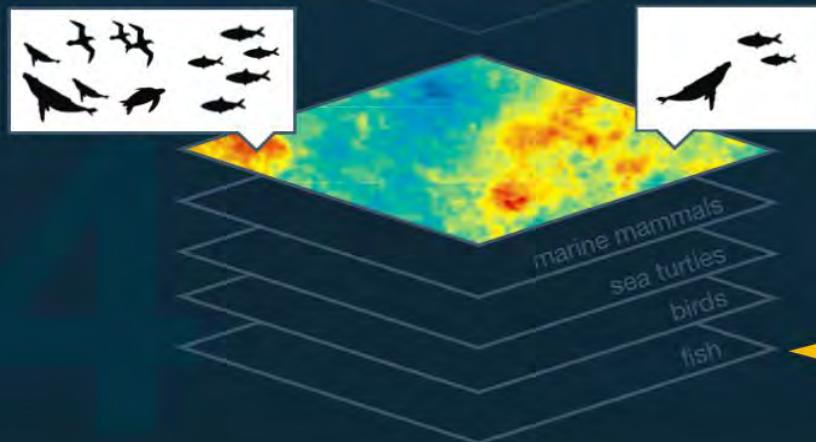


# OCEAN PLANNING IN THE NORTHEAST

OPTION 4: **OVERLAY** ABUNDANCE HOTSPOTS,  
CORE HABITAT, AND OTHER OCCURRENCE AREAS FOR

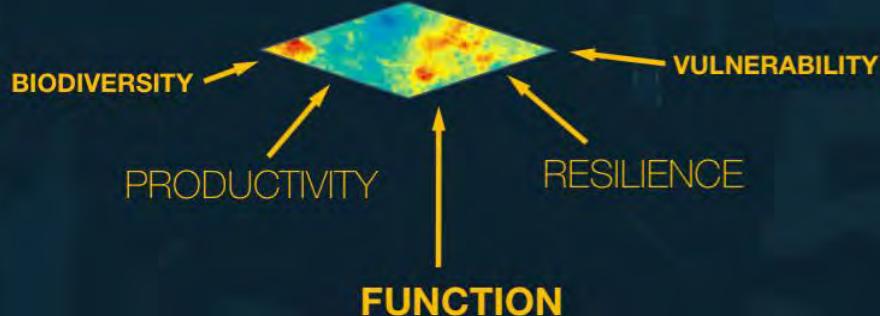
## PROTECTED & IMPORTANT MARINE SPECIES

Combine maps indicating regional abundance hot spots and other core habitat developed in OPTIONS 2 and 3 to identify areas important to multiple marine life species.



OPTION 5: **EXPLORE** OPTIONS FOR ADVANCING AN  
**ECOSYSTEM-BASED APPROACH**  
TO IDENTIFYING ECOLOGICALLY-IMPORTANT AREAS

👤 What is ecological importance?



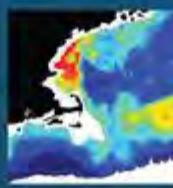
# OCEAN PLANNING IN THE NORTHEAST

## Appendix E: Effective Decision-Making Infographics



# OCEAN PLANNING IN THE NORTHEAST

Develop select **data products** that represent the best available science



Agencies agree on which data is useful and develop guidance

These data form the foundation of the Northeast Regional Ocean Plan and the Data Portal



Agencies agree on standardized reference data to support review and permitting

Identify opportunities for agencies to develop **data products** that support consultations; implement consultations as appropriate



Agencies agree on which data is useful and develop guidance

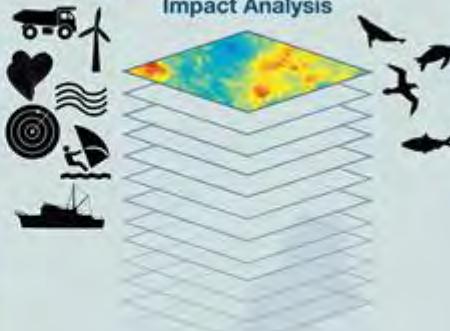
## USE DATA TO SUPPORT COORDINATED MANAGEMENT

### Compatibility Analysis



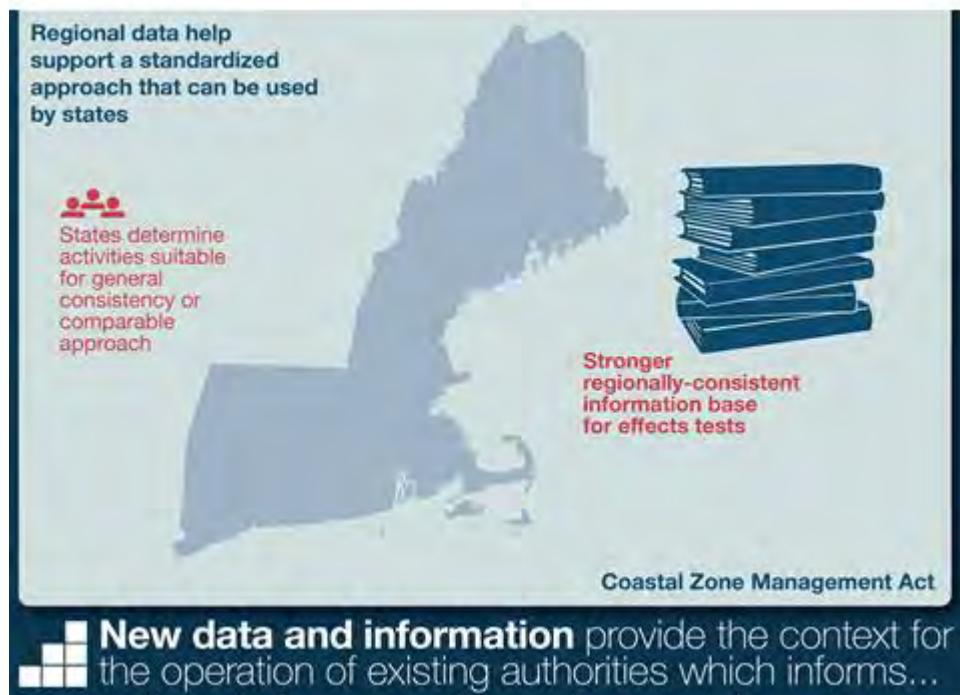
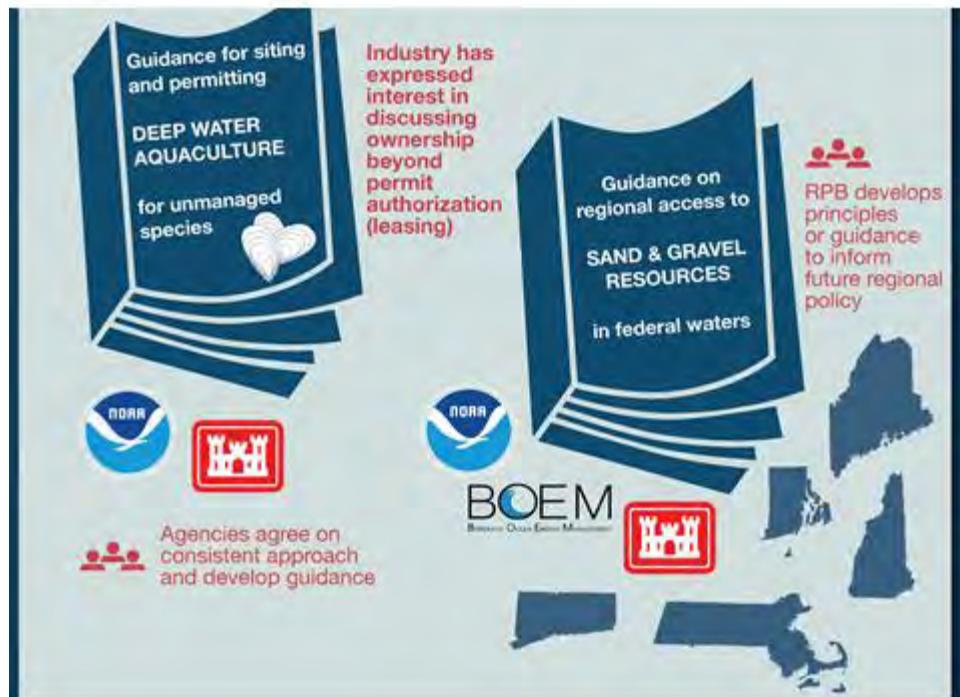
Agencies agree on scope and format and develop guidance about its use

### Cumulative & Multi-Sector Impact Analysis



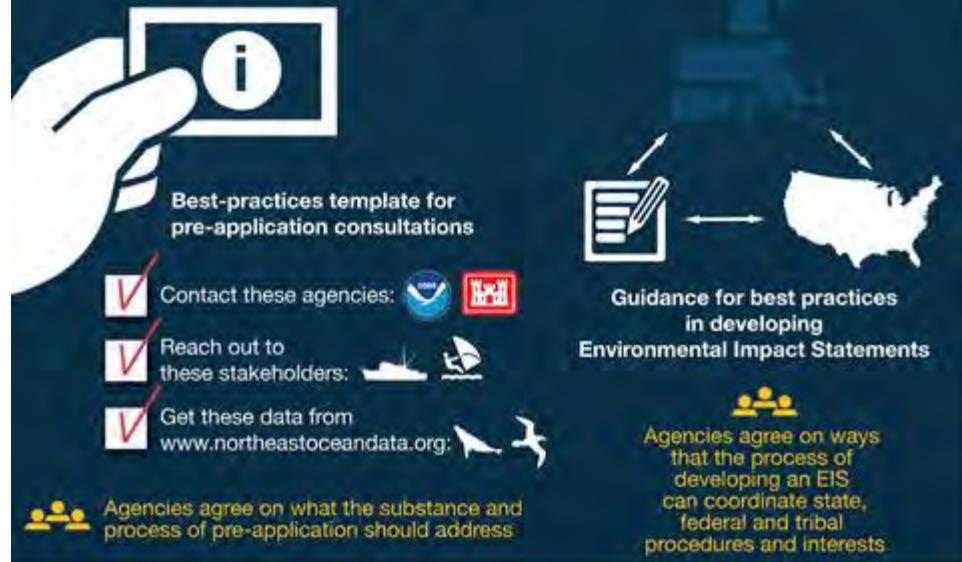
Agencies agree on how data and information can be used and develop guidance

# OCEAN PLANNING IN THE NORTHEAST



# OCEAN PLANNING IN THE NORTHEAST

options to **improve** the environmental review and permitting process  
**for specific projects**





# Online Public Comment Submissions Summary



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## **Online Public Comments Submission**

Comments submitted online to NE RPB co-leads follow in chronological order from the date they were received:

**October 15, 2014**

**Robert Murphy**

**Chair, Cape Cod and the Islands Group – Sierra Club**

***Appendix A***

**October 23, 2014**

**Rob Moir**

**Ocean River Institute**

I was concerned to see in Option five the words "ecosystem-based approach to identifying important ecological areas"

Because, in the science of ecology, importance values are a very specific term developed by Curtis and Macintosh (1951) to assess communities. The importance value is the sum of the relative species density, relative dominance, and relative frequency. Thus the maximum value for an importance index is 100.

Scientists have found that the importance of oak-hickory forests (ecosystem) in North Carolina is significantly higher than the importance of forests in New Hampshire because the former forests have a greater diversity of tree species.

For oceans, Odum and Odum report that the ecosystem of cod has a broad diversity of species and therefore a high importance value. While spartina salt marshes, the specialty of the Odum brothers, has the lowest importance value due to the predominance of one plant species and only one plant grazer, a grasshopper. I suspect the ecosystem of the bluefin tuna has nearly as low an importance value as the salt marsh.

In the pragmatic world of planning and management, to say cod ecosystem is more important than bluefin tuna ecosystem is science smart, based on best available science, and sushi stupid. There's no way a community built behind a salt marsh is going to think saltmarsh ecosystem less important than the ecosystem of the cod. This is because the word "importance" has different meanings to scientists and urban planners. Protection from storm surge does not factor into the ecologist's importance index.

I urge you not to use the term "important ecological area." To use the word choice must be made between two professional groups at the expense of the other. Better to say critical habitat for x or commercially valuable area, or say it like it is.

For the manager, every ecosystem is important and to lose any ecosystem is incompetence management. The challenge is to understand each ecosystem sufficiently well to be able to insert developments with minimum harm.

Adaptive ecosystem-based management requires scientists to stay engaged with the managers to modify behavior should approaches not be working the way we think. Because ecosystems are complex and dynamic we can never fully comprehend all the connections or players. We must expect the unexpected; there will be surprises, and that's the wonder of it all.

**October 24, 2014**

**Gayle Sweeney**

**Hampton Beach resident**

This comment is for Hampton Beach NH and involves the shoreline more than the ocean: Hampton Beach State Park by the Dunes and by the Seabrook /Hampton Harbor and Bridge.

The Hampton Beach State Park is part of the NH Audubon Important Bird Area Program. The Important Bird Area or IBA is of global significance. The designation includes the harbor, estuary and the Hampton marshlands. The state park is included in the designation due in part to the Piping plovers that nest there. There is an Avian report thru NH Audubon about the significance of the area...

Monarch Butterflies in the thousand some years migrate thru the park and the general neighborhood...There is a Monarch Watch Waystation...The Hampton Beach Beautification Committee is involved with park officials in planting flowers at the entrance of the park...

The Hampton Beach State park has a lot of potential...It is right by the Hampton Seabrook harbor and estuary . This water is found between the Parker River National Wildlife refuge and the Great Bay National Wildlife Refuge. The Hampton Seabrook harbor is where the Great Marsh begins and extends as far as Gloucester MA. The National Wildlife Refuge has declared the Hampton Seabrook Harbor area as an area of interest.

I was wondering if it would be possible to add the Hampton Seabrook Harbor and estuary to the National Wildlife Refuge system. Also this is where the Hampton State Park could come into play more...As I wrote the park has a lot of potential at the Hampton Beach resort both for tourism and research...The park is right at the harbor and perhaps could be instrumental in becoming more of a stepping stone for programs

involving many programs and agencies including NH Audubon, NWR NH Fish and Wildlife etc.

These are some of my thoughts. I appreciate your time.

Thank you very much

Gayle Sweeney

**October 30, 2014**

**Alison Chase**

**Natural Resources Defense Council**

*Appendix B*

**October 31, 2014**

**Melissa Gates**

**Surfrider Foundation**

*Appendix C*

**November 3, 2014**

**Priscilla Brooks**

**Conservation Law Foundation**

*Appendix D*

**November 3, 2014**

**Brent Greenfield**

**National Ocean Policy Coalition**

*Appendix E*

**October 31, 2014**

**Kelley Drye & Warren LLP**

**David E. Frulla**

**Andrew E. Minkiewicz**

**Anne E. Hawkins**

*Appendix F*

**November 5, 2014**

**The Nature Conservancy**

**Michelle Lakly**

*Appendix G*



## Appendix A

From: David Dow ddow420@comcast.net  
Subject: Fwd: Draft CC&I Group Comments on NE RPB SAP Goal #1- revised #1  
Date: October 15, 2014 at 10:34 AM  
To: David Dow ddow420@comcast.net

---

### Introduction:

The Cape Cod & the Islands Group- Sierra Club Excom submits the following comments on behalf of its 1100 members on Goals #1 (Healthy Oceans and Coastal Ecosystems) of the Northeastern Regional Planning Body Strategic Action Plan (NE RPB SAP). We are unable to attend one of the Fall Public meetings, since we are engaged in the 2014 draft Massachusetts Ocean Management Plan update dialog which is occurring in the same time frame. We helped the Massachusetts Chapter- Sierra Club draft its comments on 2009 MOMP draft. .We will focus our comments on local implications of goal #1 to the ocean waters surrounding Cape Cod and the Islands. We will leave commenting on goal # 2 (Effective Decision Making) to the Massachusetts Chapter Excom which has the lead on the Cape Wind project and national Club entities (Marine Action Team and Beyond Coal: Ocean Wind Energy Campaign), since they have more direct interactions with the appropriate state/federal agencies with regulatory oversight. MAT submitted the Sierra Club comments on 8 of the 9 national goals in President Obama's National Ocean Policy (NOP). The CC&I Group will develop the draft comments on Omnibus Habitat Development being developed by the New England Fishery Management Council (NEFMC) and NOAA Fisheries. One of our Excom members represented the Sierra Club at the recent NEFMC meeting in Hyannis, Ma. We have been engaged in section 208 of the Clean Water Act dialog for addressing our wastewater mitigation challenges on Cape Cod. The CC&I Group was a member of the Upper Cape Watershed Advisory Group and we have submitted comments on three of the town Comprehensive Wastewater Management Plans (CWMP). The Sierra Club has a policy of speaking with one voice at the national and grassroots (Chapters and Groups) level, so that we have not supported any of the town CWMPs because they contain elements that are contrary to national Club positions and policies.

The first thing that we want to say is that these diverse ocean planning endeavors and the associated permitting/regulatory regime by state/federal agencies are poorly coordinated. One of the goals of the National Ocean Policy is to integrate planning between state/federal agencies and Native American interests (Wampanoag tribes in our case). It was interesting when the tribal representatives spoke from the audience during the NE RPB SAP hearing in Barnstable Village (which had a low attendance because of poor publicity). The CC&I Group agrees with the tribal representatives that we need a greater focus on sustainable uses of the ocean and protection of wild places, wild things for the next 7 generations. The recent NEFMC meeting shows that sector groundfish management by the state/federal governments has been a disaster for both fish and fishermen/women. We don't support this unsustainable fisheries regime for the depleted stocks (Gulf of Maine and Georges Bank cod) which have a hard cap and the bycatch restrictions which reduce the landings of abundant groundfish/sea scallops. We agree with the Boston Globe editorial that we need to find new solutions based on sustainability.

We will discuss our perspective that the basic productive capacity of Essential Fish Habitat (EFH) has been altered by climate change (increased water temperature and ocean acidity) and eutrophication (nitrogen and phosphorus). Our local embayments face the loss of eelgrass beds; increased erosion of salt marshes and damaged shellfish beds which are inshore EFH for some of the 27 species managed by the NEFMC. Since EFH includes all the life stages (eggs; larvae; juveniles and adults) of the 27 managed species, this embraces most of state (0-3 miles) and federal jurisdictional (3-200 miles) waters surrounding Cape Cod. These habitat restoration challenges are ignored by the Cape Cod Commission's section 208 watershed planning efforts for

wastewater mitigation which focuses on water quality concerns (nitrogen loading reduction). Some of the town CWMPs (Comprehensive Wastewater Management Plans) are considering ocean outfalls for treated sewage effluent which the Sierra Club opposes because dilution is not the answer to toxic pollution by contaminants of emerging concern (cecs). The CC&I Group had a member on the drafting team of the Toxics Activist Team's cec fact sheet and we have been doing outreach events on this fact sheet. We have cecs in our public and private drinking water supplies on Cape Cod.

Since the NE RPB SAP is based on MOMP and the SAMP developed by the state of Rhode island, it separates ocean planning from human activities in coastal watersheds (eutrophication) and large scale ocean stressors (climate change and unsustainable fishing) in the northwest Atlantic ocean. This is a mistake from our perspective and we feel that areas like the Waquoit Bay Watershed National Estuarine Research Reserve (WBNERR) should be utilized as test sites on land for ecosystems-based management approaches (an idea supported in MAT's comments on the NOP). Climate change is the Sierra Club's top environmental priority and it is being addressed in marine waters by MAT and the Beyond Coal: Ocean Wind Energy Campaign.

There has been a shift at the base of the Gulf of Maine food chain from the "grazing food chain" (which is tied into the Spring diatom bloom) to the "microbial food web" which has influenced the link between forage fish (sea herring; menhaden, sand lance; etc.) and fish, marine mammals, seabirds and sea turtles at the top of the food chain. The implications of these changes at the base of the marine food chain on energy flow on the Northeast Continental Shelf are explored in the Northeast Fisheries Science Center's EMaX model. These changes in the productive capacity of the ocean food web forced the NOAA Fisheries modelers to increase the natural mortality from 0.2 to 0.4 in order to develop a Total Allowable Catch (TAC) target which sets the quota and bycatch constraints for groundfish sector management. These increases in natural mortality may be the new reality as a result of the shifting baseline phenomenon in the ocean from climate change and eutrophication. There have been changes in predator/prey interactions (top down control of marine biota by seals and sharks); changes in distribution between benthic prey and their fish predators; shifts in the distribution of forage fish and pelagic invertebrates due to climate change and alterations in the productive capacity of EFH as a result of unsustainable fishing and other human-based stressors. These changes don't just effect fish, but also include protected resources (marine mammals; sea turtles) and natural trust resources (seabirds). MOMP protects the core habitat of many PRs and NTRs as SSUs (Special, Sensitive and Unique) and provides protection for existing ocean uses from new activities like offshore sand and gravel removal for beach nourishment; aquaculture and ocean renewable energy projects.

Goal #1 (Healthy Oceans and Coastal Ecosystems) has discussions on identifying "areas of ecological importance"; developing maps of distribution and abundance; identifying "hot spots" and "core habitats" and exploring options for ecosystem-based management approaches. It would be easier to comment on these approaches if there were operational definitions of how this will be accomplished and linked more effectively to federal/sate agencies with regulatory and management responsibilities. The Cape Cod Commission section 208 draft report has a graphic of an operational approach for adaptive management which has been support by a Triple Bottom Line model and a Geographic Information System Database. MOMP has the MORIS system to provide data to support management decisions. Even though NROC has supported workshops and expert panels on the data required to support Healthy Oceans and Coastal Ecosystems goal, the NE RPB SAP endeavor appears to be data rich, but information poor (especially when one considers the accessibility of this data/information products to the general public). The NE RPB SAP meetings are attended by ENGO policy wonks; users and bureaucrats and these meetings are not accessible to concerned members of the general public.

Since the SAP will not be released until 2016 after President Obama has left office, it is important to have public support for this endeavor if it is to exist as an operational program into the future

~~To have public support for this endeavor if it is to exist as an operational program into the future.~~

There is need for a science translation effort to make this data and the associated products accessible to concerned citizens and a greater outreach effort is needed to needed to this audience. The CC&I Group uses town Health & Safety Fairs and outreach to community of faith groups for outreach to the general public on the Sierra Club cec fact sheet. The Toxics AT recently held a webinar on this fact sheet. The Massachusetts Breast Cancer Coalition has done outreach to the medical community and the public on its cec fact sheet. Staff at WBNERR and state university Sea Grant programs have expertise in science translation, while the Cape Cod Commission has used facilitators from the Consensus Building Institute (CBI) to develop outreach strategies for the public. NROC and the other contractors supporting the NE RPB SAP did a terrible job publicizing their public meeting in Barnstable Village and held the meeting during the day when many members of the public are at work. Since the NE RPB meetings are held during the day at expensive motels/hotels (October 21 meeting in Durham, NH), it is hard for the CC&I Group to attend these meetings for a couple of days because we receive no funds from the national Sierra Club. We have taken advantage of some day trips to nearby, off-Cape venues. Some of the Fall 2014 public meetings include early evening hours which can include working members of the general public which is an improvement. A North Atlantic right whale Sierra Club activist attended the public meeting in Belfast, Me. The October 14 MOMP meeting in Hyannis, Ma. is being held between 5-7 P.M. in order to include the working members of the public.

### **Specific Comments:**

\* Adaptive, Ecosystem-based Management; Monitoring and Indicators of Ecosystem Health: As we mentioned earlier these inter-related topics need to be described in operational terms in order to see how effectively they support goal #1 Since we are experiencing changes in the environment in the ocean adjacent to Cape Cod and the Islands, it is important to identify changes in the locations of the feeding aggregations for NARWs as their large zooplankton food source changes in time and space. The same is true for Humpback whales and their food source of sand lance and sea herring. The potential effects of ocean wind turbine construction on whales was a key focus area in the Sierra Club comments on the BOEM (Bureau of Ocean Energy Management) large scale wind farm areas off of southeastern Massachusetts (MA Wind Energy Area and RI/MA Wind Energy Area). MOMP proposes the Canal electric substation in Sandwich, Ma. as a priority site for bringing this “green electricity” on land and connecting to the regional New England electric grid, so the transmission corridor to move this energy from the south side of Cape Cod to the north is of local interest (both environmentally and socioeconomically, since the Canal Electric Plant is closing). As part of the wastewater mitigation effort, some town CWMPs are considering ocean outfalls for treated sewage effluent (which we oppose) and community ocean wind turbines could provide energy for sewerage and WWTP operation and maintenance. The Sierra Club supports ocean wind energy to reduce greenhouse gas (ghg) generation, while the Massachusetts Chapter supports REGI- Regional Greenhouse Initiative between New England States and Canadian Maritime provinces. Thus there is some interaction between our waste water/windenergy development challenges on land and compatible human uses in the coastal ocean.

The Gulf of Maine Council for the Marine Environment held a Summit in 2004 which included indicators for fisheries and aquaculture. Two of these that should be considered are economic multiplier effect of recreational fishing and commercial fishing on the regional economy at the County level (compares expenditures with direct, indirect and induced economic benefits to the surrounding community). On Cape Cod we have lost our working waterfront to non-water dependent uses (condominiums with docks; motels/hotels to support tourism; and other human development). This places more infrastructure at risk from relative sea level rise and storm surge associated with extreme weather events. This increased development will make it harder to implement climate adaptation and community resilience strategies for the effects of climate change on our natural environment and the natural capital/ecosystem services that support our

socioeconomic system. Given the rising flood insurance rates in the 100 year FEMA flood zone and the inability of many homeowners outside of this zone to purchase homeowners insurance in the private market (being forced into the state FAIR system and its 5-10% wind deductibles), changes in the ocean have socioeconomic consequences on our residents. Climate change on land requires some combination of retreat; adaptation and suffering from the inevitable changes that are already occurring and likely to worsen in the future. This is one of the reasons that the CC&I Group supports consideration of the interaction between human activities in coastal watersheds and the adjacent ocean that surrounds us.

\* Even though goal #2 (Effective Decision Making) discusses forming Interagency groups to discuss policy and management issues in regards to offshore aquaculture; sand and gravel extraction; and other new/emerging uses, our experience at the grassroots level finds very limited interaction and coordination between the agencies addressing the challenges that we face locally. Even though the Cape Wind electricity will come onshore at Oak Street in Yarmouth and the two large scale offshore wind farm transmission corridor may come onshore in Sandwich, BOEM rarely holds meetings on Cape Cod to solicit public input on these transmission lines and their environmental consequences (in spite of the fact that the MOMP map of SSUs and existing water dependent uses shows many areas that are off limits and have serious constraints both on the south and north shorelines of Cape Cod). Even though MOMP permits the land use agencies on Cape Cod; Marthas Vineyard and Nantucket to develop guidelines for community wind turbine development in state Ocean Act jurisdictional waters (0.3 to 3 miles), there are no guidance plans in effect to develop these sources of "green electricity". MOMP is focused on submerged electric cables in soft sediments (buried at 6-9 feet depths). and 500 meter wide buffer zones in the waters between 0.3 and 3 miles from shore.

\* Even though the state/federal governments talk about "carbon sequestration" to reduce green house gas emission (ghg) impacts, we have no coordinated effort to reduce salt marsh erosion from the combined effects of climate change and eutrophication. WBNERR and its scientific partners have a scientific project to explore some of these possibilities. The largest organic carbon sinks in the ocean are non-living particulate and dissolved organic carbon in the sediments and water column which are relatively inert and hard to sequester. The NE RPB might want to have NROC and its scientific panels of experts explore the effects of climate change on respiration in the water column which utilizes this POC/DOC and effects of bioturbation in the sediments for incorporating these inert organic carbon components for storage in the sediments (i.e. carbon sequestration). There is extensive research amongst oceanographers on the ocean carbon cycle and the changes that are likely to occur from climate change. Increased ocean acidity is going to decrease the importance of carbon sequestration in marine biota with calcareous shells, but seagrass bed restoration could provide a future sink.

\* The CCC section 208 watershed planning endeavor completely ignores MOMP/NE RPB SAP activities and the NEFMC/NOAA Fisheries OHA process, since it is being conducted under the Clean Water Act's Total Maximum Daily Load regulatory regime. The CCC did consider the NARW critical habitat in Cape Cod Bay when it decided that the community wind turbines should be developed in Nantucket Sound. We could site other examples of the poor coordination between the diverse ocean planning endeavors that are occurring simultaneously and the resulting permitting and management endeavors of local/state/federal agencies. This situation is incomprehensible to most local residents and time wasting, inefficient for those of us who are volunteer Sierra Club activists.

It hard for us to protect wild places, wild things in the surrounding ocean, while allowing compatible human uses (aim of National Ocean Policy) at the grassroots level when our volunteers are spread thinly over a variety of ocean planning and management endeavors at the local level which are poorly coordinated and lack integration. The state/federal/tribal

representatives on the NE RPB need to focus on saving the marine equivalent of the forest (marine biota and their habitats) and not dealing with the individual trees (effects of human activities being managed or permitted by agencies with legislative authority). We need greater focus on long term sustainability and the triple bottom line concept. We need to protect wild places, wild things for the next 7 generations as advocated by the Native American representatives. We are the victims of too many top down management failures by federal agencies (like the sector management of groundfish by the NEFMC/NOAA Fisheries) or the state government (targeted watershed management approach for wastewater on Cape Cod). We need to use more bottom up strategies that involve the general public and not just ENGO policy wonks and well organized user groups with paid staff, if the SAP is to become operational in 2016.

Thanks for the opportunity to comment on the fall 2014 public meetings focus on two of the NE RPB SAP goals.

Robert F. Murphy  
Chair, Cape Cod and the Islands Group- Sierra Club



## Appendix B



40 West 20<sup>th</sup> Street  
New York, NY 10011  
(212) 727-2700  
Fax (212) 727-1773

October 30, 2014

Ms. Betsy Nicholson  
Federal Co-Lead for the Northeast Regional Planning Body  
National Oceanic and Atmospheric Administration  
Northeast Regional Office  
55 Great Republic Drive  
Gloucester, Massachusetts 01930

*Submitted electronically*

**Re: Options for the Northeast Regional Ocean Plan**

Dear Ms. Nicholson,

On behalf of the Natural Resources Defense Council (NRDC) and our more than 1.4 million members and online activists, over 124,000 of whom live in New England, thank you and the other members of the Northeast Regional Planning Body (RPB) for your work to develop a Northeast Regional Ocean Plan (Plan) that will help ensure the continued functioning of our ocean's valuable resources and safeguard its sustainable use for this and future generations. We appreciate the opportunity to weigh in with you at this critical stage of Plan development and strongly urge you embrace a variation of the Healthy Ocean and Coastal Ecosystems Goal's Option 5, which calls for the scientific designation of areas of ecological importance, and Option 2, to develop measurable and relevant indicators of ocean health, and to adopt a series of commitments to use the Plan recommendations and outcomes to enhance ocean health and sustainable ocean use and allow us to see "on the water" results from the Plan.

As you well know, New England's ocean resources support more than 224,000 jobs, with the tourism and recreation sector representing more than 70 percent of these.<sup>1</sup> In 2012, nearly 1.3 million

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<sup>1</sup> National Oceanic and Atmospheric Administration. ENOW Data 2011. Available at <http://coast.noaa.gov/enowdatawizard/index.jsp?RegionList=-5&vYears=2011>. Please note that employment numbers and percentage of jobs due to tourism and recreation and living resources would be higher if the data accounted for the self-employed. Jobs numbers include part-time and seasonal employees.

recreational anglers took 6.2 million fishing trips in New England, generating more than \$1.4 billion in total sales impacts. The region's seafood industry generated nearly \$13 billion in sales impacts.<sup>2</sup> These economic indicators only touch on our ocean's wealth with many ecosystem services, such as storm surge protection, often unaccounted for.

Executive Order 13547 emphasizes the importance of ocean health, expressly calling for action to help "protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources" and "improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies".<sup>3</sup> The *Final Recommendations of the Interagency Ocean Policy Task Force* (Final Recommendations) further states:

[Coastal and marine spatial planning or CMSP] is intended to improve ecosystem health and services by planning human uses *in concert with the conservation of important ecological areas, such as areas of high productivity and biological diversity; areas and key species that are critical to ecosystem function and resiliency; areas of spawning, breeding, and feeding; areas of rare or functionally vulnerable marine resources; and migratory corridors.*

Enhanced ecosystem services and benefits can be attained through CMSP because they are centrally incorporated into the ... Plan as desired outcomes of the process and not just evaluated in the context of individual Federal or State agency action. *CMSP allows for a comprehensive look at multiple sector demands which would provide a more complete evaluation of cumulative effects. This ultimately is intended to result in protection of areas that are essential for the resiliency and maintenance of healthy ecosystem services and biological diversity, and to maximize the ability of marine resources to continue to support a wide variety of human uses.*<sup>4</sup>

We have a rare opportunity to define a new stewardship approach for ocean management – one which acknowledges the fundamental reliance of all of us on a healthy ecosystem and takes measures to defend it. NRDC's enthusiasm for the RPB's Plan stems from the understanding that this process will lead to improved ocean health and sustainable ocean use. We offer the below recommendations on the draft RPB documents and encourage you to turn to the science community to assist in your work and to continue to reach out to all of us who use and love the ocean to shape this landmark plan.

## **Recommended Options for the Healthy Ocean and Coastal Ecosystems Goal**

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<sup>2</sup> National Marine Fisheries Service. 2014. *Fisheries Economics of the United States 2012*. Available at <http://www.st.nmfs.noaa.gov/Assets/economics/documents/feus/2012/FEUS2012.pdf>. Please note that the results from this survey cannot be directly compared to ENOW data; the analyses use different data and models. Please note that the NMFS report includes self-employed fishermen. The seafood industry is defined as the commercial harvest sector, seafood wholesalers and distributors, seafood processors and dealers, importers, and seafood retailers.

<sup>3</sup> The White House. Office of the Press Secretary. July 19, 2010. Executive Order 13547. Available at <http://www.whitehouse.gov/the-press-office/executive-order-stewardship-ocean-our-coasts-and-great-lakes>.

<sup>4</sup> The White House Council on Environmental Quality. July 19, 2010. *Final Recommendations of the Interagency Ocean Policy Task Force* at 44. Available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf). Emphasis added.

## **I. The RPB should adopt an ecosystem-based approach to identify a network of important ecological areas with help from the science community.**

The RPB should adopt an enhanced version of Option 5: “Explore options for *advancing* an ecosystem-based approach to identifying important ecological areas *and identify a New England network of important ecological areas.*”<sup>5</sup> Identifying important ecological areas is a fundamental step in coordinated ocean planning. Given the primary importance that the ecosystem’s health brings to bear on so many other uses, it is only reasonable to take care in identifying a core list of areas that are critical to the continued functioning of the system. The Final Recommendations recognizes this, calling for regional planning bodies, with assistance from scientific and technical experts, to “investigate, assess, forecast, and analyze”:

- Important physical and ecological patterns and processes (e.g., basic habitat distributions and critical habitat functions) that occur in the planning area, including their response to changing conditions;
- *The ecological condition and relative ecological importance or values of areas within the planning area, including identification of areas of particular ecological importance, using regionally-developed evaluation and prioritization schemes that are consistent with national guidance provided by the NOC [National Ocean Council] ...*
- The relationships and linkages within and among regional ecosystems, including neighboring regions both within and outside the planning area, and the impacts of anticipated human uses on those connections; ... and
- Important ecosystem services in the planning area and their vulnerability or resilience to the effects of human uses, natural hazards, and global climate change...<sup>6</sup>

Securing the integrity of a network of important ecological areas that encompasses the diversity of offshore habitats necessary to support New England’s remarkable abundance of ocean life is the cornerstone for the region’s long-term health. Scientists have identified that healthy, functioning marine ecosystems satisfy four principles by maintaining or restoring: 1) native species diversity, 2) habitat diversity and heterogeneity, 3) populations of key species, and 4) connectivity.<sup>7</sup> Rarely is a single area large enough to meet the hallmarks necessary to safeguard marine biodiversity, as such it is important to identify a network of places that is:

- *Representative* of the area, including some proportion of every marine habitat type and/or species;

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<sup>5</sup> Options for the Northeast Regional Ocean Plan at 2. Available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>. Italicized language has been added to the initial option.

<sup>6</sup> Final Recommendations at 57. Available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf). Emphasis added.

<sup>7</sup> Foley, M.M., et al. 2010. Guiding ecological principles for marine spatial planning. *Marine Policy* 34(5): 955-966. Available at <http://micheli.stanford.edu/pdf/18-Foleyetal2010MarPol.pdf>.

- *Resilient* to disturbances, of a size and configuration that natural and human-caused damage to some areas can be absorbed without jeopardizing the integrity of the network;
- *Redundant*, with more than one location of each biodiversity element presented to allow a margin of safety; and
- *Connected*, so that discrete important areas are linked in a way to preserve important ecological processes and populations.<sup>8</sup>

Options 1 through 4 will not get us to the ecosystem-based approach necessary to ensure that the region's valuable marine biodiversity is protected for the future – and which the RPB is called to deliver through Final Recommendations.<sup>9</sup> Only Option 5 allows for the evaluation of ecosystem components that might not be highlighted in distribution and abundance modeling, such as “areas of high productivity and biological diversity, species rarity, persistence, vulnerability, function and resilience.”<sup>10</sup> Only Option 5 would conduct the necessary scientific exploration of the system envisioned in the Final Recommendations: “conservation of important ecological areas, such as areas of high productivity and biological diversity; areas and key species that are critical to ecosystem function and resiliency; areas of spawning, breeding, and feeding; areas of rare or functionally vulnerable marine resources; and migratory corridors.”<sup>11</sup>

Fortunately, the work necessary for the RPB to undertake Option 5 is not onerous. The basic blueprint for systematically identifying a representative, resilient, and redundant network of important ecological areas is well-established in the scientific literature and used by countless practitioners worldwide,<sup>12</sup> including the Northwest Atlantic Marine Ecoregional Assessment (NAM ERA), an analysis to identify a portfolio of highly important marine areas from the Gulf of Maine to Cape Hatteras in North Carolina.<sup>13</sup> The RPB does not need to recreate the wheel, but can build off of the science-driven, peer-reviewed NAM ERA effort. The RPB’s Options 1-4 – work that is largely underway – can feed into this process.

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<sup>8</sup> Tear, T.H., et al. 2005. How much is enough? The recurrent problem of setting measurable objectives in conservation. *Bioscience* 55(10): 835-849. Available at [http://www.estuarypartnership.org/sites/default/files/resource\\_files/Tear%20et%20al%202005%20-%20How%20much%20is%20enough.pdf](http://www.estuarypartnership.org/sites/default/files/resource_files/Tear%20et%20al%202005%20-%20How%20much%20is%20enough.pdf); Gaines, S.D., et al. 2010. Designing marine reserve networks for both conservation and fisheries management. *Proceedings of the National Academy of Sciences* 107(43): 18286-18293. Available at <http://www.pnas.org/content/107/43/18286.full>.

<sup>9</sup> Summary of options for identifying important ecological areas and conducting other assessments for ocean planning at 1-3. Available at [http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>10</sup> *Ibid* at 3.

<sup>11</sup> Final Recommendations at 44. Available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf).

<sup>12</sup> Margules, C.R. and Pressey, R.L. 2000. Systematic conservation planning. *Nature* 405: 243-253 at <http://www.nature.com/nature/journal/v405/n6783/full/405243a0.html>; Margules, C.R. and Sarkar, S. 2007. *Systematic Conservation Planning*. New York: Cambridge University Press.

<sup>13</sup> Greene, J.K., M.G. Anderson, J. Odell, and N. Steinberg, eds. 2010. The Northwest Atlantic Marine Ecoregional Assessment: Species, Habitats and Ecosystems. Phase One. The Nature Conservancy, Eastern U.S. Division, Boston, MA. Available at <https://www.conservationgateway.org/ConservationByGeography/NorthAmerica/UnitedStates/edc/reportsdata/marine/namerica/Pages/default.aspx>.

The RPB voices concerns that under Option 5 “[a]greement on scientific definition and approaches will be challenging; will require extensive effort to conduct and implement analyses”.<sup>14</sup> However, this need not be the case. The basic building blocks of a robust process – existing data, proven methodology and free software programs – already exist.

We encourage the RPB to bring together independent scientists working throughout the region – for example, as an ecosystem working group – to advise on tried and true ways to address this topic of how important ecological areas should be identified. Furthermore, scientists should help define a set of scientific guidelines and identify the key ecological components which can drive the formulation of a network of important ecological areas. This approach has been followed successfully in other areas, including the internationally acclaimed Australia Great Barrier Reef process. Once a network has been identified that meets the scientific guidelines, it should be reviewed by the same expert workgroup and the public through a series of public listening sessions.

As part of this process (and linked to Objective 3 of the Effective Decision Making Goal), the RPB should develop a compatibility assessment that specifies those current and likely future activities – not only limited to the four potential uses of offshore wind energy, sand and gravel mining, aquaculture, and carbon sequestration – that the important ecological areas are vulnerable to.<sup>15</sup> In this way, it will be possible to take steps to protect these special habitat areas, using existing regulatory authorities, from incompatible uses (where they are incompatible) while allowing compatible uses.

To the extent that user conflicts arise, the RPB should consider using tradeoff analyses as identified in the Healthy Ocean and Coastal Ecosystems Goal Assessment Option 3 to protect important ecological areas while respecting existing and new sustainable uses.<sup>16</sup> Tradeoff analyses, used to evaluate discrete alternatives against one another in the context of a Plan’s goals and objectives, could be employed to help structure a final Plan that best protects important ecological areas while respecting and making space for new and existing uses.

## **II. The Northeast RPB should develop an ocean health index that serves as a baseline against which to measure the progress toward meeting the Healthy Ocean and Coastal Ecosystems Goal.**

In addition to identifying and protecting a network of important ecological areas, the RPB should develop an ocean health index that allows regulators and the public to monitor success in protecting the region’s ocean health over time (Assessment Option 2).<sup>17</sup> The baseline indicators for this work should include the same ecosystem components (*e.g.*, keystone species, important habitats) identified by the scientific workgroup mentioned above. Specific, measurable, achievable, relevant and time-

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<sup>14</sup> Options for the Northeast Regional Ocean Plan at 2. Available at: <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>15</sup> Northeast Regional Ocean Plan: Options for Effective Decision Making at 19. Available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Report-Sept-29.pdf).

<sup>16</sup> Options for the Northeast Regional Ocean Plan at 3. Available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>17</sup> *Ibid* at 3.

limited – or SMART – objectives should be developed based on these indicators and monitored to allow for a regular assessment of how well the Plan is achieving the Healthy Ocean and Coastal Ecosystems Goal.<sup>18</sup>

Precedent exists for this work as well – for example, the Puget Sound Partnership identified indicators associated with the health of Puget Sound and developed SMART objectives that would implement its goal of a healthy ecosystem. One of the key components of the Puget Sound is estuaries and the indicator used is the aerial extent of eelgrass beds; the SMART objective tied to this indicator is to have a “20 percent increase in the area of eelgrass in Puget Sound relative to the 2000-2008 baseline reference by the year 2020.”<sup>19</sup> Reaching this goal shows that existing actions and activities are sustainable; whereas, falling short of this goal alerts managers that new actions are needed to restore and recover this key ecosystem component. Having measurable and meaningful objectives in a customized New England ocean health index would allow for regular checkups on marine health and advise future Plan iterations.

### **Recommended Options for the Effective Decision Making Goal**

**III. The RPB should identify the network of important ecological areas in the Plan, and develop siting recommendations and performance standards as guidance to agencies based on a compatibility assessment that clearly indicates the types of activities and uses that are compatible or incompatible with the discrete important areas that comprise the network.**

The RPB sets forth a series of options related to establishing commonly shared data regarding natural and cultural resources and human activities, for the purpose of improving the efficiency and effectiveness of agency review and decision-making. The options described are not mutually exclusive, and they each have merit. We recommend that Effective Decision Making Objective 3 Options 1 and 2 be combined. Option 1 should clearly include a map showing the distribution of important ecological areas, accompanied by a compatibility analysis (Option 2) that indicates the types of activities and uses that are incompatible with the important ecological areas (as stated above, it should be of all existing and predicted uses, not simply the RPB’s identified subset of four).<sup>20</sup>

The Plan should then include siting recommendations and performance standards, based on the compatibility analysis, that steer activities and uses toward the ocean areas where they can be sustainably employed. Identifying optimal places and times for activities, along with performance standards that minimize impacts to ocean resources and other users and identification of effective

<sup>18</sup> For further instruction in this approach, see Kershner, J., Samhouri, J.F., James, C.A., Levin, P.S. 2011. Selecting Indicator Portfolios for Marine Species and Food Webs: A Puget Sound Case Study. *PLoS ONE* 6(10): e25248. Available at <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0025248>; Ehler, Charles; A Guide to Evaluating Marine Spatial Plans, Paris, UNESCO, 2014. *IOC Manuals and Guides*, 70; ICAM Dossier 8. Available at <http://unesdoc.unesco.org/images/0022/002277/227779e.pdf>.

<sup>19</sup> See Puget Sound Partnership Vital Signs at <http://www.psp.wa.gov/vitalsigns/eelgrass.php>.

<sup>20</sup> Options for the Northeast Regional Ocean Plan at 4. Available at <http://neoceannplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>; Northeast Regional Ocean Plan: Options for Effective Decision Making at 17-20. Available at [http://neoceannplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Draft-Report-Sept-29.pdf](http://neoceannplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Draft-Report-Sept-29.pdf).

mitigation measures, similar to work undertaken in Rhode Island, Massachusetts, and Oregon, would provide useful guidance and increase effective and efficient decision-making for agencies carrying out their existing responsibilities. This information should be institutionalized beyond the Plan within the federal agencies memoranda and internal and external guidance, and the states' coastal zone management processes, as called for in the Coordination Options provided.<sup>21</sup>

#### **IV. The RPB should analyze cumulative multi-sector impacts at a regional scale.**

The RPB should ask for expert input on methods for analyzing cumulative impacts to New England's ocean life.<sup>22</sup> We need to know what threats – and in what combination – can cause irrevocable change to the ecosystem in order to prevent this from occurring. The background document entitled *Northeast Regional Ocean Plan: Options for Effective Decision Making* wisely proposes agencies “[d]evelop guidance within the plan for the analysis of cumulative multi-sector impacts at a regional scale, with focus on migratory species.”<sup>23</sup> Unfortunately, the discussion document *Options for the Northeast Regional Ocean Plan* fails to include this option, or any option explicitly devoted to cumulative impacts analysis.

This oversight should be addressed, as coordinated ocean planning aims to advance an integrated approach with a focus on avoiding the sector-by-sector impacts, which, when unaccounted for on a regional basis, can lead to a severely degraded ecosystem. The importance of this work is captured in one of CMS's national guiding principles: “*CMS would use an ecosystem-based management approach that addresses cumulative effects* to ensure the protection, integrity, maintenance, resilience, and restoration of ocean, coastal, and Great Lakes ecosystems, while promoting multiple sustainable uses.”<sup>24</sup>

### **Conclusion**

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<sup>21</sup> Options for the Northeast Regional Ocean Plan at 5-6. Available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>22</sup> For a review of the state of the art research, understanding, tools, and models available to tackle the challenge of cumulative impacts analysis, see Clarke Murray, C., Mach, M.E., and Martone, R.G. 2014. Cumulative effects in marine ecosystems: scientific perspectives on its challenges and solutions. WWF-Canada and Center for Ocean Solutions. Available at [http://awsassets.wwf.ca/downloads/cumulativeeffects\\_updated\\_forwebupload\\_singlepages.pdf](http://awsassets.wwf.ca/downloads/cumulativeeffects_updated_forwebupload_singlepages.pdf).

<sup>23</sup> Northeast Regional Ocean Plan: Options for Effective Decision Making at 19. Available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Draft-Report-Sept-29.pdf).

<sup>24</sup> Final Recommendations at 48. Available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf). Emphasis added. See, also, at 15-16, “Policies, programs, and activities of the United States should be managed and conducted in a manner that seeks to prevent or minimize adverse environmental impacts to the ocean, our coasts, and the Great Lakes ecosystems and resources, *including cumulative impacts*, and to ensure and improve their integrity” and at 59 “The ... Plan would include a regional assessment, based on environmental, social, economic, and other necessary data and knowledge, describing the existing and predicted future conditions, uses, and characteristics of the ocean, coastal, or Great Lakes areas covered in the CMS Plan. The regional assessment would include: relevant biological, chemical, ecological, physical, cultural, and historical characteristics of the planning area; ecologically important or sensitive species/habitats/ecosystems; and areas of human activities. *The assessment would also include an analysis of ecological condition or health and of cumulative risks as well as forecasts and models of cumulative impacts.* The regional assessment would explain the information obtained and analyses conducted during the planning process and how they were used to help determine management decisions and plan alternatives.” Emphasis added.

We are at a unique historical juncture where the plans we set in place now will determine how well the Northeast ocean waters and wildlife – already under stress from pollution, destruction of productive marine habitats, climate change and ocean acidification – continue to provide the food, jobs, and recreation we rely on them for while existing and new offshore industrial uses escalate. The RPB's Plan can offer the promise of sustainable ocean health, through the designation and appropriate management of important ecological areas and the development of an ocean health index and monitoring program.

We appreciate the RPB's efforts and look forward to working with you as you continue your deeply important work to develop a final Northeast Regional Ocean Plan to guide the region's ocean protection and sustainable use.

Sincerely,



Alison Chase  
Policy Analyst  
Natural Resources Defense Council



## Appendix C

October 31, 2014

To the Northeast Regional Planning Body:

The Surfrider Foundation appreciates this opportunity to provide comments to the Northeast Regional Planning Body (RPB) regarding options for making progress toward the effective decision making and healthy oceans and coastal ecosystems goals.

Surfrider Foundation is a nonprofit ocean user group that engages a vast volunteer network to protect oceans, waves and beaches through activism, education, research, and conservation. We have a strong New England regional presence with local representation in each coastal state; we are comprised of non-consumptive, low impact ocean recreation enthusiasts, such as sea kayakers, surfers, swimmers, wildlife watchers, and folks who enjoy sitting along the shore, all working together to enjoy and protect the ocean.

### **Options for Identifying Important Ecological Areas**

Surfrider Foundation asserts that identifying and protecting important ecological areas (IEAs) is an essential element of regional ocean planning. We recommend that the RPB continue to work with the scientific community to identify a suite of habitat types, keystone species and important ecological processes that together serve as a representative sampling of the region's remarkable marine life. We believe that option 5, calling for the exploration of options for advancing an ecosystem-based approach to identifying ecologically important areas, is the most robust option to achieve the healthy ocean and coastal ecosystem goal, as it incorporates the steps of the previous options.

Crucial to the full execution of the agreed upon options for identifying IEAs is integrated collaboration from all involved agencies, science advisors, NGOs, and stakeholders. This is consistent with the principles of the National Ocean Policy and would ensure strong buy-in so the IEA analysis results in real protections for these important places in the final Plan.

It is important not to shy away from the word *protection*. Surfrider points to the National Priority Objectives, which recommend that you "establish and implement an integrated ecosystem protection and restoration strategy,"<sup>1</sup> with one of the seven

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<sup>1</sup> Final Recommendations of the Interagency Ocean Policy Task Force at 6, available at:  
[http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf#12](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf#12)



established goals to “protect, maintain, and restore the Nation’s ocean, coastal, and Great Lakes resources and ensure resilient ecosystems and their ability to provide sustained delivery of ecosystem services.”<sup>2</sup> Protection of the marine environment is a key principle of the National Ocean Policy and should be a priority focus in each of our Northeast goals and associated actions.

### **Use of Data in Identifying IEAs**

As outlined in your options document, Surfrider recommends that the RPB can use existing data and build off from that with the current characterization studies, to help identify areas that would ensure a functioning ecosystem as well as gaps in data that need to be filled to properly plan for ocean uses.

This work can help us identify a network of areas important for spawning, breeding, feeding and migrating ocean fish and wildlife to ensure that the ecosystem continues to function and is resilient in the face of new challenges, like ocean acidification and climate change, and potential new uses that if employed, are likely to have negative impacts on the marine environment, like mineral exploration and extraction, seismic airgun testing, and some aquaculture businesses.

The National Ocean Policy’s Final Recommendations note: “[Spatial planning] ultimately is intended to result in protection of areas that are essential for the resiliency and maintenance of healthy ecosystem services and biological diversity, and to maximize the ability of marine resources to continue to support a wide variety of human uses.”<sup>3</sup>

Without ensuring the long-term health of the ecosystem, important economic activities like recreation and tourism, which rely on these resources, will be negatively impacted.

### **Regional Ocean Plan as an Iterative Process**

Given that time and funding required to achieve results of option 5 may stretch beyond the limits of the Plan launch, Surfrider recommends that the RPB recognize that ocean planning should be an iterative process; the Plan should lay out a process that can be repeated, and the RPB could then demonstrate the utility of that process through the

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<sup>2</sup> As above at 7.

<sup>3</sup> Final Recommendations of the Interagency Ocean Policy Task Force at 44, available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf).



data being assembled, collected or noted as a gap and planned for future collection. Recognizing ocean planning as an iterative process allows for focus on the development of the process leading to our final Northeast Ocean Plan in the given timeframe, rather than limiting the scope of the options by the explicit data we are able to collect in the given timeframe for the Plan's development.

### **Adding an Option to Identify and Protect Non-Consumptive Uses and Areas**

In addition to the Identification IEAs, Surfrider recommends that the healthy ocean & coastal ecosystems goal include an option to "Identify and protect non-consumptive, low impact ocean and coastal uses and areas, which contribute to healthy ocean and coastal ecosystems through enhanced public awareness and stewardship, as well as economic and social benefits that do not come at the expense of ecosystem degradation."

The identification and protection of non-consumptive uses and areas benefits both the ecosystems as well as economic and social values, transcending any other sector. Non-consumptive recreation opportunities depend significantly on the preservation of coastal and ocean ecosystems. Conversely, the degradation of these resources may reduce the quality of experience for users or render it unviable altogether. As such, protecting recreation uses and areas is not only compatible with, but also an essential strategy for advancing ecosystem protection.

Providing for the identification and protection of non-consumptive uses and areas in the Plan would also be an on-ramp for enhanced stakeholder participation in the public process for regional ocean planning. The coastal and marine use recreation characterization survey, conducted under the direction of the RPB and led by the Point 97-SeaPlan-Surfrider Foundation team, is already underway; since the work is in progress, minimal additional work or funding would be required to take action on this option. Inclusion of this option under the healthy ocean and coastal ecosystems goal would go a long way toward increasing stakeholder involvement in the process, and protecting the ocean as well as the public's use and enjoyment of the resource.

### **Identifying Threats**

It is vital not only to characterize species, habitats and human uses and values as we look at IEAs, but also to identify which threats- such as pollution, overfishing, climate change, certain types of development and mineral exploration and extraction- are likely to negatively impact the continued health of the ocean and its key ecological species and habitats. Identifying threats will provide us with spatial information to properly



identify and protect IEAs.

### **Keeping Information Updated**

Surfrider Foundation recommends that the RPB specifically delegate authority for keeping various data relevant- addressing the shifting political, funding, data and climate- and explicitly identify which agencies are responsible for what data in the Plan.

### **Options for Effective Decision Making**

Surfrider appreciates the effort made in this options document to identify strategies for improved coordination between government agencies. Advancing ecosystem-based management of New England's marine and coastal resources depends on better collaboration across jurisdictional boundaries and at all levels of governance.

However, we are very concerned about the limited focus on public involvement throughout the document and urge the RPB to define and include additional opportunities for public involvement in the options for effective decision-making.

The ocean is a public resource and effective decision-making must include the meaningful participation of citizens, including all affected communities and stakeholders.

Moreover, providing for robust public involvement is consistent with the requirements of the National Environmental Policy Act and other federal laws; maintaining strong focus on public input in decisions impacting our ocean and coasts will help ensure that trade-offs for new development are adequately characterized.

Agency-to-agency process discussions would be an ideal place for the RPB and other agency experts to apply focus, but is not an area where the general public can easily identify or offer informed feedback.

As such, Surfrider recommends that greater attentions be placed on making future public documents more readily digestible prior to presenting to the public for feedback.

### **Suggestions for Improving Documents for Public Review**

To achieve that end, Surfrider recommends that the RPB assemble an ad hoc stakeholder focus group by conference call or webinar ahead of the next document scheduled for release for public review, to get public input on how to message complex



decision-making options to the general public. This approach would better ensure that the messaging you are distributing for public review is conveyed in a manner that stakeholders can easily understand, while still remaining factual and comprehensive, and rendering informed and valuable feedback that will help mitigate potential future conflicts.

As the Northeast embraces a more integrated approach to agency decision-making, the public's role must be clearly defined and supported. Non-consumptive users are crucial participants in any decision, as we are the largest and most economically significant sector.<sup>4</sup>

### **Options for Improving the Public Process for Stakeholder Involvement**

Surfrider commends the RPB for its attentions to stakeholder involvement in regional ocean planning. Your collective efforts to engage the public at critical decision points throughout the process is evident, and we appreciate your responsiveness to this vital component of the National Ocean Policy.

In full appreciation of how quickly everyone is working to complete this initial phase of Plan development in the specified timeframe, in the future, we ask that you provide a bit more lead time than one week for the public to review complex draft documents before being expected to offer informed feedback.

### **Feedback on October 2014 Public Meetings**

Surfrider found the public meetings held in October to assemble state stakeholders for discussions on the options documents to be beneficial in affording state-by-state stakeholders the opportunity to discuss their own state interests and priorities with RPB members in an informal setting. We greatly appreciate the amount of work that went into these meetings. We wish to thank those RPB members and staff who went above and beyond to attend multiple meetings.

We offer the following suggestions to improve the process for the next round of public meetings:

1. **Suggestion:** Interested stakeholders should be asked to assist the RPB with developing the process and format for public meetings.

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<sup>4</sup> State of the U.S. Ocean and Coastal Economies 2014. National Ocean Economic Program & Center for the Blue Economy, <http://www.oceaneconomics.org/download/>.



- Benefit: Engaging stakeholders in scoping for the approach of and identifying the process for meetings designed to capture the input of the public would ensure greater buy-in and effectiveness of these meetings.
  - Opportunity: Utilizing the existing framework established ahead of the last set of public meetings, whereby RPB staff graciously met by phone and in person with interested stakeholders to discuss the already planned public meetings, the RPB could implement this suggestion by instead using these preliminary discussions to solicit stakeholder input to help shape the public meetings (the same is true for the Forum).
2. Suggestion: The RPB should assemble an ad hoc stakeholder focus group by conference call or webinar ahead of the next set of documents to be released for public review, to get input on how to message complex options to the general public, prior to presenting to stakeholders for review.
- Benefit: This approach would better ensure that the messaging you are distributing for public review is conveyed in a manner that stakeholders can easily understand, while still remaining factual and comprehensive, and rendering informed and valuable feedback.
  - Opportunity: The RPB has email lists of public meeting attendees who could be invited to participate in this messaging focus group.
3. Suggestion: Engagement opportunities in public meetings should be diversified to allow real time remote participation as well as live recorded audio and/or video for stakeholders who are unavailable during the meeting time.
- Benefit: This approach would open-up participation to a wider audience of stakeholders, many of whom are unavailable during weekday meetings. This approach also provides an easy on-ramp for potentially interested stakeholders to tune-in from home or work to get a sense of the process, before committing to meeting attendance.
  - Opportunity: There are several free technologies available that could be tested, including Livestream for video streaming and freeconferencecall.com for audio call-ins for your meetings. In addition, many municipal and state governments livebroadcast hearings and other general meetings, and are likely to have a facility and equipment you could use.
4. Suggestion: Break public meetings into two groups- one for stakeholders who are new to the ROP process and one for those who are already engaged, to ensure that you're capturing all interested stakeholders while continuing to gather specific public feedback on the task(s) at hand.
- Benefit: This approach would allow the RPB to gather robust and informed feedback from engaged stakeholders while educating newly interested stakeholders about ocean planning, the National Ocean Policy, and progress made to date in the Northeast.



- Opportunity: This approach would enhance stakeholder retention as it values both the time that engaged stakeholders have invested while also focusing on recruiting and engaging newly interested stakeholders.
- 5. Suggestion: States could follow the lead of New Hampshire in utilizing stakeholder support for amplifying opportunities to engage in public meetings.
  - Benefit: This approach generates greater buy-in and also markets the opportunity to engage to a broader audience.
  - Opportunity: The RPB has email lists of public meeting attendees who could be explicitly invited to share messaging with fellow stakeholders.
- 6. Suggestion: States could follow the lead of Maine in organizing their public meetings specifically around the State RPB Advisory Committee with an open invitation to the public to attend.
  - Benefit: This approach renders informed stakeholders at the table to carry discussion on the current topic(s) forward, rather than spending a majority of the meeting on the basics of ocean planning.
  - Challenge: The weekday afternoon timing of this October 8 meeting, from 1-4PM, made attendance by the general public difficult. Realizing that the intent was to solicit input from advisors who are expected but not explicitly directed to represent and share feedback with their respective stakeholder groups, Surfrider recommends that if this approach is replicated for future public meetings, advisors be made aware in writing of their expected role in sharing findings with their communities, or that the meeting be scheduled after normal working hours or on a weekend to provide better opportunity for public attendance.
- 7. Suggestion: States could follow the lead of Connecticut in organizing their public meetings in collaboration with existing state meetings relevant to ocean planning.
  - Benefit: This approach leveraged an existing meeting and brought new, concerned and engaged stakeholders to the ROP table.
  - Opportunity: Each state, as well as the Tribal Nations, Fisheries Council, and the Federal agencies, have meetings they could leverage in this way to specifically target affected stakeholders.

### **Feedback on Stakeholder Forum**

Surfrider found the Stakeholder Forum to be beneficial in many ways. Primarily, the Forum offered engaged stakeholders the opportunity to have open discussion with RPB members regarding the ROP process and options documents. In concert with staff presentations on the options, the breakout sessions and small group discussions were lively and fruitful. **Surfrider is extremely appreciative of the RPB members who**



prioritized this important opportunity, and were present for the Forum.

In addition to a few RPB members, what was missing at this daylong, weekday meeting was sectorally diverse, regionally crosscutting stakeholder presence. Without this robust stakeholder presence, the Forum and its effectiveness as a tool to engage stakeholders was significantly diminished.

We urge the RPB to host another Forum at the next critical decision juncture; we offer the following suggestions to improve the process for a potential future Stakeholder Forum:

1. Suggestion: While the growing RPB email list is likely to capture a majority of the individuals serving on state advisory groups, it would be helpful for all RPB members to specifically share information about the Regional Forum with their state advisors to encourage participation.
  - o Benefit: This approach leverages existing relationships between state RPB members and state stakeholders, and therefore adds credibility to the ask for participation.
  - o Opportunity: Each state, as well as the Tribal Nations, Fisheries Council, and the Federal agencies, have email lists for their stakeholder advisory groups in place that could be used to help promote participation in regional meetings, as well as to further amplify communications through the email lists of those advisors. There was missed opportunity this October for state RPB members to share Regional Forum information with state stakeholders and advisors.
2. Suggestion: Use the state-based public meetings as brainstorming workshops to build up to the Forum, so that the state-based stakeholders hammer out state-specific thoughts on the topic(s) at hand, and are then made aware of the importance of sharing at the regional level and motivated to attend the Forum to share their findings with the regional stakeholder community, as well as the full RPB.
  - o Benefit: This approach lends community support to the work of the state RPB members and empowers stakeholders to take ownership of their state's interests in ROP, as well as to engage in dialogue with other states and Tribal peoples in the Northeast, and the RPB.
  - o Opportunity: This approach could be implemented at the next critical decision juncture, with an email circulated from NROC to its ROP list with an explicit ask for RPB members to share with their advisors and email lists. State RPB reps could specifically request their advisors to flesh out thoughts on topics at hand and agree to participate at the region-wide meeting to share.



3. **Suggestion:** To ensure that all state stakeholders are adequately represented in the development of our Plan, the RPB should clearly define the expectation for State RPB members to fully develop advisory groups **specific to the ROP** process.
  - o **Benefit:** This would ensure that states are actively and openly engaging stakeholders in ROP, not just in their state plans. Further, this would ensure that all affected stakeholders can engage in a state advisory function, and not need to be hand-selected by the state leads.
  - o **Opportunity:** Maine has a good model to follow for assembling a robust advisory board focused on the ROP; Rhode Island is also effectively utilizing their OSAMP advisory group for state feedback on ROP. Surfrider recommends that these be used as examples.

Thank you for taking the time to consider Surfrider Foundation's positions on your options for identifying IEAs, effective decision-making, and improving the public process for participation in ROP. We look forward to continuing to represent New England's non-consumptive ocean and coastal recreation users in the public process, and working with you to urge additional recreational users to engage.

Sincerely,



Melissa Gates  
Northeast Regional Manager







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November 3, 2014

***Submitted electronically through the public comment portal at [neoceanplanning.org](http://neoceanplanning.org) and to klund@northeastoceanouncil.***

**Re: Comments on *Options for the Northeast Regional Ocean Plan* (September 29, 2014).**

Dear Northeast Regional Planning Body:

Conservation Law Foundation (CLF) is pleased to provide comments to the Northeast Regional Planning Body (RPB) regarding its *Options for the Northeast Regional Ocean Plan*, dated September 29, 2014. CLF supports the development of a comprehensive, ecosystem-based regional ocean plan as the primary mechanism for implementing the goals and priorities of the *National Ocean Policy*<sup>1</sup> and the *Final Recommendations of the Interagency Ocean Policy Task Force*<sup>2</sup>. We commend the Northeast RPB on the steady progress it is making in the development of the Northeast Regional Ocean Plan. Ultimately, the goal of the *National Ocean Policy* and regional ocean plan is to ensure that New Englanders and the nation can rely on all that our ocean has to offer by way of food, transportation, renewable energy, recreation and jobs now and in the future, while ensuring that our ocean ecosystem, including its wildlife and habitats, is protected, healthy and thriving.<sup>3</sup> The options that you choose in November to advance the Healthy Ocean and Coastal Ecosystems and Effective Decision Making goals of the Ocean Plan will largely determine how the Ocean Plan fosters the health of our ocean ecosystem and how the Ocean Plan is implemented.

#### **Goal: Healthy Ocean and Coastal Ecosystems**

*Develop a planning framework to protect, restore, and maintain healthy ocean and coastal ecosystems that provide social, cultural, spiritual, and economic benefits. Account for changing environmental conditions and new information as it becomes available. Respect the intrinsic value of the ocean, its biodiversity, and act as its steward/caretaker, recognizing humans as part of the ecosystem.*

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<sup>1</sup> Executive Order 13547, Stewardship of the Ocean, Our Coasts and the Great Lakes. Fed. Reg. 43023. Thursday, July 22, 2010.

<sup>2</sup> White House Council on Environmental Quality, Final Recommendations of the Interagency Ocean Policy Task Force (July 19, 2010), available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf).

<sup>3</sup> Final Recommendations at 44. Available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf). See, "CMSP is intended to improve ecosystem health and services by planning human uses in concert with the conservation of important ecological areas, such as areas of high productivity and biological diversity; areas and key species that are critical to ecosystem function and resiliency; areas of spawning, breeding, and feeding; areas of rare or functionally vulnerable marine resources; and migratory corridors. Enhanced ecosystem services and benefits can be attained through CMSP because they are centrally incorporated into the CMS Plan as desired outcomes of the process and not just evaluated in the context of individual Federal or State agency action. CMSP allows for a comprehensive look at multiple sector demands which would provide a more complete evaluation of cumulative effects. This ultimately is intended to result in protection of areas that are essential for the resiliency and maintenance of healthy ecosystem services and biological diversity, and to maximize the ability of marine resources to continue to support a wide variety of human uses."<sup>3</sup> Emphasis added.

***Options for identifying “areas of ecological importance”:***

The Northeast RPB’s Healthy Ocean and Coastal Ecosystems goal stated above and in the *Framework for Ocean Planning in the Northeast United States*<sup>4</sup>, describes what must be the overarching goal and vision of the Northeast regional ocean plan – a framework to protect, restore and maintain healthy ocean and coastal ecosystems that provide social, cultural, spiritual and economic benefits, taking into account changing environmental conditions and our evolving understanding of our ocean ecosystem while respecting the intrinsic value of the ocean and its biodiversity. We strongly support this goal. With respect to the five options for identifying areas of ecological importance, we strongly **urge you to immediately pursue Option 5** to explore and implement an ecosystem approach to identifying Important Ecological Areas. The Final Recommendations recognizes the importance of an ecosystem approach and calls for regional planning bodies to advance this effort with assistance from scientific and technical experts.<sup>5</sup> Unlike Options 2, 3, and 4 which are based on examining individual species abundance and distribution, an ecosystem-based approach would enable consideration of other important factors such as productivity, biological diversity, species rarity, persistence, vulnerability, function and resilience. To be clear, the work now underway by the Duke University/NOAA team which is contemplated in Options 2 and 3 and would form the components for Option 4 is critical to the ocean plan and will provide essential input into the ecosystem approach to Important Ecological Areas contemplated in Option 5, but it cannot deliver the ecosystem framework to identifying Important Ecological Areas that the RPB should support and advance.

To advance Option 5, we recommend that the Northeast RPB form an interdisciplinary working group to review available methodologies for identifying Important Ecological Areas and to recommend an appropriate methodology for the Northeast Regional Ocean Plan that takes into account data availability, time to completion, and fiscal requirements. Members of this working group should include scientists with expertise on New England’s ocean ecosystem, as well as scientists who have expertise in Important Ecological Area methodologies whether they are based in New England or elsewhere. Once a working group has been defined, a methodology chosen and funds made available, a broader group of scientists with expertise in various components and aspects of Northeast marine ecosystems as well as scientists with broad expertise on marine ecosystem dynamics will need to be assembled to review data and to implement the methodology. We believe that this work, combined with scientific analysis currently underway will enable the RPB to identify Important Ecological Areas in an ecosystem based framework and result in an ocean plan that has strong underpinnings in ecosystem science and that lays a foundation for ecosystem-based management in the coming years.

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<sup>4</sup> Northeast Regional Planning Body, Framework for Ocean Planning in the Northeast United States, available at <http://neoceanplanning.org/wp-content/uploads/2014/02/NE-Regional-Ocean-Planning-Framework-February-2014.pdf>

<sup>5</sup> Final Recommendations at 57. Available at [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf). See, “**Analyze Data, Uses, Services, and Impacts:** With assistance from scientific and technical experts, the regional planning body would investigate, assess, forecast, and analyze the following: Important physical and ecological patterns and processes (e.g., basic habitat distributions and critical habitat functions) that occur in the planning area, including their response to changing conditions; The ecological condition and relative ecological importance or values of areas within the planning area, including **identification of areas of particular ecological importance**, using regionally-developed evaluation and prioritization schemes that are consistent with national guidance provided by the NOC... The relationships and linkages within and among regional ecosystems, including neighboring regions both within and outside the planning area, and the impacts of anticipated human uses on those connections...Important ecosystem services in the planning area and their vulnerability or resilience to the effects of human uses, natural hazards, and global climate change...” Emphasis added.

The interdisciplinary ecosystem workgroup should meet several times over the period of 8-12 months and to the maximum extent possible be designed to use the time of the participants efficiently including using conference calls and electronic communications and other opportunities for input. Resources for dedicated staff time to facilitate, manage and/or provide technical expertise for this effort will advance the work and encourage participation from the scientific community.

CLF wants to underscore that methodologies for identifying Important Ecological Areas have been developed and used extensively here in the United States and around the world – the RPB would not be starting this process from square one.<sup>6</sup>

***Options to conduct other types of assessments:***

CLF recommends that the Northeast RPB pursue Option 2 to develop a New England specific ocean health index to develop a baseline assessment of the region's ocean health and to periodically monitor the region's ocean health and provide a basis for adaptive management in the future. This work should be coordinated with existing regional efforts (as discussed in Option 1) to measure ocean health including but not limited to NROC/NERACOOS Sentinel Monitoring for Climate Change, the Gulf of Maine Council's Ecosystem Indicator Partnership, the National Estuary Program and others. Any ocean health index that is developed should include a range of metrics which measure the ecological, economic, and cultural characteristics of the Northeast marine ecosystem.

With respect to Option 3 and “tradeoff analyses”, the Northeast RPB should consider incorporating the use of tradeoff analyses in the development of a decision framework to evaluate the alternatives in a manner that protects important ecological areas while respecting new and existing sustainable uses.

**Goal: Effective Decision-Making**

*Improve management effectiveness, intergovernmental decision making, engagement, collaboration, and integration of best available knowledge. Reflect ever changing social, environmental, and technological conditions.*

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<sup>6</sup> Examples of methodologies for identifying Important Ecological Areas include but are not limited to:

Margules, C.R. and Pressey, R.L. 2000. Systematic conservation planning. *Nature* 405: 243-253 at <http://www.nature.com/nature/journal/v405/n6783/full/405243a0.html>; Margules, C.R. and Sarkar, S. 2007. Systematic Conservation Planning. New York: Cambridge University Press.

Greene, J.K., M.G. Anderson, J. Odell, and N. Steinberg, eds. 2010. The Northwest Atlantic Marine Ecoregional Assessment: Species, Habitats and Ecosystems. Phase One. The Nature Conservancy, Eastern U.S. Division, Boston, MA. Available at <https://www.conservationgateway.org/ConservationByGeography/NorthAmerica/UnitedStates/edc/reportsdata/marine/namera/Pages/default.aspx>.

Center for Ocean Solutions. 2011. Decision Guide: Selecting Decision Support Tools for Marine Spatial Planning. The Woods Institute for the Environment, Stanford University, California.



*Objective 1. Enhance Inter-Agency Coordination*

*Objective 2. Implement Specific Actions to Enhance Informed Public Input in Decision-making*

*Objective 3. Incorporate Maps and Other Products into Existing Agency Decision-making Processes*

As stated above, on September 29, 2014, the RPB published *Options for the Northeast Regional Ocean Plan (Options)*. Section II of *Options* presents the RPB's proposed approaches to achieve Objectives 1-3 under the Effective Decision-Making goal reproduced above and outlined in the RPB's *Framework for Ocean Planning in the Northeast*. Specifically, *Options* focuses in on how data and information in the ocean plan can be used by to improve existing permitting and leasing processes and explores several alternatives to enhance the predictability of regulatory processes and foster improved coordination among agencies.

CLF recommends that the RPB advance work supporting each of the options listed under both areas of focus: **incorporate plan data and information into existing permitting and leasing decisions (primarily addresses objective 3), and to enhance agency coordination and predictability of regulatory processes (primarily addresses objectives 1 and 2)**.

With respect to the goal of “incorporating plan data and information”, we urge that the initial emphasis be on identifying overlapping jurisdictions among agencies, duplicative review processes, and regulatory gaps in ocean management. Certainly the efficacy of ocean management will be improved by ensuring that state and federal agencies utilize the best available scientific data. To the extent that the Ocean Data Portal becomes the repository of that best available scientific data, and that data is updated on a regular basis (the Ocean Plan should include a detailed plan and agency responsibilities for updating and management of the Ocean Data Portal), as appropriate, decision-making will be enhanced. However, if the RPB does not undergo that fundamental exercise of identifying overlapping jurisdictions, duplicative review processes and regulatory gaps in great detail, feeding better data into the decision-making process will have limited affect. To the extent that existing authorities are inadequate for the purpose of effectively implementing the regional ocean plan, or there are gaps or confusing jurisdictional overlaps, they should be identified to ensure that effective implementation strategies can be identified and pursued. CLF would also like to emphasize the importance of developing a compatibility analysis (option 2 under **incorporate plan data and information into existing permitting and leasing decisions**) as well establishing interagency working groups to address policy and management issues (option 5 under **enhance agency coordination and predictability of regulatory processes**) but urges the RPB not to limit these actions to only new and emerging uses but current uses as well.

### **Enhance Inter- Agency Coordination**

Enhancing existing permitting review, providing access to data, and streamlining the permitting process for applicants is *not* coordination. Throughout the document, improved coordination is conflated with access to data and improvements to existing permitting review processes like the *National Environmental Policy Act* and the *Army Corps of Engineers*. CLF absolutely agrees that access to data, and identifying and filling data gaps is critical to informed agency decision-making, but availability of data, does not by its very existence, enhance inter-agency coordination, nor will it necessarily result in

the effective implementation of the regional ocean plan. The proposed Memorandum of Agreement referenced in *Options* at p.5 may be the appropriate tool to address how and whether agencies with jurisdiction to permit a particular project or provide regulatory oversight on a use issue or conflict, share the data, consult the data, and discuss the data with each other. This coordination is as important as having access to the data. For example, the Massachusetts Clean Energy Center in collaboration with the Bureau of Offshore Energy Management (BOEM) and the Massachusetts Executive Office of Energy and Environmental Affairs has contracted a study by the New England Aquarium, Cornell University, the University of Rhode Island and the Provincetown Center for Coastal Studies to gather data about how and when marine mammals and sea turtles use the wind energy areas identified by BOEM during the wind energy area identification phases in Massachusetts and Rhode Island. The fact that the data exists does not ensure coordination between BOEM and the National Marine Fisheries Service (NMFS). Is NMFS aware of the data? Is it useful to them at all? Will they use the data to inform their Incidental Take or Incidental Harassment assessments? Should they? If one federal agency has questions about the sampling or monitoring protocols, how will those questions be resolved? The RPB has not defined or addressed how and whether data as part of the Ocean Data Portal should be used to inform decision-making, nor has it established any agreed upon protocols for incorporating and accepting new data into the Ocean Data Portal. If the Ocean Data Portal is to become the primary database relied upon by state and federal agencies in making decisions about ocean management, the RPB should establish protocols for verifying, updating and incorporating new data into the Ocean Data Portal. In addition, the RPB should consider data standards that must be met before it can be incorporated into decision-making. To that end, it may make sense for the RPB or a data working group to spend some time discussing how agencies should consider how scientific validity and appropriate weight of data included in the portal will be determined.

Absent a broad review of existing law, regulation, and jurisdiction to identify opportunities for improved coordination, there will be an overreliance on statutes like NEPA or USACOE, as the primary implementation tools for effective coordination. This overreliance risks that implementation of the ocean plan will happen in a project by project/piecemeal way. Also, to the extent that tribal discussions are proceeding and are subject to a separate parallel effort, the RPB should discuss how and when this parallel effort will be synced with the ongoing RPB effort. Coordination could be important in developing a fuller understanding of whether Important Ecological Areas may also be Important Cultural Areas.

*Options* does identify and recommend the “programmatic” approach to environmental assessments and environmental impact statements as a potentially useful and effective tool for implementing the regional ocean plan and enhancing coordination. *Options* at p.5. CLF agrees that the programmatic EIS could be a high value tool toward achieving the goals of the regional ocean plan. The RPB should explore this tool in greater depth. In September of 2003, the NEPA Task Force Report to the Council on Environmental Quality suggested that “Programmatic NEPA analyses and tiering can reduce or eliminate redundant and duplicative analyses and effectively address cumulative effects.” See “Modernizing NEPA Implementation: The NEPA Task Force Report to the Council on Environmental Quality” (Sept. 2003) at p. 35. The programmatic EIS lens has been promoted by advocacy organizations over the years as the only appropriate way to review a proposed project, but it has not been often embraced by lead agencies



under NEPA. The RPB should explore more fully the limitations and resistance of federal agencies to employ a programmatic approach. It is certainly a tool that could allow federal agencies to consider future uses with emphasis on the cumulative effects of multiple future activities.

Pre-application meetings under NEPA are in the same category as the programmatic EIS in the sense that pre-application meetings have been hailed as a means of streamlining permitting review and identifying stakeholder issues in advance of the permitting process for over a decade. See <http://www.ferc.gov/media/news-releases/2002/2002-3/prefiling.pdf>.

If the pre-application meeting is viewed as a critically important tool for improving coordination and implementing the regional ocean plan then the RPB should explain what works about the pre-application meetings that are happening today and identify where improvements could be made. In other words, if the RPB is recommending a process that has been in existence for over a decade, it should also explain what would be different about that process in the regional ocean planning context if there is going to be any benefit. For example, would an optional pre-application meeting become a tool that state and federal agencies agree to always use as part of the application process? How would the consistent use of this tool advance the regional ocean plan? Based on that analysis, the Ocean Plan could incorporate agreed-upon standards for the pre-application review process that would improve that process and overall decision-making.

With respect to the Outcome discussed for CZMA consistency review, Options at p. 6, the RPB should clarify that “the ocean plan facilitates consistency with state enforceable policies that relate to management of ocean and coastal resources and activities to the extent the state enforceable policies are consistent with the goals of the regional ocean plan.

CLF agrees that there is a need to establish interagency groups to address policy and management issues regarding offshore, deepwater aquaculture and sand and gravel extraction for beach nourishment with the caveat that the economic and environmental benefits of beach re-nourishment post major storm related beach erosion or as the result of inappropriate hardening the shoreline is not a foregone conclusion. For this reason, the stated “outcome” should be clear that the RPB is not only trying to facilitate increased clarity about the regulatory processes for the project proponent, or the agencies involved, but also for stakeholders, and the public. The proposed interagency group discussions should allow for public access and comment. CLF suggests re-wording the outcome for this section to something like: Discuss regulatory and permitting review processes for new and emerging activities in federal waters that are consistent with the goals of the regional ocean plan through a public dialogue.

Finally, protecting resources in a climate change context is not discussed in any of the outcome or practical consideration sections of Options. CLF has commented on numerous occasions that effective decision-making must include a discussion about how to manage and protect resources in the face of climate change. The same is true for managing existing and future human uses. The Effective Decision Making section of Options should mention climate change.



conservation law foundation

CLF thanks the RPB for the opportunity to provide comments at this critical juncture in the Northeast Regional Ocean Planning process and as always stand ready to assist in this important endeavor, and we look forward to the NE RPB's great accomplishments through 2016.

Sincerely,

Priscilla M. Brooks  
Vice President and Director of Ocean Conservation



## Appendix E



November 3, 2014

Submitted Electronically

Ms. Katie Lund  
Executive Secretary  
Northeast Regional Planning Body  
[klund@northeastoceancouncil.org](mailto:klund@northeastoceancouncil.org)

### **RE: Comments on Options for the Northeast Regional Ocean Plan**

Dear Ms. Lund:

The National Ocean Policy Coalition (“Coalition”) is pleased to submit comments on the Northeast Regional Planning Body’s (“RPB”) “Options for the Northeast Regional Ocean Plan.” The Coalition is an organization of diverse interests representing sectors and entities that support tens of millions of jobs, contribute trillions of dollars to the U.S. economy, and seek to ensure that actions under the National Ocean Policy are implemented in a manner that best benefits the National interest, including protection of the commercial and recreational value of the oceans, marine-related natural resources, and terrestrial lands of the United States.

In addition to the fundamental points described below, the Coalition addresses the RPB’s proposed options in part as follows:

- Summarize management areas currently designated under existing authorities (partially underway): Further implementation of this option must be strictly limited to the identification of designated areas and clearly describe the purposes for which they were designated and manner in which they are managed, and any proposed use or application of resulting product must be transparently disclosed to the public
- Development of marine life distribution and abundance maps (partially underway): Draft products developed under this option must include extensive public review/comment opportunities, feature active and comprehensive user group engagement, and be amendable at any time, and agencies should not be asked or compelled to apply them in their decision-making
- Identification and overlay of abundance “hot spots,” core habitats, and other occurrence areas: RPB should not pursue these options, as doing so would involve significant time and resource considerations and legal implications and be subject to misuse/misinterpretation
- Explore options for an ecosystem-based approach to identifying important ecological areas: Given the evolutionary nature of ecosystem-based management, RPB should not pursue this option, as EBM precursors such as this proposed approach must only occur at the present state of science/knowledge and not be rushed to meet arbitrary deadlines
- Coordinate with existing regional efforts to measure ocean health: Any decision to use ocean health indicators from existing programs should be made by individual statutorily-authorized, permanent agencies through their own processes rather than by the RPB

- Consider customizing the Ocean Health Index for ocean waters in the Northeast: Any decision to apply existing ocean health indicators including the Ocean Health Index should be made by individual statutorily-authorized, permanent agencies through their own processes rather than by the RPB
- Revisit the topic of “tradeoff analyses”: RPB should not engage in tradeoff analyses given inevitable data gaps, implications surrounding the transitory and non-statutory nature of the RPB and its products, and the significant resources that would be required
- Use ocean plan data to improve the efficiency and effectiveness of permit and lease application review and decision-making and consultative processes: RPB should not use the ocean plan as a mechanism to compel changes to the ways in which agencies carry out their regulatory review, decision-making, or consultative processes
- Develop “compatibility analyses” for potential development activities and related guidance for assessments under NEPA and other laws: Given significant resource, funding, and implementation uncertainties, regulatory implications, and existing statutes, RPB should not develop such analyses or guidance
- Institutionalize use of ocean plan data/guidance through existing regulatory review and guidance documents: RPB should not institutionalize use of ocean plan data and guidance, as any decision to cite ocean plan or related products should be initiated by individual agencies themselves
- Develop standardized information about the process and use of ocean plan data/information for initial review of proposed projects: RPB should not pursue this option, as new requirements/obligations pertaining to regulatory review and consultation processes should originate with applicable agencies themselves in accordance with their statutory authorities
- Develop guidance for public explaining how agencies will work together to use the ocean plan for environmental reviews under NEPA and other laws: Agency commitments to use ocean plan content in statutory environmental reviews should not be sought; in the event that any agency seeks to implement ocean plan content in conducting such reviews, the ocean plan should clearly state how ocean plan content may be used and any such agency should clearly communicate how they are using such data and what decisions/processes will be influenced
- Institutionalize use of ocean plan data through formal agency commitments: RPB should not institutionalize use of ocean plan data, as doing so would usurp the will and intent of Congress and heighten regulatory uncertainty
- Identify opportunities to enhance the efficiency and effectiveness of the CZMA consistency review process: Given that its development and implementation has not been authorized by Congress and significant legal implications, RPB should not seek to use the ocean planning effort to influence CZMA processes
- Establish interagency groups to address policy/management issues for aquaculture and sand and gravel extraction: RPB should not pursue this option, as such activities should be the result of agencies’ independent determinations to do so rather than in response to an ocean plan directive/requirement

## INTRODUCTION

A primary driver of the Coalition’s concerns regarding regional ocean planning efforts under the National Ocean Policy/RPB construct has been that, pursuant to foundational National Ocean Policy documents, RPB products not authorized by statute are to be implemented by federal agencies to the maximum

extent, including through regulations where necessary.<sup>1</sup> By influencing federal agency discretion and decision-making in such a manner, RPB actions could introduce significant uncertainty, confusion, delay, and adverse economic impacts for businesses and communities in the region. As described in detail below, language in the draft options documents reflects the reality that RPB actions are expected to have far-reaching consequences in part by serving as precursors to eventual regulatory activity.

For example, in presenting options for identifying “areas of ecological importance,” conducting ocean assessments, incorporating ocean plan data and information into existing permitting and leasing decisions, and enhancing agency coordination and regulatory process predictability, the draft documents place great emphasis on securing agency commitments to incorporate ocean plan content into their statutory decision-making processes.

Rather than seek to secure agency commitments to enforce non-statutorily authorized RPB products, the RPB should commit to providing data and information for voluntary agency use as agencies see fit, in accordance with agencies’ careful, independent, transparent, and legally sound consideration and best judgment. Such an approach would be more consistent with language in the RPB Charter conveying an “agreement” “without binding members to final outcomes,” and an understanding that “commitments contained in this charter will not be enforceable.”<sup>2</sup>

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<sup>1</sup> See Executive Order for Stewardship of the Ocean, Our Coasts, and the Great Lakes, July 19, 2010, *available at* <http://www.whitehouse.gov/files/documents/2010stewardship-eo.pdf>, Section 6 (“All executive departments, agencies, and offices that are members of the [National Ocean] Council and any other executive department, agency, or office whose actions affect the ocean, our coasts, and the Great Lakes shall, to the fullest extent consistent with applicable law...[p]articipate in the process for coastal and marine spatial planning and comply with Council certified coastal and marine spatial plans, as described in the Final Recommendations and subsequent guidance from the Council.”); Final Recommendations of the Interagency Ocean Policy Task Force, July 19, 2010, *available at* [http://www.whitehouse.gov/files/documents/OPTF\\_FinalRecs.pdf](http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf), Pages 47, (“Where pre-existing legal constraints, either procedural or substantive, are identified for any Federal agency, the NOC would work with the agency to evaluate necessary and appropriate legislative solutions or changes to regulations to address the constraints. In the interim, agencies would comply with existing legal requirements but should endeavor, to the maximum extent possible, to integrate their actions with those of other partners to a CMS Plan.”); 61-62 (“...State and Federal regulatory authorities would adhere to, for example, the processes for improved and more efficient permitting, environmental reviews, and other decision-making identified in the CMS [Coastal and Marine Spatial] Plan to the extent these actions do not conflict with existing legal obligations. State and Federal authorities with programs relevant to the CMS Plan would in a timely manner review and modify programs, as appropriate, to ensure their respective activities, including discretionary spending (e.g., grants and cooperative agreements), adhere to the CMS Plan to the extent possible. State and Federal agencies would also be expected to formally incorporate relevant components of the CMS Plan into their ongoing operations or activities consistent with existing law. This may be implemented in a variety of ways. For example, agencies could enter into memoranda of understanding (MOUs) to coordinate or unify permit reviews and decision-making processes. Where existing regulatory or statutory requirements impose constraints on the ability of an agency to fully implement the CMS Plan, the agency would seek, as appropriate, regulatory or legislative changes to fully implement the CMS Plan.”); 62 (“...CMS Plans...are intended to guide agency decision-making and agencies would adhere to the final CMS Plans to the extent possible, consistent with existing authorities...Once a CMS Plan is approved, Federal, State, and tribal authorities would implement them through their respective legal authorities.”); and 65-66 (“Agencies would incorporate components of the CMS Plan into their respective regulations to the extent possible. Adherence with CMS would be achieved through Federal and State agencies and tribal authorities incorporating CMS Plans into their pre-planning, planning, and permitting processes, to the extent consistent with existing laws and regulations. The CMS Plan signatories would periodically review these processes, and where legal constraints are identified, would seek to remedy these constraints, including by working with the NOC to evaluate whether a legislative solution or changes to regulations are necessary and appropriate.”); National Ocean Policy Implementation Plan, April 2013, *available at* [http://www.whitehouse.gov/sites/default/files/national\\_ocean\\_policy\\_implementation\\_plan.pdf](http://www.whitehouse.gov/sites/default/files/national_ocean_policy_implementation_plan.pdf), Page 21 (Marine planning will support regional actions and decision-making...); and Marine Planning Handbook, July 2013, *available at* [http://www.whitehouse.gov/sites/default/files/final\\_marine\\_planning\\_handbook.pdf](http://www.whitehouse.gov/sites/default/files/final_marine_planning_handbook.pdf), Page 17 (“By their concurrence, Federal agencies agree that they will use the marine plan to inform and guide their actions in the region consistent with their existing missions and authorities.”); and Northeast Regional Planning Body Charter, *available at* <http://neocceanplanning.org/wp-content/uploads/2014/07/Charter-with-Signatories.pdf>, Pages 1 (“...participation on the NE RPB does not commit any **non-federal** NE RPB member, or **non-federal government** represented by the member, to adopt resulting products or plans.” (emphasis added); 2 (“By committing to this process, NE RPB members agree to participate in regional ocean planning as a framework for improved coordination and decision making.”); and 7-8 (“If the NE RPB decides to create a formal regional ocean plan...the intent would be to guide agency decision-making, and agencies would adhere to the final plan to the extent possible, consistent with their existing authorities.”).

<sup>2</sup> See Northeast Regional Planning Body Charter, *available at* <http://neocceanplanning.org/wp-content/uploads/2014/07/Charter-with-Signatories.pdf>, Page 6.

Limited resources, current states of knowledge and technical capacity, and the importance of avoiding unintended consequences also underscore the need for the RPB to refrain from attempting to identify new “areas of ecological importance” or conduct ocean assessments by customizing the Ocean Health Index for the Northeast or engaging in tradeoff analyses.

The need for the RPB to proceed with extreme caution is underscored by the absence of (1) a regional ocean science plan that analyzes the current state of science and identifies relevant data and information gaps; (2) economic goals and a regional economic development plan and assessment that account for all existing and future potential uses; and (3) a formal RPB stakeholder advisory body and standing technical advisory committee.

As the Coalition has previously noted, in order to ensure the identification and implementation of well-informed and coordinated activities, the development and finalization of a regional ocean science plan should precede actions taken in furtherance of RPB goals and objectives that involve the use of scientific data or information.<sup>3</sup>

The Coalition also continues to believe that before moving forward, the RPB should identify and seek public review and comment on proposed economic goals and subsequently develop a regional economic development plan to implement those goals.<sup>4</sup> As to the regional economic assessment that the RPB decided to pursue at its January 2014 meeting,<sup>5</sup> as discussed further below, it is critical that the assessment analyze all existing and future potential uses and move forward simultaneously with environmental characterization efforts. Proceeding in such a manner will help mitigate the risk of potential adverse economic consequences from RPB activities as well as present an opportunity to support and strengthen engagement with the user group community.

In addition, the Coalition continues to urge the RPB to establish a formal stakeholder advisory body and a standing technical advisory committee before further RPB activity takes place,<sup>6</sup> as a clear, transparent, and inclusive process would help mitigate the risk of ill-informed actions that unnecessarily constrain commercial and recreational activity in the Northeast.

Lastly, in presenting ocean plan options for public consideration, the RPB in several instances references funding considerations.<sup>7</sup> The current budgetary environment and fiscal constraints facing the nation

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<sup>3</sup> See January 9, 2014 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, Page 13, available at <http://oceancpolicy.com/wp-content/uploads/2014/01/Revised-NE-RPB-Goals-Objectives-1-9-14-NOPC-Comments.pdf>.

<sup>4</sup> See January 9, 2014 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, Page 3, available at <http://oceancpolicy.com/wp-content/uploads/2014/01/Revised-NE-RPB-Goals-Objectives-1-9-14-NOPC-Comments.pdf>.

<sup>5</sup> See Framework for Ocean Planning in the Northeast United States, Pages 10-16, available at <http://neoceanplanning.org/wp-content/uploads/2014/02/NE-Regional-Ocean-Planning-Framework-February-2014.pdf>.

<sup>6</sup> See Northeast Regional Planning Body June 26, 2014 Meeting Transcript, Page 35, available at [http://neoceanplanning.org/wp-content/uploads/2014/07/Transcript\\_June2014\\_RPB\\_Meeting.pdf](http://neoceanplanning.org/wp-content/uploads/2014/07/Transcript_June2014_RPB_Meeting.pdf).

<sup>7</sup> See Options for the Northeast Regional Ocean Plan, Pages 1 (“Establishment of a panel with pertinent expertise may be needed to ensure that methods are scientifically and technically sound and achievable in light of anticipated funding and technical capacity-related constraints”), 2 (“Practical consideration: Existing indicators were developed for different purposes; funding and technical capacity needs; RPB will need to define the purpose and use”), and 3 (“Practical consideration: Funding and technical capacity needs; RPB will need to define the purpose and use”), available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>, and Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Pages 1 (“The RPB will also need to consider agency and staff capacity, budget, and the overall planning timeline”), 2 (“Identify capacity and budgetary needs and obtain technical support for conducting analyses”), 3 (“Identify capacity and budgetary needs and obtain technical support for conducting analyses” and “Determine level of effort, capacity and budget required to advance an approach or approaches to identifying important ecological areas”), 4 (“Identify capacity and budgetary needs to support a work group and establish a baseline”), and 5 (“...development of the index will require additional budget and capacity to customize goals, conduct analyses, and establish a baseline” and “Identify capacity and

continue to create increased competition for scarce federal resources, and the development and implementation of activities proposed in the options materials will require significant taxpayer dollars. Given resource constraints and the potential diversion of existing resources away from activities that are essential to the ability of businesses to function and the economy and local communities to thrive, to inform public feedback, the Coalition thus urges the RPB to clearly communicate to the public the projected costs and funding sources associated with all proposed options.

## **HEALTHY OCEAN AND COASTAL ECOSYSTEMS GOAL**

In presenting options for implementation of the Healthy Ocean and Coastal Ecosystems goal, the RPB notes that agencies “need to identify how to implement options under existing regulatory and resource management authorities and programs.”<sup>8</sup>

Consistent with the Coalition’s previous communications to the RPB,<sup>9</sup> commercial and recreational interests have a direct stake in healthy ocean and coastal ecosystems and support sound, informed, and science-based policies that support them. To that end, a number of federal laws are already in place that directly and indirectly address the protection of ocean and coastal ecosystems.

In addition, the Coalition is concerned that the ecosystem characterization is receiving priority over the characterization of the region’s economy. As the Coalition commented earlier this year,<sup>10</sup> the economic component of the RPB’s characterization of the region’s ecosystem, economy, and cultural resources should include a complete analysis of all existing and future potential uses, as identified by commercial and recreational stakeholders, and the economic and societal benefits that they could provide for the region. Such a comprehensive analysis will likely require at least as much time and resources as the ecosystem assessment, and its development should proceed in tandem with RPB efforts to assess the region’s environment.

Furthermore, while the RPB’s February 2014 Framework for Ocean Planning in the Northeast United States noted that the first step in assessing regional efforts to identify ecologically important areas or measure marine health would be to define “ecological importance” and “health,”<sup>11</sup> it appears that these terms have not been defined even though the assessment of regional efforts was launched earlier this year.<sup>12</sup> For example, in presenting one option for public consideration that is discussed below, the RPB says that potential implementation actions would include establishment of a work group in part “to define ecological importance.”<sup>13</sup>

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budgetary needs to develop the OHI), available at [http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>8</sup> See Options for the Northeast Regional Ocean Plan, Page 1, available at <http://neceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>9</sup> See June 28, 2013 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, available at [http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC\\_Comments\\_on\\_Draft\\_NE\\_RPB\\_Goals.pdf](http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_Draft_NE_RPB_Goals.pdf).

<sup>10</sup> See January 9, 2014 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, Page 11, available at <http://oceancpolicy.com/wp-content/uploads/2014/01/Revised-NE-RPB-Goals-Objectives-1-9-14-NOPC-Comments.pdf>.

<sup>11</sup> See Framework for Ocean Planning in the Northeast United States, Page 11, available at <http://neceanplanning.org/wp-content/uploads/2014/02/NE-Regional-Ocean-Planning-Framework-February-2014.pdf>.

<sup>12</sup> See June 2014 Draft Summary of Marine Life Data Sources and Approaches to Define Ecologically Important Areas and Measure Ocean Health, Developed in Support of the Healthy Ocean and Coastal Ecosystem Goal for Ocean Planning in the Northeast, available at [http://neceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory\\_Draft\\_6.17.14.pdf](http://neceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory_Draft_6.17.14.pdf).

<sup>13</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 3, available at [http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

In sum, efforts to support healthy ocean and coastal ecosystems are best supported through well-established statutorily-authorized entities, mechanisms, and processes, based on sound science and data, and reflective of the current and future potential economic role and contributions of all marine resources and uses in the Northeast.

#### Options to Identify “Areas of Ecological Importance”

The RPB presents five options to identify “areas of ecological importance,” ranging from the identification of areas already designated by federal and state agencies pursuant to their applicable authorities to the identification of new areas to consider for application in decision-making.

The Coalition remains concerned that in implementing the Healthy Ocean and Coastal Ecosystems goal, RPB efforts to characterize the region’s ecosystem, including by identifying areas of ecological importance and eventually incorporating them into decision-making processes, could lead to unintended consequences, cause unnecessary or unjustified time and space restrictions, preclude investment in new economic activities, inhibit informed decision-making on changing national priorities, and drain scarce agency resources.

For example, time and resource-intensive implementation of options to identify abundance “hot spots” and other “core habitat” and occurrence areas could yield maps and information that are misinterpreted or misused in ways that unnecessarily limit access to commercial or recreational activity, and considering options for an “ecosystem-based approach” to identifying “important ecological areas” could lead to ill-informed maps based on inadequate science.

The RPB should therefore refrain from initiating additional efforts to identify new “areas of ecological importance.” In the event that any “ecologically important” areas are ultimately identified, rather than being asked or pressured to commit to incorporating them into their decision-making activity, individual agencies should decide on their own, in a manner consistent with relevant authorities, if and how to use and apply such information.

*Option 1: Summarize management areas currently designated under existing authorities, such as Critical areas under the Endangered Species Act and Essential Fish Habitat under the Magnuson-Stevens Act (partially underway)<sup>14</sup>*

The RPB notes that implementation of Option 1 would produce an ocean plan that includes maps and other information related to currently designated areas, with a practical consideration being that areas are frequently designated for different management purposes.<sup>15</sup>

According to the RPB, potential actions in furtherance of Option 1 include consideration of methods for merging boundaries for areas designated under more than one authority, as well as determining potential management implications for areas designated under multiple authorities.<sup>16</sup>

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<sup>14</sup> See Options for the Northeast Regional Ocean Plan, Page 1, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>15</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>16</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 2, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

While the identification of areas designated under federal and state authorities in and of itself is not necessarily of concern, the potential use and application of such information is unclear. RPB references to determining potential management implications for areas identified under multiple authorities raises additional questions about the ultimate impact of Option 1 implementation.

Since the RPB has already decided to pursue Option 1, as indicated by its “partially underway” notation, given that the designation and management of the areas in question is already governed under existing laws, any further implementation of Option 1 should be strictly limited to the identification of designated areas. For any identified areas, the purpose for which they were designated and the manner in which they are managed should be clearly described.

Furthermore, any proposed use or application of information produced as a result of Option 1 implementation should be transparently disclosed to the public, with public review and comment periods utilized in any instance where agency decision-making might be impacted.

*Option 2: Develop distribution and abundance maps for marine life species (partially underway)<sup>17</sup>*

The RPB states that Option 2 implementation will lead to an ocean plan with species distribution and abundance and (likely) habitat area information, with practical considerations being application in regulatory decisions and the integration of science and disparate data sets over the next year.<sup>18</sup> The RPB further notes that a potential action will be the need for regulatory agencies to “engage in product development and consider potential management applications.”<sup>19</sup>

Pursuant to the RPB’s February 2014 Framework for Ocean Planning in the Northeast United States,<sup>20</sup> work has been underway since earlier this year to characterize the distribution and abundance of marine mammals, sea turtles, marine birds, and fish in the Northeast region.

With the RPB already having made the decision to develop marine life distribution and abundance maps, it is essential that any draft distribution and abundance products be subject to opportunities for extensive public review and comment, informed by active and comprehensive engagement with existing and future potential user groups, and amendable at any time based on new data or information.

In addition, agencies should not be asked or otherwise compelled to apply final products in their decision-making processes. In the event that any agency decides to use a final product in such a manner, it is vital that they clearly and transparently communicate such intentions to all potentially impacted stakeholders -- including but not limited to the utilization of public comment periods -- and ensure consistency with all relevant laws, including but not limited to those related to data and information quality.

*Option 3: Identify abundance “hot spots” and other core habitat and occurrences (migratory corridors, spawning areas, etc.) for individual species*

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<sup>17</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>18</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>19</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 2, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>20</sup> See Framework for Ocean Planning in the Northeast United States, available at <http://neoceanplanning.org/wp-content/uploads/2014/02/NE-Regional-Ocean-Planning-Framework-February-2014.pdf>.

*Option 4: Overlay abundance “hot spots,” core habitats and other occurrence areas<sup>21</sup>*

The RPB notes that Options 3 and 4 would lead to ocean plan identification of hot spots for protected, socio-economically, and culturally important species, as well as maps that identify areas important to multiple species.

Practical considerations cited by the RPB include the need to complete the ongoing marine life distribution and abundance project and develop a methodology for identifying “hot spots” and other habitat areas (Option 3), develop a methodology for combining maps of “hot spot” and other habitat areas for multiple species (Option 4), garner agency agreement to incorporate outcomes into regulatory processes (Option 3), and identify potential application(s) in regulatory processes (Option 4).<sup>22</sup>

The RPB further states that for both options, potential actions include the identification of capacity and budgetary needs and need for technical support, with one potential action in support of Option 4 including the research and consideration of “legal implications associated with identifying important areas for multiple protected species and...developing plan implementation guidance accordingly.”<sup>23</sup>

The Coalition opposes the identification and overlay of abundance “hot spots” and core habitats and other occurrence areas for inclusion in the ocean plan. As the RPB implies, pursuit of these actions would involve significant time and resources as well as legal implications. Furthermore, proceeding with either option would increase the risk that economic activity will be needlessly harmed. By including maps of “hot spots” in the ocean plan, agencies and others may misinterpret or misuse the information in a manner that unnecessarily restricts or prohibits commercial or recreational uses.

Furthermore, the availability of RPB “hot spot” and similar maps could tempt agencies to rely on them to an extent that directs focus away from criteria required to be considered by law or results in omitted or inadequate analysis of key project elements. In the event that the development of “hot spot” maps is nonetheless pursued, their development should originate through individual statutorily-authorized agencies themselves rather than the RPB.

Due to the unclear but potentially significant adverse economic impacts, to the extent that the RPB nevertheless pursues Option 3 and/or Option 4, it must do so in a manner that is scientifically sound, transparent, based on well-defined and accepted criteria and legally compliant data, fully consistent with all applicable legal authorities, closely coordinated with potentially impacted stakeholders including through extensive public review and comment periods, and not subject to pressures associated with meeting artificial deadlines.

*Option 5: Explore options for an ecosystem-based approach to identifying important ecological areas<sup>24</sup>*

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<sup>21</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>22</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>23</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 3, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>24</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

The RPB says that Option 5 implementation would result in the definition of important ecological areas that reflect factors beyond species distribution, abundance, and core habitat, identification of technical approaches to measuring various ecological components, and research of existing regulatory authorities for potential “implementation opportunities.”

Practical considerations cited by the RPB include challenges in reaching agreement on scientific definition and approaches, the effort required to conduct and implement analyses, and the need to complete other work first.<sup>25</sup>

The RPB further notes that implementation of Option 5 could include the identification of areas of high productivity and biological diversity and addressing species rarity, persistence, vulnerability, function, and resilience, with potential actions including legal research and consideration of opportunities for “utilizing an analysis of important ecological areas under existing authorities” and determinations on the level of required effort, capacity, and funding.<sup>26</sup>

The Coalition opposes the RPB’s exploration of options for an ecosystem-based approach to identifying important ecological areas. As the Coalition previously commented,<sup>27</sup> at the present state of knowledge, practical experience with the design and implementation of monitoring programs that enable ecosystem-based management is limited, especially on the broad spatial and temporal scales that are required to support informed ocean and coastal planning decisions. Similarly, given its evolutionary nature, precursors to ecosystem-based management such as an ecosystem-based approach to identifying important ecological areas must only occur as the present state of science and knowledge allows and not be rushed to meet arbitrary deadlines.

In the event that the RPB decides to develop and implement an ocean plan with an ecosystem-based approach, adjustments to the anticipated schedule for its completion would therefore be required and significant thought and time would have to be invested in developing data collection, monitoring, and analysis methodologies that can deliver reliable and sound information.

In addition, effective data gathering and monitoring would require that the goals of any ecosystem-based ocean planning approach first be collectively defined through public processes. Until stakeholders understand what the ecosystem-based component will look like and what associated efforts are supposed to achieve, it will be difficult to determine how to efficiently and effectively approach and fund critical data collection and management efforts.

To that end, before attempting to create an ecosystem-based ocean plan approach, a concrete proposal specific to the Northeast would need to be developed which outlines the envisioned goals and efforts associated with data collection, quality control, analysis, and interpretation necessary to support the ecosystem-based approach. Furthermore, since “scientific” information could be used in attempts to influence public perception, mechanisms must also be provided that ensure the scientifically sound use of the obtained information.

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<sup>25</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>26</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 3, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>27</sup> See June 28, 2013 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, available at [http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC\\_Comments\\_on\\_Draft\\_NE\\_RPB\\_Goals.pdf](http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_Draft_NE_RPB_Goals.pdf).

At a minimum, the proposal should include the following:

- A statement outlining the goals and objectives envisioned for the ecosystem-based approach, as determined by the stakeholder community through public processes;
- Data collection and measurement programs outlining which parameters (variables) should be monitored, for what purpose, how, where, and how often;
- Protocols for data quality control to ensure measurements are technically defensible and bound by acceptable uncertainty limits before they are released for analysis, model input, and interpretation; and
- Protocols outlining the anticipated use of the information to ensure the application of scientifically proven analysis methods and the dissemination of peer-reviewed, statistically sound information

An initial proposal that addresses these points should be finalized before a detailed assessment is made of the resources needed for its implementation, including, for example, sampling equipment, laboratories, and marine vessel requirements.

In addition, the RPB must ensure that all impacted stakeholders, including the Northeast commercial and recreational user community, buy in to the ecosystem-based approach and are involved and committed at every stage of the process, including the identification of goals and the continuous analysis of data outflow. Such engagement and consensus is necessary to adequately acknowledge and account for the role of humans in ecosystems and the benefits associated with various economic activities and programs that are authorized by law. RPB actions in support of this or any other option ultimately selected must reflect this fundamental principle to ensure a balanced approach in all RPB activities.

Defining and realizing a realistic and achievable ecosystem-based approach to identifying important ecological areas would also require that qualified local scientists and scientific experts from industry stakeholders be brought in to work together with RPB representatives.

Therefore, an ocean plan component that is dependent on an ecosystem-based approach to identifying important ecological areas must not be implemented before the pertinent data is appropriately collected, analyzed, and made publicly available. Such activities will take time, and their completion would be constrained by the imposition of arbitrary deadlines.

Lastly, any observing, mapping, and other data collection activities ultimately carried out under any of the RPB's proposed options must recognize limits in the ability of maps and forecasting/modeling tools to account for variations in conditions across geographic areas and reflect differences in operations among specific activities and users. Such activities should also have the ability to adapt to new information about ecosystems, alternative uses of ecosystem resources and services, and economic activities that drive quality of life in the region.

Furthermore, given inherent limits in the utility of maps and the fact that different types of maps may be needed for various uses, the utilization of maps or interpretation of mapping data must consider the maps' intended use. At the outset, the RPB must thus clearly and comprehensively communicate the purpose for which any maps are proposed to be developed, as the development of any individual map

requires decisions on unique factors such as those pertaining to data, uses, interpretation, and visual representation.

#### Options to Conduct Other Types of Assessments

The RPB presents three options for conducting other types of assessments to measure ocean health and conduct tradeoff analyses to assess the impacts of management decisions on existing activities and natural resources.

*Option 1: Coordinate with existing regional efforts to measure ocean health, such as the Northeast Regional Ocean Council's Sentinel Monitoring for Climate Change, the Gulf of Maine Council's Ecosystem Indicator Partnership, and others<sup>28</sup>*

The RPB states that an outcome of Option 1 would be an ocean plan that includes indicators from existing programs to "inform regional baseline of ecosystem health," with practical considerations including funding and technical capacity, the need to define the purpose and use of indicators from existing programs, and the fact that existing ocean health indicators "may not be ideally suited for regional ocean planning purposes."<sup>29</sup>

The RPB also states that Option 1 would allow for consideration of opportunities to track changes over time and "inform regional planning and regulatory decisions," with the RPB needing to "consider and articulate" the RPB's long-term role in ocean plan implementation while it selects or develops any indicators.<sup>30</sup>

Any decision to use ocean health indicators from existing programs should be made by individual statutorily-authorized permanent agencies through their own processes rather than by the RPB. Proceeding in such a manner will increase certainty and predictability for regulator and regulatee alike. The notation that the RPB will need to determine its long-term role in selecting or developing any indicators underscores the Coalition's position.

If Option 1 is nevertheless pursued, in advance of any decision to incorporate ocean health indicators from existing programs, the RPB must first explain and provide opportunity for extensive public review and comment regarding which if any specific indicators the RPB proposes to incorporate and how the indicators might be used and applied by the RPB and individual agencies.

Following public review and comment, and in the event that regional consensus is reached for moving forward (including among commercial and recreational interests) with incorporating ocean health indicators from existing efforts, minimum requirements must be in place that ensure compliance with relevant federal and state data and information quality laws, standards, and protocols, and any such indicators must be based on sound science. In addition, continuous opportunities must be available to update the indicators to incorporate new data and information.

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<sup>28</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>29</sup> See Options for the Northeast Regional Ocean Plan, Page 2, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>, and Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 4, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>30</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 4, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

*Option 2: Consider Customizing the Ocean Health Index ([www.oceanhealthindex.org](http://www.oceanhealthindex.org)) for ocean waters in the Northeast<sup>31</sup>*

According to the RPB, the outcome of Option 2 implementation would be an ocean plan that includes Northeast ocean planning goal-specific ocean health indicators and a baseline to measure future progress, with practical considerations including funding and technical capacity and the need to define the purpose and use of customized indicators.<sup>32</sup>

The RPB further explains that it could consider adopting the Ocean Health Index framework to evaluate and monitor the ocean's ecological, economic, and cultural benefits and "more directly support regional planning needs," and notes that the RPB would need to "consider and articulate" the RPB's long-term role in ocean plan implementation.<sup>33</sup>

Any decision to apply existing ocean health indicators including the Ocean Health Index should be made by individual statutorily-authorized permanent agencies through their own processes rather than by the RPB. Similar to Option 1, the notation that the RPB will need to determine its long-term role in selecting or developing any indicators underscores the Coalition's position.

RPB actions to support the development and implementation of a customized Ocean Health Index to support regional planning would also be premature. As the June 2014 report to the RPB on "Marine Life Data Sources and Assessment Approaches in the Northeast U.S." makes clear, while there are examples of the Ocean Health Index, "[s]o far, none have been used in a regulatory context." In addition, the report also notes that potential challenges for an Ocean Health Index customized for the Northeast include, among other things, developing a goal framework and defining and characterizing "resilience."<sup>34</sup>

To the extent that the RPB nonetheless proceeds with an effort to customize the Ocean Health Index for the Northeast, the proposed development and implementation of the regional index must be subject to extensive public review and comment, including but not limited to the development of goals and indicators.

Given the indicators' potential application in decision-making activity, minimum requirements must also be in place that ensure compliance with relevant federal and state data and information quality laws, standards, and protocols, and any data and information included in the index must be based on sound science and subject to continuous opportunities to incorporate new data and information.

In no case should the RPB engage in activities in support of the development and implementation of a regional Ocean Health Index in the absence of broad stakeholder consensus to do so.

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<sup>31</sup> See Options for the Northeast Regional Ocean Plan, Page 3, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>32</sup> See Options for the Northeast Regional Ocean Plan, Page 3, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>33</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Pages 4-5, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>34</sup> See Draft Summary of Marine Life Data Sources and Approaches to Define Ecologically Important Areas and Measure Ocean Health, Developed in Support of the Healthy Ocean and Coastal Ecosystem Goal for Ocean Planning in the Northeast, June 2014, Page 56, available at [http://neoceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory\\_Draft\\_6.17.14.pdf](http://neoceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory_Draft_6.17.14.pdf).

*Option 3: Revisit the topic of “tradeoff analyses” (i.e. attempting to simultaneously determine multiple effects of making a decision: for example, effect on existing human activities and natural resources from siting a new activity). Consider this topic after developing reference data on human activities and natural resources, deciding on whether and how to identify ecological areas or measure ocean health, and determining the uses of ocean plan data and information under existing authorities.<sup>35</sup>*

In stating that the RPB could revisit the possibility of conducting tradeoff analyses in 2015, the RPB in part notes that tradeoff analyses usually require “robust spatial and socioeconomic data and specific spatial management decisions.”<sup>36</sup>

The Coalition opposes RPB engagement in tradeoff analyses. In addition to inevitable data gaps and implications surrounding the transitory and non-statutory nature of the RPB and the products it produces (e.g. increased uncertainty as a result of the non-statutorily authorized, non-permanent RPB providing tradeoff analyses for statutorily-created agencies to apply in their statutory decision-making processes), developing tradeoff analyses that would have to be comprehensive and tailored to each individual project would also involve significant resource considerations that would likely well exceed the capacity of the RPB.

Even if the RPB finishes developing reference data, makes decisions on identifying ecological areas and measuring ocean health, and determines how ocean plan data and information will be used, given these substantial and structural deficiencies, the rationale for the RPB not conducting tradeoff analyses will be just as relevant in 2015 as it is in 2014.

Importantly, as the June 2014 report to the RPB on “Marine Life Data Sources and Assessment Approaches in the Northeast U.S.” notes, while they have been piloted in the region, ecosystem services tradeoff assessments “to date...have not been used in a planning or regulatory context.”<sup>37</sup>

The Coalition therefore supports the RPB’s proposal not to move forward with conducting tradeoff analyses at this time. In the event that the RPB moves forward with Option 3 now or at any time in the future, whether focused on the siting of a “new activity” or applied even more broadly, any tradeoff analyses must be conducted in a non-discriminatory and transparent manner that accounts for all existing, new, and potential future uses.

## **EFFECTIVE DECISION MAKING GOAL**

A number of government entities with vastly different jurisdictions and responsibilities serve on the RPB, and current federal law provides clear jurisdictional leads and processes for decisions regarding the leasing, permitting, and licensing of marine activities and the use and conservation of resources.

Therefore, RPB activities intended to result in streamlined decision-making must not conflict with existing statutes and regulatory regimes and not dilute or blur existing authorities and mandates.

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<sup>35</sup> See Options for the Northeast Regional Ocean Plan, Page 3, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>36</sup> See Summary of Options for Identifying Important Ecological Areas and Conducting Other Assessments for Ocean Planning, Page 5, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems\\_Draft-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Healthy-Ocean-and-Coastal-Ecosystems_Draft-Sept-29.pdf).

<sup>37</sup> See Draft Summary of Marine Life Data Sources and Approaches to Define Ecologically Important Areas and Measure Ocean Health, Developed in Support of the Healthy Ocean and Coastal Ecosystem Goal for Ocean Planning in the Northeast, June 2014, Page 5, available at [http://neoceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory\\_Draft\\_6.17.14.pdf](http://neoceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory_Draft_6.17.14.pdf).

## Incorporating Northeast Ocean Plan Data and Information into Permitting and Leasing Decisions

Noting that “agency commitments are needed to implement solutions,” and in furtherance of the Effective Decision Making goal, the RPB presents three options by which to “[i]ncorporate plan data and information into existing permitting and leasing decisions.”<sup>38</sup>

As the Coalition has previously communicated,<sup>39</sup> the use of RPB processes to incorporate regional data and maps into existing decision-making or regulatory processes could lead to unintended consequences.

If not conducted with great caution and sound scientific methodology and custom-designed based on a particular need and consistent with statutory authority, the use of data and maps could promote unnecessary or unjustified time and space restrictions. In addition, static data and maps that omit new information on the region’s coastal and marine resources could preclude investments in new economic activity in the region or otherwise constrain informed decision-making on evolving national priorities.

While efforts aimed at increasing the collection of quality data and improving data accessibility are important, absent express legislative authorization and appropriation, the Coalition continues to maintain that available resources and methodologies are insufficient to incorporate new regional maps and other products into statutorily-driven decision-making processes by arbitrary deadlines. Furthermore, such efforts could divert scarce agency resources and personnel away from existing governmental activities that are necessary to support existing and potential future ocean and coastal obligations in the Northeast.

To the extent that actions are carried out in support of this goal, the ultimate product should be information available to agencies to use as they deem appropriate under their respective discretionary authorities, rather than directives, requirements, or guidance that they are bound or otherwise committed to follow by virtue of their being addressed in the ocean plan.

*Option 1: Using existing map-based data in the ocean plan, improve the efficiency and effectiveness of review of and decisions on permit and lease applications for ocean-based activities by:*

*A. Identifying the best available information that characterizes human activities (shipping, fishing, etc.) and natural and cultural resources for use in the early stages of the NEPA process, including selection of alternatives to be analyzed and issues and potential impacts to be assessed (scoping), and also for use in initial review of applications for related regulatory approvals (e.g., U.S. Army Corps of Engineers permitting).*

*B. Creating ocean plan content (for example, maps, other non-spatial information, data regarding temporal trends) to facilitate and support statutorily-required consultations with federal resources agencies. Examples include the United States Fish and Wildlife Service or National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA) regarding threatened and endangered species and NMFS under the Magnuson-Stevens Fisheries Management Act regarding “essential fish habitat.”<sup>40</sup>*

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<sup>38</sup> See Options for the Northeast Regional Ocean Plan, Pages 3 and 4, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>39</sup> See January 9, 2014 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, available at <http://oceancpolicy.com/wp-content/uploads/2014/01/Revised-NE-RPB-Goals-Objectives-1-9-14-NOPC-Comments.pdf>.

<sup>40</sup> See Options for the Northeast Regional Ocean Plan, Page 4, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

As to Option 1A, the RPB document states that an outcome would include an ocean plan with data representing “best available science,” with practical considerations including a “potentially extensive effort to agree on methods and approve final data, maps, and other ocean plan information.”

Addressing the use of ocean planning data products to inform agency review and permitting activity, among other things SeaPlan’s background report to the RPB states that data products could serve as “sources of authoritative information” for use in “any subsequent management, NEPA, or regulatory action.” The report further notes that agencies “could agree to use data representing best available science, and baseline reference data, as the applicable regional standard for project review and permitting processes.”<sup>41</sup>

The Coalition opposes using the ocean plan to seek to compel changes to permit and lease application review and decision-making processes. As stated above, RPB actions should not lead to directives, requirements, or guidance that agencies are bound or otherwise committed to follow by virtue of being addressed in the ocean plan.

To the extent that the RPB nevertheless pursues implementation of Option 1A, as the Coalition previously commented,<sup>42</sup> data and maps cannot be universally applied to any regulatory process regardless of context. Rather, data and maps must be custom-designed based on the particular need. Generated for one particular purpose, data and maps could be misused and misapplied in other contexts in a manner that could negatively impact commercial or recreational activity.

In addition, it is imperative that the RPB account for all of the region’s existing and future potential marine-related activities and resources, including but not limited to shipping, commercial and recreational fishing, boating, conventional energy, tugs and barges, and ports. The necessity of a thorough and comprehensive approach is underscored by the potential use of acquired information in permitting and leasing decisions under statutory processes including the National Environmental Policy Act (NEPA). Assessments of economic as well as ecological activities and resources must be completed before any additional planning activities or process or decision-making tools are adopted or implemented, with resulting data and information likely necessitating a review and amendment of RPB goals and options.

Furthermore, rather than rely on “best available science” the RPB should expressly commit to developing a “scientifically-sound” data product, as adopted in Objective 3 for Effective Decision Making in the RPB’s February 2014 Framework for Ocean Planning in the Northeast United States (Framework).<sup>43</sup>

Consistent with the RPB’s acknowledgement in the Framework,<sup>44</sup> it is also essential that the RPB address the need to identify and account for data uncertainty, variability, and potential limitations and challenges thereof.

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<sup>41</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Pages 17-18, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Report-Sept-29.pdf).

<sup>42</sup> See June 28, 2013 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, available at [http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC\\_Comments\\_on\\_Draft\\_NE\\_RPB\\_Goals.pdf](http://gallery.mailchimp.com/6bb66fed099f6eb4e4253667e/files/NOPC_Comments_on_Draft_NE_RPB_Goals.pdf).

<sup>43</sup> See Framework for Ocean Planning in the Northeast United States, Page 22, available at <http://neoceanplanning.org/wp-content/uploads/2014/02/NE-Regional-Ocean-Planning-Framework-February-2014.pdf>.

<sup>44</sup> See Framework for Ocean Planning in the Northeast United States, Page 22, available at <http://neoceanplanning.org/wp-content/uploads/2014/02/NE-Regional-Ocean-Planning-Framework-February-2014.pdf>.

The RPB should also provide clear guidance and protocols that apply to the collection and use of ocean plan data, including minimum requirements that ensure compliance with relevant federal and state data and information quality laws, standards, and protocols. In addition, continuous opportunities must be available to update the ocean plan and incorporate new data and information.

As to Option 1B, the RPB document notes that an ocean plan could include information in support of statutorily-required federal resource agency consultations, with practical considerations including the need for agency agreement on ocean plan content and the need to identify responsibilities for material development and approval.<sup>45</sup>

In discussing the identification of “opportunities for agencies to develop materials that support consultations” required under various federal laws including the Magnuson-Stevens Act, Endangered Species Act, and National Historic Preservation Act (NHPA), the SeaPlan background report to the RPB notes that agencies identified the following as potential actions to consider for the Northeast ocean plan:

- Consideration of programmatic approaches for Endangered Species Act and Essential Fish Habitat (Magnuson-Stevens Act) for specific phases of wind energy leasing/review process, sand and gravel extraction, and certain deepwater aquaculture species (blue mussels); and
- Development of an approach for mapping NHPA resources as a foundation for development of a programmatic consultation<sup>46</sup>

The Coalition opposes the use of the RPB process to compel changes to the ways in which federal resource agencies carry out permitting and leasing reviews and decisions and conduct statutorily-required consultations under laws including but not limited to the Endangered Species Act, Magnuson-Stevens Act, and National Historic Preservation Act.

In the event that the RPB nonetheless implements Option 1B, the RPB should make clear that any planning activities intended to impact permitting and leasing reviews and related decisions as well as statutorily-required consultations must not deprive agencies of their right to exercise their statutorily-granted discretionary authority as they deem appropriate, even if the exercise of such authority is deemed to be inconsistent with a plan or process already developed through the RPB.

As stated above, any data or information collected and used in the ocean plan must also be subject to clear guidance and protocols, including minimum requirements that ensure compliance with relevant federal and state data and information quality laws, standards, and protocols.

Importantly, in seeking to “facilitate and support” required interagency consultations, any actions carried out in support of Option 1B should not be taken in a manner that seek to prioritize or otherwise favor certain uses over others.

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<sup>45</sup> See Options for the Northeast Regional Ocean Plan, Page 4, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>46</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Pages 18-19, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Deci- Draft-Report-Sept-29.pdf>.

*Option 2: Develop “compatibility analyses” for potential development activities and related guidance for cumulative impact and other assessments under NEPA, and other laws as applicable<sup>47</sup>*

The RPB document states that inclusion of compatibility analyses and guidance for cumulative impact and other assessments in the ocean plan would yield an outcome that “improves understanding of interactions and related natural resource impacts,” with practical considerations being whether sufficient data and information exists to successfully conduct such analyses.<sup>48</sup>

SeaPlan’s background report to the RPB notes that compatibility analyses options include the development of reference materials describing and cataloguing potential resource/activity interactions, as well as spatial descriptions of areas more suitable or less suitable for particular activities. The SeaPlan report goes on to state that compatibility analyses could support U.S. Army Corps of Engineer public interest permitting reviews, suggesting that a first step could be agency scoping on the need, level of detail, and content for a compatibility analysis.<sup>49</sup>

As to cumulative impact analyses, the SeaPlan report includes an option to develop guidance for such analyses at a regional scale (with a focus on migratory species) and says that agencies identified cumulative impact assessments “as an issue that the plan could advance,” with recommendations including the following:

- Development of consistent methodology for use of plan data and agency guidance to support consistent analysis;
- Recognize that individual approaches may be better suited for specific circumstances and focus on clarifying and/or coordinating existing agency guidance and organizing the data to support future individual agency assessments; and
- Use plan data to assess regional cumulative impacts of particular actions (e.g. impacts of structure on seafloor habitat or migratory pathway) and categories of infrastructure (e.g. wind energy, sand and gravel extraction, and/or deepwater aquaculture)<sup>50</sup>

The Coalition opposes the development of “compatibility analyses” for potential development activities and related guidance for assessments under NEPA and other laws. Among other things, it is unclear how the compatibility analyses described by the RPB would be conducted, funded, inclusive of all relevant use and resource data and information, and utilized and applied across various sectors and authorities. Given these significant uncertainties and regulatory implications, the Coalition strongly urges the RPB not to develop compatibility analyses for potential development activities.

If the RPB nonetheless implements Option 2, it must first account for agency feedback on this option by reviewing the results of a transparent and public scoping process in which all relevant agencies determine the need for and potential contours of a compatibility analysis. In the event that agencies

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<sup>47</sup> See Options for the Northeast Regional Ocean Plan, Page 4, available at <http://neceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>48</sup> See Options for the Northeast Regional Ocean Plan, Page 4, available at <http://neceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>49</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 19, available at [http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf).

<sup>50</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 20, available at [http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf).

find merit in the development of compatibility analyses, any development of compatibility analyses must be limited to the compilation of non-binding reference documents based on sound science and data that identify potential interactions with all resources and uses.

As to the development of guidance for cumulative impact and other assessments under NEPA and other laws, the RPB should refrain from developing new guidance, clarifying existing guidance, or using ocean plan data to assess impacts on a regional scale. With NEPA and other resource use and conservation laws applied in a specific manner according to the facts involved with applicable individual scenarios, the RPB should not set out to provide new interpretations or application mechanisms for these statutes.

The need for the RPB to not interfere with existing NEPA and other statutory processes is underscored by the conclusion in a June 2014 report requested by the RPB that approaches to cumulative impact assessments “are still evolving, and while there have been recent developments in the region, these approaches have not yet been used to support ocean planning and management decisions.”<sup>51</sup>

In order to reduce the potential for statutory conflicts and regulatory uncertainty, the RPB should instead rely on individual agencies themselves to (1) clarify existing guidance and organize data to support future individual agency assessments; and (2) make their own determinations about whether and how to use quality-compliant data and information in their activities.

*Option 3: Institutionalize use of the ocean plan’s data and guidance through existing regulatory review and guidance documents. Possible examples include the U.S. Army Corps of Engineers’ New England Programmatic General Permit and BOEM guidance on studies needed for proposed wind energy development.*<sup>52</sup>

The RPB document states that implementing Option 3 would lead to an ocean plan that identifies specific agency regulatory review and guidance documents that make linkages to the ocean plan data and guidance, with practical considerations including agency agreement on such linkages and long-term support for ocean plan data and information.<sup>53</sup>

SeaPlan’s background report to the RPB notes that the U.S. Army Corps of Engineers’ forthcoming New England Programmatic General Permit and other federal and state agency guidance documentation “could cite the ocean plan and data portal as an informational resource.”<sup>54</sup>

The Coalition opposes any effort to institutionalize agency use of ocean plan data and guidance through existing regulatory review and guidance documents. To the extent that decision are made to cite or rely on external sources, including those related to an ocean plan or related product, such determinations

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<sup>51</sup> See June 2014 Draft Summary of Marine Life Data Sources and Approaches to Define Ecologically Important Areas and Measure Ocean Health, Developed in Support of the Healthy Ocean and Coastal Ecosystem Goal for Ocean Planning in the Northeast, Page 5, available at [http://neocceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory\\_Draft\\_6.17.14.pdf](http://neocceanplanning.org/wp-content/uploads/2014/08/Marine-Life-Assessment-Inventory_Draft_6.17.14.pdf).

<sup>52</sup> See Options for the Northeast Regional Ocean Plan, Page 4, available at <http://neocceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>53</sup> See Options for the Northeast Regional Ocean Plan, Page 4, available at <http://neocceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>54</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 19, available at [http://neocceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Report-Sept-29.pdf](http://neocceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Report-Sept-29.pdf). As to the New England Programmatic General Permit, on October 9, 2014 the New England District of the U.S. Army Corps of Engineers announced the decision of the District Engineer to discontinue the regional approach of the New England General Permit proposal in favor of a state-by-state effort. See October 9, 2014 Public Notice, U.S. Army Corps of Engineers, New England District, available at <http://www.nae.usace.army.mil/Portals/74/docs/regulatory/publicnotices/NAE-2013-00714-9Oct2014.pdf>.

should be initiated by agencies themselves through the exercise of their own independent judgment and in accordance with existing laws, regulations, and data and information quality standards and protocols.

### Enhancing Agency Coordination and Predictability of Regulatory Processes

Noting a need for “agency commitments to implement solutions,” and in furtherance of the Effective Decision Making goal, the RPB presents five options by which to address the “need for improved agency coordination and clarification of agency review processes, including those involving use of ocean plan data.”<sup>55</sup>

As the Coalition has previously communicated,<sup>56</sup> better coordination across governmental agencies could yield positive results. However, any information obtained through the RPB process should be used and considered by agencies as they see fit, with agency implementation of any ocean plan contents strictly voluntary and based on the agency’s careful, independent, and transparent consideration and best judgment, and consistent with existing applicable laws and regulations, including those establishing public review and comment procedures. In addition, any RPB activities intended to enhance interagency coordination must address all existing and potential future uses, including but not limited to shipping, commercial and recreational fishing, boating, conventional energy, tugs and barges, and ports.

*Option 1: Enhance pre-application procedures by developing standardized information about the process and use of ocean plan data and information for initial review of proposed projects<sup>57</sup>*

The RPB document states that implementing Option 1 would result in applicants, agencies, and other interested parties “understand[ing] the regulatory process and related use of ocean plan data and information,” with a practical consideration of “balancing need for flexibility with commitment to standardizing procedures.”<sup>58</sup>

On this subject, SeaPlan’s background report to the RPB states that a best-practices template to “inform pre-application consultation for NEPA review and permitting actions” could be developed to include:

- General characterization of the planning and regulatory context, and descriptions of key issues typically associated with certain development activities and the consultation process;
- List of agencies, tribes, and stakeholders with jurisdictional, informational, and professional interests in the proposed action;
- Guidance to proponents regarding type of information and level of detail that can best support initial discussion (by project type, applicable authorities, and key data portal data); and
- Agency commitments to standardize pre-application consultation practices as normal course of doing business<sup>59</sup>

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<sup>55</sup> See Options for the Northeast Regional Ocean Plan, Page 5, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>56</sup> See January 9, 2014 National Ocean Policy Coalition Comments to the Northeast Regional Planning Body, available at <http://oceancpolicy.com/wp-content/uploads/2014/01/Revised-NE-RPB-Goals-Objectives-1-9-14-NOPC-Comments.pdf>.

<sup>57</sup> See Options for the Northeast Regional Ocean Plan, Page 5, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>58</sup> See Options for the Northeast Regional Ocean Plan, Page 5, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>59</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 13, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf).

The SeaPlan report notes that agencies conveyed “strong support for an enhanced and informed pre-application process constructed in part to take maximum advantage of the regional informational context that the ocean plan will provide,” with non-governmental representatives supporting an “enhanced pre-application process that provides high-quality baseline data, access to agency and stakeholder expertise, and clear direction, but that allows for project-specific flexibility in how the process is managed.” It further states that a template for pre-application best practices “would not result in additional formal obligations for the proponent or an agency, and the lead agency could tailor such a template to its own practices.”<sup>60</sup>

For projects requiring an Environmental Impact Statement (EIS), the SeaPlan report also includes an option for development of an interagency memorandum “outlin[ing] mutual expectations and best practices” for lead and cooperating agencies. SeaPlan says that agencies could develop a memorandum that reflects agreements on state-federal agency coordination, public pre-application and scoping meeting participation, and early identification of review/approval requirements and related schedules, among other things. To address possible time and resource concerns, it adds that a pilot project could be developed that focuses on a specific ocean use.<sup>61</sup>

While the Coalition appreciates the intent behind Option 1, it does not support the proposal. New requirements or obligations pertaining to regulatory review and consultation processes must originate with the applicable agencies themselves, pursuant to their statutory authority, rather than the RPB.

To the extent that the RPB nevertheless pursues the development of standardized information to “enhance” pre-application consultation procedures, any resulting RPB product should be provided as non-binding guidance for informational purposes and not lead to additional requirements or formal or informal obligations on project proponents, agencies, or stakeholders. This will help ensure maximum flexibility in how proponents, agencies, and others engage in pre-application consultation practices for specific projects, while at the same time making any information available that could be of potential value to those participating in the process.

Similarly, the development of any interagency memorandum outlining agency commitments in the review of projects requiring an EIS must be led by the agencies themselves in a manner that is consistent with their statutory authority.

*Option 2: Develop guidance for the public that explains how agencies will work together to use information in the ocean plan for environmental review under NEPA and other laws*<sup>62</sup>

The RPB document says that including this guidance in the ocean plan would create an “understanding of how the ocean plan informs decisions,” with practical considerations including whether the opportunity exists “to do more than provide ‘guidance.’”<sup>63</sup>

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<sup>60</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Pages 13-14, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison-Draft-Report-Sept-29.pdf>.

<sup>61</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 14, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison-Draft-Report-Sept-29.pdf>.

<sup>62</sup> See Options for the Northeast Regional Ocean Plan, Page 5, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>63</sup> See Options for the Northeast Regional Ocean Plan, Page 5, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

In addition to providing an option to develop federal agency external guidance describing how agencies will implement the ocean plan,<sup>64</sup> SeaPlan’s background report to the RPB discusses how the ocean plan could contain guidance describing how planning practices included in the plan could be utilized in NEPA review, Clean Water Act and Rivers and Harbors Act permitting, and regulatory consultations.<sup>65</sup>

In doing so, the SeaPlan report states that federal agencies could develop guidance on how and with what level of authority various data can be used or further developed for resource/human activity characterizations under NEPA and permitting review processes, and that lead agencies for regulatory consultations could develop guidance describing how consultations will use ocean plan data and information. The report adds that guidance could clarify that agencies “will need to make their decisions based on the details of individual proposed activities and related new information.”<sup>66</sup>

The Coalition opposes any efforts to secure agency commitments to use ocean plan content for environmental reviews under NEPA or other laws or to develop related guidance for agency use. As stated above, agency implementation of any ocean plan contents must be strictly voluntary and based on the agency’s careful, independent, and transparent consideration and best judgment, and consistent with existing applicable laws and regulations.

However, just as when agencies utilize the best scientific information available from sources outside the RPB process, to the degree that any particular agency seeks to implement ocean plan data, guidance, or other content in conducting reviews under NEPA or any other law, it is vital that such implementation be transparent and well-understood by the regulated community. Therefore, the ocean plan should clearly state how ocean plan content may or may not be used by agencies, and any agency that uses or otherwise implements ocean plan content in their activities should also clearly communicate precisely how they are doing so and what decisions or processes will be influenced.

In addition, the RPB should clarify that, notwithstanding the content of the ocean plan, agencies will ultimately make their own decisions on proposed activities based on their independent judgment and applicable statutory authorities.

*Option 3: Institutionalize use of ocean plan data (in NEPA reviews and related permitting and leasing processes) through Memoranda of Agreement or comparable expressions of agencies’ commitments, development of a regionally standard inter-agency agreement to facilitate collaboration and cooperation in NEPA reviews, and implementation of “programmatic approaches” (general agency agreements to work collectively to address specific issues, not specific to individual development proposals). These options could focus on ESA, “essential fish habitat” and other statutorily-required interagency consultations. See Option 1(B) under Healthy Ocean and Coastal Ecosystems goal, above.<sup>67</sup>*

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<sup>64</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 15, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf).

<sup>65</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 14, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf).

<sup>66</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 14, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf).

<sup>67</sup> See Options for the Northeast Regional Ocean Plan, Page 5, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

The RPB document notes that implementation of Option 3 would result in “formal agency commitments to use ocean plan data to inform decisions” and an ocean plan describing such commitments, with practical considerations including agency level of effort and comfort to enter into such commitments and agency responsibilities for developing and implementing the commitments.<sup>68</sup>

SeaPlan’s background report to the RPB notes that “the authority to use and implement” ocean plan content and the “assurance” that the plan will be applied over time “rests in the transitory authority of the [National Ocean Policy] Executive Order.” It further states that development of interagency memorandums of agreement or similar documents memorializing ocean plan practices “would provide predictability and greater assurance that the foundational benefits of the ocean plan will be carried forward over time.”<sup>69</sup>

The Coalition opposes efforts to institutionalize the use of ocean plan data in agency decision-making. The transitory nature of RPB marine planning activities is attributable to the absence of statutory authorization for the National Ocean Policy/marine planning initiative. Vehicles such as interagency memorandums and similar mechanisms should therefore not be utilized as instruments to institutionalize a process and document the creation of which has not been authorized or funded by Congress.

In addition to usurping the will and intent of Congress, proceeding in such a manner will only serve to heighten regulatory uncertainty by memorializing an effort that will likely lead to conflicts, delays, and other complications with agency decision-making under existing authorities.

The lack of congressional authorization and related potential for statutory conflicts underscores the need to avoid using formal agreements to institutionalize agency use and application of ocean plan contents.

*Option 4: Identify opportunities for enhancing the efficiency and effectiveness of the CZMA consistency review process, such as:*

- *Identifying and using CZMA consistency review options designed for minor, routine federal agency activities that are compatible with state and federal CZMA policy interests*
- *Improving how state CZM programs receive notice of federal actions*
- *Developing and using plan data and information to enhance understanding of projects’ potential effects on specific state interests*<sup>70</sup>

The RPB document notes that Option 4 would yield an ocean plan that “facilitates consistency with state enforceable policies that relate to management of ocean and coastal resources and activities,” with general consistency provisions and ocean plan data and information used to “support projects’ consistency with state enforceable policies.” Practical considerations cited by the RPB include

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<sup>68</sup> See Options for the Northeast Regional Ocean Plan, Page 5, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>69</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 15, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decison_Draft-Report-Sept-29.pdf).

<sup>70</sup> See Options for the Northeast Regional Ocean Plan, Page 5-6, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

differences in program structures/policies among states and ensuring state involvement with ocean plan data, map, and non-spatial information development and use.<sup>71</sup>

SeaPlan's background report to the RPB notes that the ocean plan presents an opportunity to determine whether ocean plan data and information could support the use of CZMA general consistency or "de minimus" [sic] provisions to categories of activities related to certain uses (e.g. marine minerals, renewable energy, Navy training, Coast Guard buffer zones). It also includes a potential action to evaluate whether regionally or sub-regionally consistent "geographic location descriptions" could be identified for specific activities to address a "geographic management patchwork" that the report says can result from state exertion of formal jurisdiction under CZMA outside state waters.

It further states that agencies could identify ocean plan data and planning decisions that would benefit from coordination with state ocean plans and/or CZMA programs, noting that states will "look to ensure that practices developed under the regional ocean plan are not inconsistent with those already in place at the state level."<sup>72</sup>

Given that its development and implementation has not been authorized or funded by Congress, as with the proposed options to influence agency decision-making under NEPA and other laws, the Coalition is troubled by the proposal to use the Northeast ocean plan and planning effort to influence the CZMA review process and urges the RPB not to do so.

As the statute intended, CZM plans are inherently state-specific, with each such plan guided by purposes and a history unique to that particular state and which may or may not align with the interests of the RPB. Using the RPB's ocean planning effort to influence CZMA activities could thus conflict or otherwise interfere with state CZMA work carried out under well-established law and processes.

The Coalition is also concerned with the potential action to use the ocean plan "as an opportunity to consider whether or how the interests behind the establishment" of areas outside state waters where states have "formally" exerted jurisdiction "can be addressed consistently across regional waters."<sup>73</sup> There are significant questions about whether state application of CZMA in a manner that could block activity in federal waters far offshore and beyond their coastal zone is consistent with statutory intent. Utilizing the RPB process to encourage or memorialize such actions on a regional scale would thus raise similar and substantial legal issues and should be avoided.

If the RPB nevertheless pursues Option 4, any effort to connect Northeast ocean plan development and implementation with the CZMA consistency review process must respect and ensure consistency with state policies and programs and all applicable federal laws, accommodate variations in policy choices among states in the region, and utilize data and information that complies with all relevant federal and state data and information quality laws, standards, and protocols.

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<sup>71</sup> See Options for the Northeast Regional Ocean Plan, Page 6, available at <http://neoceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>72</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Pages 21 and 22, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Draft-Report-Sept-29.pdf).

<sup>73</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Pages 21 and 22, available at [http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Draft-Report-Sept-29.pdf](http://neoceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Draft-Report-Sept-29.pdf).

In addition, any attempts to generate administrative efficiencies by garnering state and federal support for the application of general consistency or similar provisions in lieu of formal consistency review should be based on transparent criteria that does not at the outset exclude any particular activity from consideration.

*Option 5: Establish interagency groups to address policy and management issues regarding offshore, deep-water aquaculture and sand and gravel extraction for beach nourishment as new, emerging issues in the ocean environment. For example, the interagency group could develop pre-application and siting guidance.<sup>74</sup>*

The RPB document says that implementation of Option 5 would lead to “increased clarity in regulatory processes,” with practical considerations including a focus on certain aquaculture species and specific areas with the potential need for sand and gravel.<sup>75</sup>

In addressing the “key challenge” of developing policy that provides “equitable access” to sand and gravel resources among the Northeast states, SeaPlan’s background report to the RPB states that the “informational context of the planning process provides an opportunity to help frame a regional perspective that could help guide regional or state policy making.”<sup>76</sup>

As to deepwater aquaculture, in providing an option for the establishment of an interagency working group to develop “clear regulatory guidance for siting and permitting unmanaged species,” the report notes that regulators currently face challenges in approving specific locations and facility operations because existing data “may not adequately represent resources at a project-specific scale, and there is scant experience evaluating the ability to mitigate potential impacts to species of concern.”<sup>77</sup>

The Coalition opposes the inclusion of an ocean plan charge to establish an interagency working group(s) and/or effort to address policy and management issues by developing siting and permitting guidance for marine uses. The establishment of such a group and/or initiative must be the result of agencies’ independent determinations to do so rather than in response to a directive or requirement through the RPB process. Moreover, it is premature for the ocean plan to focus on certain specific uses in the absence of a completed analysis and evaluation of all the region’s existing and future potential economic and ecological uses and resources.

In the event that the RPB pursues Option 5, the development of any siting and permitting guidance must be carried out consistent with applicable authorities, account for all resources and uses in making determinations that may bear on guidance that is ultimately issued, and developed in a transparent manner that is subject to public review and comment and close coordination with commercial and recreational interests.

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<sup>74</sup> See Options for the Northeast Regional Ocean Plan, Page 6, available at <http://neceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>75</sup> See Options for the Northeast Regional Ocean Plan, Page 6, available at <http://neceanplanning.org/wp-content/uploads/2014/09/Draft-NE-Regional-Ocean-Plan-Options-September-2014.pdf>.

<sup>76</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Page 15-16, available at [http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Report-Sept-29.pdf](http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Report-Sept-29.pdf).

<sup>77</sup> See Northeast Regional Ocean Plan: Options for Effective Decision Making, Report Prepared for the Northeast Regional Planning Body, September 2014, Pages 16-17, available at [http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision\\_Report-Sept-29.pdf](http://neceanplanning.org/wp-content/uploads/2014/09/Options-for-Effective-Decision_Report-Sept-29.pdf).

## **CONCLUSION**

The options presented for public comment place significant emphasis on the use of ocean plan content and processes to influence the statutory decision-making activities of individual agencies in a manner that will almost certainly introduce significant uncertainty, confusion, delay, and negative economic effects for businesses and communities across the region. The Coalition continues to maintain that the RPB-based planning process and its associated regulatory implications represents an unnecessary initiative that will confuse and potentially detract from the existing range of clear, well-understood, and statutorily-authorized planning tools available to governmental agencies.

If, however, the RPB chooses to continue with such a planning process, rather than seeking to assure agency compliance with a product that has not been authorized by statute and whose implementation may conflict with processes established through existing laws and regulations, any activities that RPB members choose to pursue should be focused on providing data and information to agencies for them to voluntarily use and interpret as they see fit and in accordance with their respective governing authorities.

In addition, any data and information should be developed in the most comprehensive manner possible, analyzing all ecological and economic resources and existing and potential future uses and opportunities in the region.

In compiling and providing any data and information, the RPB should also work closely with the commercial and recreational communities to ensure that all resources and existing and potential future uses are accounted for and that such data and information is based on sound science and compliant with applicable data and information quality laws, standards, and protocols. Formal mechanisms for user group engagement, including but not limited to a formal advisory body, would help facilitate such coordination.

In closing, the Coalition appreciates the opportunity to provide feedback on the proposed options and respectfully urges the RPB to closely consider the comments herein as it contemplates potential content for the Northeast regional ocean plan.

Sincerely,



Brent Greenfield  
Executive Director  
National Ocean Policy Coalition



## Appendix F

### KELLEY DRYE & WARREN LLP

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October 31, 2014

Betsy Nicholson  
Federal Co-Lead for Northeast Regional Ocean Planning  
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Greater Atlantic Regional Office  
55 Great Republic Drive  
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Dear Ms. Nicholson and RPB members:

On behalf of the Fisheries Survival Fund (“FSF”), we submit the following comments on the Northeast Regional Planning Body’s (“RPB’s”) work to develop the Northeast Regional Ocean Plan (“ocean plan”) in advance of its upcoming meeting on November 13-14 in Portsmouth, NH. FSF represents the significant majority of the full-time limited access permit holders in the Atlantic scallop fishery. Our members are home-ported along the Atlantic coast from North Carolina and Virginia north through New Jersey, Connecticut, and Massachusetts.

At its November meeting, the RPB will discuss updates to the regional ocean planning effort and options for proceeding with further work on two goals of the ocean plan: 1) Effective Decision Making, and 2) Healthy Ocean and Coastal Ecosystems. As FSF has stated in previous comments, the ocean planning process in the Northeast has a history of poor communication and coordination. Federal agencies typically only attempt outreach to the fishing industry late, if at all, in the development phase of offshore wind and other construction projects. In previous comments, we have expressed concerns about the statutory authority of the RPB and any extralegal efforts to prioritize rights to ocean resources. However, we do recognize the utility of the RPB’s work to enhance coordination among stakeholders and the various agencies with jurisdiction over marine resources.

#### **I. OCEAN ENERGY PROJECTS REQUIRE IMPROVED COMMUNICATION**

In but one example of the many problems with the current offshore permitting and leasing process, a consortium of three downstate New York power companies was able unilaterally to nominate an area just offshore Long Island for a wind farm under the Bureau of Ocean Energy Management (BOEM)’s “Smart from the Start” program. Just by nominating this

Betsy Nicholson

October 31, 2014

Page Two

area, the company triggered BOEM to initiate a solicitation that led to two other wind energy companies placing bids to site projects there. Only after the bids were developed were existing ocean users offered the chance to explain their interests in that area in response to a Call for Information from the agency.

Responses to the Call revealed just about every type of ocean user conflict imaginable. For starters, NMFS/NOAA and the New England Council submitted letters urging BOEM to consider the extensive fishing activity in the proposed area. Portions of the area overlap Essential Fish Habitat, as well as important fishing grounds for a wide range of commercially prominent species. Fisheries Survival Fund, for the scallop industry, has repeatedly provided BOEM with survey and fishery data showing the substantial scallop biomass and fishing activity in the Call Area. Furthermore, a pre-existing proposal by Liberty Natural Gas to construct the Port Ambrose liquid natural gas facility within the call area is currently undergoing National Environmental Policy Act review. Even the American Wind Energy Association expressed concerns over the viability of a wind farm in the call area. So far, BOEM has all but dismissed this information.

BOEM's roll-out for its Smart from the Start program in 2010 claimed the program would enable better and quicker decisions on wind energy development areas and proposals. The comment record in response to the Call reveals, however, that it is inefficient and ineffective for BOEM to enable private companies to lay claim to the valuable ocean areas without a well-structured process. A wide range of stakeholder groups, from the fishing industry to the Sierra Club, have stressed the importance of early consultation on siting wind energy projects in response to this and other Calls for Information. We, too, have advocated repeatedly, but to little avail, for intelligent advance planning for proposed wind energy projects.

The failure to consider this information in the earliest possible stages of planning decisions is simply inexcusable. We therefore urge the RPB to develop effective protocols and agreements that ensure reasonable protections for historic fishing grounds and other existing ocean uses in accordance with the law. We must move away from a process in which stakeholders are responding piecemeal to poorly conceived plans, after substantial resources have been invested in their development.

## **II. SPECIFIC COMMENTS ON THE RPB'S OCEAN PLAN**

The RPB is specifically seeking comment on Objective 1—"Characterize the Region's Ecosystem, Economy, and Cultural Resources"—of the ocean plan's Healthy Oceans and Coastal Ecosystems Goal. The options presented in the public discussion documents focus on identifying species distribution, abundance hot spots, and core habitats, as well as exploring options for an ecosystem-based approach to identifying important ecological areas. Many of the recommended actions, and in particular those that could lead to increased assessments or enhanced understanding of the Northeast Atlantic ecosystem, will be important to provide

Betsy Nicholson  
October 31, 2014  
Page Three

information that is currently missing from decision making. The utility of this information will depend on whether the correct indicators are developed.

It is absolutely critical that any goals and policies that the RPB sets prioritize the rights to traditional fishing grounds and the protection of areas of high biomass abundance. To that end, it is troubling that the listed options in the public discussion documents focus only on the physical environment. The most important aspect of any ocean planning process is that existing ocean uses are accurately described and considered before any siting proposals are analyzed. The document does not state whether the proposed actions are intended to entirely satisfy Objective 1, or whether additional options will be developed to characterize the economy and cultural resources components of the objective. FSF urges the RPB to continue work to assess each component and develop a complete data set.

Even for the physical ecology-centered actions described in the public comment documents, the listed options do not address how changing ecological conditions will be assessed and communicated across agencies. This is a particular concern for the scallop fishery, which operates on a rotational management model that incorporates shifting scallop distributions and is responsive to present real-world conditions. One-time assessments that are distributed to the various agencies involved in offshore permitting and leasing decisions will not suffice as a basis for sound decision making in later years when they no longer describe the resource accurately.

The RPB is also seeking comment on three objectives under the Effective Decision Making Goal: 1) Enhance Inter-Agency Coordination, 2) Implement Specific Actions to Enhance Informed Public Input in Decision-Making, and 3) Incorporate Maps and Other Products into Existing Agency Decision-Making Processes. FSF applauds the RPB's effort to improve effective data-sharing across agencies and to enhance coordination and public participation in regulatory decisions.

The report titled "Northeast Regional Ocean Plan: Options for Effective Decision Making" presents options to achieve this goal. Notably, the document acknowledges the fact, detailed in FSF's previous comments to the RPB, that the National Ocean Policy requires any regional ocean plan to be implemented through existing federal law. However, like the options related to Goal 1 discussed above, the report focuses too narrowly on ecological data and does not adequately address the ways in which information on existing ocean uses will be incorporated into the decision making process. It also fails to state explicitly the legally binding prioritization of such activities—for example, that commercial fishing has priority over ocean wind development under the Outer Continental Shelf Lands Act. Rather than clarify agency responsibilities, the report gives great deference to agency commitments, levels of effort, and even "comfort" with data inclusion, cooperation, and consultation. The option that is ultimately selected for this goal must specifically require the development of suitable data sets on existing

KELLEY DRYE & WARREN LLP

Betsy Nicholson  
October 31, 2014  
Page Four

uses, the incorporation of that data into decision making, and thorough consultation with relevant users, as required by the law.

Also in the report, Item 5 under "Enhance Coordination and Guidance" states that external guidance will be developed for stakeholders and the public describing how agencies will implement the ocean plan "to clarify the legal and practical relationship of the ocean plan to existing authorities and the National Ocean Policy." This relationship is already clarified under the law. While clear communication of the process should be encouraged, the development of memoranda memorializing agreements among agencies as described in this item must also serve to inform the agencies of their own responsibilities and constraints.

FSF particularly supports the provisions in the report on pre-application consultations, including providing existing use information to project proponents at the earliest stages of project development. This will allow potential conflicts to be identified and addressed before public or private entities invest large amounts of money in projects that may be impractical or impermissible due to traditional fishing rights.

\* \* \* \*

To summarize, we would like to reiterate that early consultation on permitting and leasing decisions is critical. Equally important is the inclusion of fine-scale, up-to-date information on existing ocean uses in offshore leasing considerations. As the RPB lacks authority to amend the law or regulatory processes that prioritize existing resource users, its most useful role is to ensure that these activities are well-coordinated and that agencies effectively communicate with each other and the public. We appreciate the opportunity to submit these comments. As always, please do not hesitate to contact us if you have any questions or if we can provide additional information.

Respectfully submitted,



David E. Frulla  
Andrew E. Minkiewicz  
Anne E. Hawkins

Counsel for Fisheries Survival Fund

## Appendix G



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November 5, 2014

Ms. Betsy Nicholson, NOAA and RPB Federal Co-lead  
Mr. Jeff Willis, Rhode Island Coastal Resources Management Council and RPB State Co-lead  
Chief Richard Getchell, Aroostook Band of Micmac Indians and RPB Tribal Co-lead  
Northeast Regional Planning Body

Submitted via Public Comment Portal (<http://neoceanplanning.org/public-comment/>)

Dear Ms. Nicholson, Mr. Willis and Chief Getchell:

Thank you for the opportunity to comment on two of the three goals the Regional Planning Body has identified as important to establish a regional ocean plan in the Northeast – Healthy Ocean and Coastal Ecosystems and Effective Decision Making. The Nature Conservancy views this effort as a valuable opportunity to improve and elevate ecological protection and sound management of coastal and marine natural resources in the region. The RPB has done an excellent job reaching out to stakeholders to ensure a wide range of approaches to implementing these goals is considered. The RPB has provided ample opportunity for input to shape the foundation of your planning effort. Thank you for going to such lengths and considering a wide range of perspectives and ideas.

With such a wide range of options that will be discussed at your November 13-14, 2014 meeting, one of the biggest challenges the RPB will face is focusing and prioritizing activities that will support development of the best regional ocean plan possible in the next 18 months. In order to support actions that will lead to a comprehensive plan by 2016, The Conservancy offers the following comments.

### I. Healthy Ocean and Coastal Ecosystems Goal

The Conservancy strongly supports the identification of important ecological areas as a priority action. Identifying these areas using the best available data and information is essential to the ultimate outcome of elevating ecological protection in a clear and measurable way. An ecosystem-based approach to planning, as defined in Executive Order No. 13547<sup>1</sup>, is a fundamental goal for ocean planning in the Northeast. We also recognize that the science of ecosystem-based planning may not be adequately developed in the timeline required for plan implementation in 2016. This pertains particularly to Option 5, which should be recognized as the top priority and ultimate long-term goal even if it is beyond the scope for 2016. Therefore, a process to continue development of ecosystem approaches should be instituted to enable its utilization as soon as possible, if not by 2016.

One approach toward this goal is to assure that the 2016 plan identifies an approach or path toward Option 5 including the recognition of Options 1-4 as important, additive steps. An additional approach is to add one or two ecological elements to options 3 and 4 which are both practical to do and ecologically informative – thereby adding ecological value without the burden of covering all possible ecological considerations or elements (e.g. see comment below for Option 3).

The Conservancy also strongly recommends that a process for regularly updating data in the plan be discussed by the RPB now, and not become an afterthought once a plan is completed. As an example, the MA

<sup>1</sup> Executive Order No. 13547 (2010) Sec. 3 (b) " The term "coastal and marine spatial planning" means a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process..."

Ocean Plan is required to be updated every five years. Updates to the data, and advances in ecosystem-based management, might warrant changes to the plan. Changes in priorities and emerging uses could also warrant an update to the plan.

In terms of specific options presented in the Northeast Ocean Plan Options document, we offer the following comments:

*Options 1 and 2 - Summarize management areas currently designated under existing authorities and Develop distribution and abundance maps for marine life species:* We recognize that these options are already in progress. This work is essential for creating the baseline assessment, but without integration along the way these data will be difficult to use. For example, the combined Essential Fish Habitat designations cover much of the region. Therefore it will be important to develop a simple figure or tool that shows the number of species or life stages in a particular area (e.g. – 10-minute square). This was done in the Rhode Island OSAMP (Figure 5.11) and has been useful in understanding both what species have occurred in specific places and how many species find a specific area to be important. One very effective outcome of the OSAMP is the ability to convey the simple fact that 54% of the total study area (792 of 1467 square miles) now has elevated ecological protection compared to the same areas before the plan was completed.

*Option 3 and 4 - Identify abundance “hot spots” and other core habitat and occurrences:* Hotspot analysis should be a priority. We recognize that the *Marine-life Data Analysis Team (MDAT)* team is already doing this for some species. The Conservancy suggests that migratory corridors and spawning areas are very important, but they are not revealed through distribution and abundance maps. It is also important to account for the historic distribution of habitats that have been degraded and are priorities for restoration and preservation (e.g. sea grass, salt marsh, and shellfish). A literature review could provide a short term approach to starting this work with a technical working group formed to assist in the long term.

The Conservancy also suggests adding “species persistence” for identifying “other core habitats.” In completing the Northwest Atlantic Marine Ecoregional Assessment (NAMERA) and Long Island Sound Ecological Assessment (LISEA), The Nature Conservancy used species persistence as an important variable that revealed more about which places are ecologically notable than species abundance or diversity alone. Persistence helps account for the dynamic nature of marine life - the variability of where species are at any one time. By looking at which geographic places consistently support high levels of species diversity and abundance *over time*, a link is made between potentially enduring, underlying ecological factors – biotic or abiotic – and the spatial location where it occurs. Additionally, identifying benthic areas of high structural complexity is another relatively practical tool to identify “other core habitats” in that it is often well-correlated with higher relative concentrations of marine life.

*Overlay abundance “hot spots”, core habitats and other occurrence areas:* The Conservancy has extensive experience integrating spatial data sets to identify important ecological areas. We would be happy to participate in a multi-disciplinary work group and share our methodologies.

*Option 5 - Explore options for an ecosystem-based approach to identifying important ecological areas:* The Conservancy strongly supports this option and has invested heavily in pursuing science that will support ecosystem-based approaches. However, we acknowledge that it will take more time than the RPB has to develop, vet and implement these new approaches in the first iteration of the Northeast Regional Ocean Plan. Therefore, The Conservancy supports the RPB in pursuing this option in the long term. We urge the RPB to form an Ecosystems Technical Committee representing a broad range of scientific disciplines including: oceanographers, ecosystem scientists, modelers, and spatial experts. The charge of the committee would be to develop an ecosystems based approach to identifying important ecological areas.

*Options to conduct other types of assessments:* The Conservancy strongly supports measuring and monitoring ocean health in the region. Existing methodologies such as the Ocean Health Index and the new UNESCO publication “A Guide to Evaluating Marine Spatial Plans” can provide guidance to the RBP on the best approach in the Northeast. Assessments could be conducted annually and indicate areas for increased

attention to enable adaptive management. A healthy dialogue is warranted to determine the best approach to assessments and how conclusions from such assessments could be used by the RPB and by others who will benefit from the RPBs efforts (e.g. – fishery managers, offshore energy developers). It will take time to determine the best approach to assessing ocean health; therefore, The Conservancy supports the RPB in pursuing this option in the long term.

## **II. Effective Decision Making Goal**

Improved coordination among state, federal and tribal partners will be a key outcome of implementation of Northeast Ocean Plan. Just as important is providing ample opportunity for stakeholder participation in development, implementation and renewal of the Northeast Ocean Plan. Many of the options presented in the Northeast Ocean Plan Options document strive to achieve these goals. The Conservancy believes that unambiguous commitments from federal, state and tribal RPB members are essential to make this work. Therefore we strongly support options that encourage a high level of commitment from RPB members.

### **Incorporating plan data and information into existing permitting and leasing decisions**

Option 1 *Using existing map-based data in the ocean plan*: The Conservancy recognizes that this is already taking place through the Northeast and Mid-Atlantic data portals. It is important to make sure the data portal processes are transparent and retain a high level of standards. This will be important in the Mid-Atlantic region as well since there are overlapping datasets with the Northeast.

The Conservancy agrees that well-vetted ocean plan content is an essential part of an effective plan. However, without clear commitments from RPB members to use that content, it will be difficult for stakeholders to understand the benefit of implementing the ocean plan.

Lastly, with respect to using the ocean plan content to support cross-agency consultations, The Conservancy believes that there is tremendous potential for tools like the data portal to support improved processes such as Essential Fish Habitat consultations. At the same time, the RPB must strike a balance between the need to provide easy to use, current data and best available science, while acknowledging that many projects are unique and will require site specific analysis. Further, provisions must be made to update the content of the plan and the data it is based upon, ensuring that best available science is being used.

Option 2 *Develop “compatibility analyses”*: The Conservancy strongly supports this option. The compatibility analysis developed for the Massachusetts Ocean Plan is complex and yet easy to understand for new and existing stakeholders beginning the process of determining competing uses. There is also a need to balance the volume of information with the need for easily accessible tools. As with other options considered to advance the Healthy Ocean and Ecosystems goal, the bottom line is providing tools like a “compatibility analysis” to decision makers who can and will use them.

### **Enhance agency coordination and predictability of regulatory processes**

The Conservancy strongly supports actions that improve agency coordination and predictability as a means to improve natural resource stewardship and conservation. As with our comments relating to ocean and ecosystem health, we believe that unambiguous support of activities that advance this goal by RPB members is essential to the ocean plan’s success. To this end, our comments are focused on the options that most clearly do so.

Option 1 *Enhance pre-application procedures*: The pre-application phase is the point at which there are the most meaningful opportunities to modify and improve a project seeking federal permits. Therefore, The Conservancy encourages the RPB in supporting *preparation* for permitting by ocean-based agencies that could make use of the resources of the RPB (i.e. the data portal, expertise of fellow members) and use the plan to inform decisions within existing statutes and regulations.

*Option 3 Institutionalize uses of the ocean plan's data and guidance through existing regulatory review and guidance documents:* The RPB may wish to consider identifying agency documentation as well as regulatory processes where data and analysis developed will be helpful to improve regulatory and conservation outcomes.

*Option 4 Identify opportunities for enhancing the efficiency and effectiveness of the CZMA consistency review process:* It is important to consider ways to improve review of routine federal agency activities. It is also essential to improve how federal agencies assess cumulative impacts of permitted activities. Although cumulative impact tools may not be available for implementation in 2016, The Conservancy supports continued investment in developing these tools.

*Option 5 Establish interagency groups to address policy and management issues regarding offshore, deep- water aquaculture and sand and gravel extraction for beach nourishment as new, emerging issues:* The Conservancy supports the RPB's fundamental purpose in improving interagency coordination across a range of activities and uses associated with the oceans. Therefore, we suggest that rather than focusing on these two uses, that this option be implemented to address new and emerging uses in more general terms. Sand and gravel mining and deep water aquaculture are two important examples, but the RPB should not limit itself in this regard. Also, in the context of this option, we encourage the RPB to apply cumulative impacts analyses.

Again, thank you for the opportunity to share our views on priority activities with respect to your Healthy Ocean and Coastal Ecosystems Goal and Effective Decision Making Goal. Your work and your focus, especially in the next 18 months are critical to the future of our oceans resources and everyone who depends on them.

Sincerely,



Michelle B. Lakly, Ph.D.  
Eastern U.S. Division Director

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From: Heather McElroy <hmcelroy@capecodcommission.org>  
Sent: Friday, November 7, 2014 4:15 PM

Sorry not to make your recent meetings, but I am trying to pay attention to the work of the RPB. I think in general the options under these two goals make sense. One concern has to do with data availability and how it is applied - with regard to Option 1 and 2 under Effective Decision Making, I am concerned that some data may not be good enough to adequately define a use or resource area. Adequate data will be needed to make informed decisions about compatibility analyses, etc. The plan should be clear when expert opinion agrees that there is not adequate information about a resource to make decisions about it. This same caution applies to the options under Healthy Ocean and Coastal Ecosystems.

Also, re: terminology, Options seem more like Actions; they don't seem to be mutually exclusive? some seem to depend on others being completed. Use a better term to avoid confusion?

Thanks,  
Heather McElroy

Cape Cod Commission



November 12, 2014

Betsy Nicholson, Federal Co-Lead  
Grover Fugate, State Co-Lead  
Richard Getchell, Tribal Co-Lead

Dear RPB Co-leads:

I would like to take this opportunity to follow-up on my comments at the UNH workshop and at the public meeting in Boston and to propose two workshops to accompany the “ecosystem-based management/option #5” working group, as proposed by a number of other organizations, including CLF, the Nature Conservancy, NRDC, and others.

### Ecosystem-based Management

In Boston, the specific question was put to the audience – “what would you recommend to the RPB as specific steps to take going forward?”

During the meetings, I supported the proposal made by Priscilla Brooks from CLF to the effect that a working/expert group be appointed to scope out concepts and implementation steps for #5, for achieving the Healthy Ocean and Coastal Ecosystems goal.

I also briefly suggested, however, that a two-day workshop be convened to bring some of the nation’s best thinkers and practitioners together to scope out this topic. Questions such as these could be addressed in the workshop, potentially funded by NOAA, NROC or other groups:

- What are varied definitions of ecosystem-based management, and in particular what work has been done to define EBM for oceans?
- Are there examples of EBM-oceans that we could learn from?
- What are the links between EBM-oceans and marine spatial planning
- What possible links can be drawn between EBM-oceans and NEPA assessments and permitting decisions by various federal and state agencies for particular resource uses?
- What short-term, medium-term, and long-term steps would need to be taken to incorporate EBM-oceans into the work of federal agencies?

I have made an effort since the meetings to track down at least a sampling of experts and literature, from general topics such as ecosystem-based management, public trust doctrine, ocean commons, tribal management, NEPA, protected area governance, community-based management, case studies, etc. and including:

Center for Ocean Solutions, Incorporating Ecological Principles into California Ocean and Coast Management

Richard Burroughs, Coastal Governance

Margules, C.R. and R. L. Pressey, Systematic Conservation Planning

Karen McLeod and Heather Leslie, Ed. Ecosystem-Based Management for the Oceans

Tundi Agardy, Ocean Zoning: Making Marine Management More Effective

Ed Goodman, Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Comanagement as a Reserved Right

Teresa G. Jacobs and Santi Alston, Legal Considerations for Climate Change Impacts on Tribes' Off-Reservation Resources

Timothy Beatley, Blue Urbanism: Exploring Connections Between Cities and Oceans

Burns H. Weston and David Bollier, Green Governance: Ecological Survival, Human Rights, and the Law of the Commons

Mary Christina Wood, Nature's Trust: Environmental Law for a New Ecological Age

Michael C. Blumm and Mary Christina Wood, The Public Trust Doctrine in Environmental and Natural Resources Law

Jack H. Archer et al, The Public Trust Doctrine and the Management of America's Coasts

Gopnik, Morgan, Integrated Marine Spatial Planning in U.S. Waters: The Path Forward

NEPA Task Force, Modernizing NEPA Implementation

PacMARA, Decision Guide: Selecting Decision Support Tools for Marine Spatial Planning

IUCN, A Primer on Governance for Protected and Conserved Areas

Center for Regulatory Effectiveness, An Evaluation fo the Massachusetts Ocean Plan and its Implications for Coastal and Marine Spatial Planning in the United States

UNESCO, A Guide to Evaluating Marine Spatial Plans

Community Environmental Legal Defense Fund, Rights of Nature: FAQs

Natural Capital Project, InVEST Scenarios Cast Study: Vancouver Island, Canada

Rhett Larson, The New Right in Water and The Right to Water and the Public Trust

Center for Progressive Reform, Restoring the Trust: Water Resources and the Public Trust Doctrine, A Manual for Advocates

Joseph Sax, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention

Transnational Institute Agrarian Justice Programme, The Global Ocean Grab: A Primer

Robert Steneck and James Wilson, A Fisheries Plan in an Ecosystem Theater: Challenges of Managing Ecological and Social Drivers of Marine Fisheries at Multiple Spatial Scales

Center for Progressive Reform, Restoring the Trust: Water Resources and the Public Trust Doctrine: A Manual for Advocates

Rockefeller Foundation, Revaluing Ecosystems: Visions of a Better Future

Madeleine Coorey, Plan Won't Save Great Barrier Reef: Australian Scientists

Public Participation

Comments have been made repeatedly about very low public participation in the work of the RPA, a widespread problem more generally when government agencies seek to reform or improve governance structures and institutions.

I would suggest several efforts as pilot projects:

- a. a facilitated workshop of a significantly broader range of stakeholders than have participated so far, including representatives of such groups as: food sovereignty, climate change, environmental justice, water quality, new economics, landscape management, high-tech
- b. facilitated workshops in two different port communities – with a random sample of citizens. There are a plethora of models for identifying community values and solutions.

A working session of RPB members and others to design a more inclusive public participation strategy, using these and other approaches, would make sense.

I look forward to further discussion of these proposals and others made in various comment letters submitted by stakeholder organizations.

Valerie I. Nelson, PhD  
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November 10, 2014

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***Also submitted electronically to [klund@northeastoceanouncil.org](mailto:klund@northeastoceanouncil.org)***

***RE: Comments on Options for the Northeast Regional Ocean Plan: Healthy Ocean and Coastal Ecosystems Goal***

Dear Chief Getchell, Mr. Fugate and Ms. Nicholson:

As marine scientists with several centuries of collective experience studying New England's ocean, we are pleased to provide comments to the Northeast Regional Planning Body regarding the document "Options for Healthy Ocean and Coastal Ecosystems" ("the document") dated September 29, 2014. Given the importance of NROC's actions as a national model for comprehensive, ecosystem-based ocean planning, how we approach this in the northeast can in essence determine the future of our ocean. Identifying Important Ecological Areas as described in the document is one critically important and fundamental element of any effective ecosystem-based ocean plan, but it matters greatly how we do this. We write this letter to you today to strongly urge you to move forward with Option 5 to identify Important Ecological Areas, but to do so within a comprehensive, ecosystem

framework. To conduct this work, we recommend that you immediately establish an Ecosystems Working Group comprising scientists with intimate knowledge about the ocean waters in the Northeast Ocean Plan’s planning region as well as scientists with expertise in ecosystem function and ecosystem services (i.e., the *dynamics* of ecosystem function and the ways that all human needs play out, collectively, in the context of the broader ecosystem). There is strong scientific consensus around the globe that if the world’s oceans are to be healthy and capable of providing all of the services that people want and need, mankind must manage its ocean resources within a comprehensive, integrated, and adaptive ecosystem-based framework. This framework must take into account the importance of biodiversity, habitat, ecosystem function, historical and cultural values and sustainable human use. In addition, understanding climate change and enhancing the resilience of the ocean to its impacts must be front and center in our regional ocean plan. These fundamental truths underlie the bold vision of President Obama’s National Ocean Policy<sup>1</sup> and the Final Recommendations of the Interagency Ocean Policy Task Force<sup>2</sup>. In its Final Recommendations, the Interagency Ocean Policy Task Force underscored the importance of Important Ecological Areas by saying that ocean planning “is intended to improve ecosystem health and services by planning human uses in concert with the conservation of important ecological areas, such as areas of high productivity and biological diversity; areas and key species that are critical to ecosystem function and resiliency; areas of spawning, breeding, and feeding; areas of rare or functionally vulnerable marine resources; and migratory corridors.”<sup>3</sup> The Interagency Ocean Policy Task Force likewise established Ecosystem-Based Management as the first of nine national priority objectives calling on the nation to “adopt ecosystem-based management as a foundational principle for the comprehensive management of the ocean, our coasts and the Great Lakes.”<sup>4</sup> Furthermore, several federal agencies with marine jurisdictions (e.g. NOAA) have launched commendable and quite aggressive efforts to effect their internal transitions from single-interest to ecosystem-based management. However, it is still necessary to provide a unifying context in which these laudable but stovepiped efforts can be brought together in a transcendent and truly integrative way within each region. NROC has yet to rise to this challenge, and opportunity for doing so falls largely on the RPB.

With respect to the five options for identifying areas of ecological importance, we urge you in the strongest possible way to vigorously and immediately pursue Option 5 as the approach not only for identifying Important Ecological Areas but also as a way to advance the development of an ecosystem-based framework for the Northeast Regional Ocean Plan. We view Options 1, 2, 3, and 4 as tasks that will develop foundational information on individual species abundance and distribution and multi-species hotspots – all key steps toward identifying Important Ecological Areas within an ecosystem framework. However, the fruits of these labors alone will not provide planners with all that they need to make sound decisions, decisions that are rational, fair, adaptive, and visionary. We understand that a team of NOAA and Duke scientists is currently involved in developing much of the information called for in Options 1 through 4. However, the paucity of RPB activity on Option 5 has us deeply concerned.

We recommend that the Northeast RPB support the advancement of analyses in Options 1, 2, 3 and 4 while concurrently and immediately establishing an Ecosystem Working Group to develop and execute the methodology needed to identify Important Ecological Areas within

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<sup>1</sup> Reference for Obama’s Exec Order establishing the National Ocean Policy.

<sup>2</sup> Reference of the Final Recommendations of the Interagency Ocean Policy Task Force.

<sup>3</sup> Final Recommendations, p. 44.

<sup>4</sup> Final Recommendations, p. 6.

an ecosystem-based framework. We, the undersigned scientists believe that this work is critical to the future of our oceans, that the regional science community can significantly advance this work in the coming 18 months, and that this community can produce essential products to support a proper Regional Ocean Plan. We stand ready to assist.

Sincerely,



Les Kaufman  
Professor of Biology  
Boston University Marine Program  
And  
Marine Conservation Fellow  
Conservation International

Additional signatories:

Peter J. Auster, PhD  
Research Professor Emeritus  
University of Connecticut  
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And  
Northeast Undersea Research Technology & Education Center  
And  
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November 7, 2014

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**RE: Northeast Regional Planning Body Summary of Options for Discussion**

Dear Northeast Regional Planning Body Co-Leads,

We are writing to express support of the Northeast Regional Planning Body (RPB) and its efforts to move effectively forward with plan development. We are aware of the time and resource constraints the RPB is operating under and our top priority is to ensure a quality plan is completed by 2016 that results in improved outcomes for ocean managers and ocean stakeholders. We are committed to working with the RPB to ensure that the recommendations made here are consistent with that goal.

**Effective decision making goal:**

We encourage the RPB to pursue all of the objectives and options that the effective decision making goal identifies. These options would contribute to the kinds of practical outcomes and process improvements stakeholders from all industries are seeking. Overall, enhancing interagency coordination and institutionalizing use of the ocean plan's data and guidance are of highest importance. The RPB member agencies must use plan data and guidance in their existing permitting and leasing processes; otherwise, it is unclear to what end the ocean planning process will serve. Integrating the plan into agency decision-making will ensure its durability while giving ocean industry and stakeholders increased certainty. Furthermore, it will ensure the data and input stakeholders contributed in good faith (and with much effort) during the ocean planning process is taken into account for future permitting and leasing decisions.

While all of the identified options benefit the effective decision making goal, we would like to emphasize four elements that we believe the RPB should focus particular attention on implementing:

- *Memorialization of the plan in formal agency agreements:* We strongly recommend the RPB institutionalize the ocean plan through Memoranda of Agreement and agency commitments. Institutionalizing the plan will in turn complement the goals of healthy ecosystems and effective decision making. We support RPB efforts to ensure agency coordination, efficiency, and effectiveness all while promoting predictability within the process. Ensuring agencies reflect the policy and management guidance of the plan within their existing authorities will increase clarity in the regulatory process and allow cumulative impacts to be considered, which in turn protects ocean and coastal ecosystems.
- *Agreements that plan data represent best available science:* One of the longstanding challenges both government agencies and stakeholders have had in decision-making processes is the ability to effectively contribute, access, and ensure the use of the best available data. The ocean planning process provides a unique opportunity to help resolve this issue by providing a central point through which data from a wide array of sources can be collected, appropriately vetted, and easily used in decision-making by a wide variety of agencies, but it will only be a practical tool if agreements are reached on plan contents representing best available science.
- *Best practices for pre-application consultation:* Another major challenge faced by both stakeholders and project proponents is that a lack of mechanisms for coordination and consultation early in a project are a barrier to important engagement during the early project design phase. Often by the time stakeholders and non-lead agencies are able to raise issues or concerns that could have easily been addressed earlier on, project proponents have already invested significant resources. Improvements in pre-application, particularly with regards to early engagement of affected stakeholder sectors, would result in significant practical improvements for all parties involved.
- *Develop a compatibility analysis:* Agencies and decision makers are constantly balancing the large volume of information and data needed to make decisions with the lack of synthesized, easily assessable information. Evaluating the conflicts and compatibilities of ocean uses through a compatibility analysis, similar to that of the Massachusetts Ocean Plan, will clearly outline information to decision makers thereby ensuring the information can and will be used.

#### **Healthy oceans and coastal ecosystem goal:**

We support the RPB's current efforts to complete as much of Options 1-4 as is feasible. Since Options One and Two are already underway, we hope the RPB will also pursue Options Three and Four in the current iteration of the plan. The RPB should continue building on the data and information gathered in Options 1-4 to ensure an ecosystem-based management approach to important ecological areas. We view the plan and the data as iterative and should continue to be developed after the 2016 deadline. If resources, not just time, are a constraint, we would be happy to work with the RPB to identify potential new resources to support the process.

The importance of both Option Three and Four should be underscored. Pursuing these options will provide simplified, easier-to-use tools for identifying important ecological areas that are critical to the successful implementation of the ocean plan. Outside of the context of agencies responsible for managing threatened and endangered species, most government decision makers are responsible for evaluating a wide range of potentially conflicting interests, of which the environment is only one. The more comprehensive and integrated information is about areas that are particularly critical for the environment, the more useful (and used) the information will be.

We strongly recommend taking immediate, practical steps towards achieving ecosystem-based management identification of important ecological areas (Option 5).

We support the long-term goal of achieving ecosystem-based management and encourage the RPB to pursue both short and long-term objectives toward this goal. Ecosystem-based management (EBM), defined as “an integrated approach to management that considers the entire ecosystem, including humans,”<sup>1</sup> is a long-term goal of ocean planning. The ocean plan should strive for EBM within a regional context for all ocean uses. This overall management approach is important to work towards and should be an explicit goal of the RPB, but we recognize it is likely not achievable by 2016.

However, immediate steps can be taken to use an EBM approach for identifying important ecological areas. Within the context of important ecological areas, a systems perspective must be the priority. Principles of a healthy, resilient ecosystem should be the overarching goal including: native species diversity; habitat diversity and heterogeneity; populations of key species; and connectivity.

For the narrow purposes of this discussion on Option Five, we are proposing the RPB take immediate steps to pursue EBM in the limited context of identifying ecologically important areas from the ocean plan’s data sets. Options 1-4 take a species-centric approach to identifying important ecological areas; in contrast, Option Five seeks to identify areas based on a broader set of ecosystem issues, thereby providing an enhanced perspective of what is likely important than could be obtained simply by undertaking Options 1-4. For example, taking a more holistic view thru Option Five may not result in prioritization of places that are absolutely critical to one species of concern, yet would identify areas that as a whole are vital to ecosystem function, even if they are not the most important place to any individual species.

- *Recommended next steps:* To accomplish the goal of EBM identification of important ecological areas, the RPB should take the following practical steps: The RPB should convene a discussion on methodology with a range of experts. First, an initial meeting should involve experts in the methodologies of optimization software, decision support tools, and EBM while also including those familiar with current data sets available in the Northeast. Second, once a methodology is decided upon, scientists familiar with New England should be consulted to refine the method. Scientists with expertise in habitats, marine species, benthic ecology, and water chemistry can be contacted via email or phone individually to gather input. Third, once proposed options for important ecological areas are defined, it will be necessary to convene New England scientists to propose important ecological areas to the RPB.
- *Potential decision support tools for identifying important ecological areas:* We are aware of optimization software and decision support tools currently in use such as Marxan, MarineMap (SeaSketch), Marine Planner, and other EBM models. Additionally, we acknowledge the limitations to these methods and associated legal challenges with incorporating the outputs into agency decision-making. With these challenges in mind, we are simply asking to convene a group to discuss approaches to identifying areas of ecological relevance to northeast systems and outline steps to integrate this information into agencies. Moreover, to assist with the process, we can make recommendations on scientists who could add their value and expertise. We understand there would need to be a related discussion on how the work product of this group would be incorporated into agency decision-making, since the details of how this less

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<sup>1</sup> Scientific Consensus Statement on Marine Ecosystem-Based Management. 2005. Prepared by scientists and policy experts to provide information about coasts and oceans to U.S. policy-makers.

familiar (than single species or habitats) data could or should be utilized by agencies has not yet been discussed.

We thank you for your efforts to ensure a robust ocean plan. Ultimately, the RPB must seek to create an adaptive plan that establishes baselines, considers current and future planning needs, monitors progress over time, and assesses changes in ecosystems, sustainable development, and emerging technologies. Understanding current ocean needs while accounting for the uncertainty of future, new technologies and changing ecosystems is of vital importance to the success of the overall planning process. We look forward to working with you as the ocean plan progresses.

Sincerely,

Anne Merwin  
Director, Coastal and Marine Spatial Planning  
Ocean Conservancy

## New England's Regional Ocean Planning Efforts

As humans we are born with, and later develop over time, certain traits that others perceive as elements of our basic character. When these qualities become no longer evident, we would then be thought of as being out of character or at least to have changed. Other things, as well, are perceived to have a publicly recognized character, through their inception or by their actions. In the realm of ocean planning, we have here in New England our Northeast Regional Planning Body, which was born out of the National Ocean Policy, through the lineage of the National Ocean Council, the Inter-agency Ocean Policy Task Force, and Pew Ocean Commission. This birth was heralded in by the proclamation that this planning process would, at least to my mind, have two quite unique elements, the first that it would put great emphasis on stakeholder engagement and public participation; and secondly that it would entail making sure its science, data collection, and decision-making, are all based on the ecosystem as a whole by establishing Ecosystem Based Management practices. Both sound and refreshing traits, welcomed by many involved in ocean pursuits.

However, as this process began to unfold, inklings that these traits may be dropped, or not come to full fruition, started to become discernible: The realization that the body, made up of all federal and state agency reps, along with tribal leaders, sat facing each other in a horseshoe configuration as we, the public, were allowed our short (2-3 minutes) comment time, much the same as any other agency hearing. Terms like Coastal Marine Spatial Planning (CMSP) and Ecosystem Based Management (EBM), were dropped because, we were told, they were too difficult for the public to understand. Then asking the public to assist in establishing what New England's goals for ocean planning were, but instead created a goals agenda that put BOEM's (Bureau of Ocean Energy Management) initiatives of ocean energy, infrastructure and minerals mining at the forefront. All of these initial decisions, choices that gave direction to this whole process, were made before any formal stakeholder plan was formulated and agreed upon, let alone put into practice.

This is not to say that a lot of good dialogue hasn't gone on, as well as a lot of good work. Some of this work will identify important ecological areas, or survey for the distribution and abundance of marine life. Looking at ways to index and judge the overall health of the ocean while monitoring changes as they happen is also being looked at with partner organizations. In another direction the Regional Planning Body would like to work on what they call "Effective Decision Making," or the enhancement of inter-agency coordination as well as adding predictability and ease to the regulatory and leasing processes.

My concerns are, that as of late, they seem to be saying that due to a lack of time and money, they will collect what data they can and hand it over to agencies such as BOEM, just to return to the old way of permitting or leasing for projects. I'm sorry this just isn't good enough. This leaves us with incomplete data, which at times can be worse than none, and no resources to do EBM. The stakeholders, including fishermen with little time and means for it, would be relegated back to agency public hearings and writing comments for each individual project. We are also in dire need of regional coordination on things like climate, ocean warming, and acidification. Many fishermen have now joined with scientists in telling us; these are real, this is happening now, and we need to act.

As these same fishermen begin to show a spark of interest in changes in their ocean work environment, they are also beginning to get glimpses of how other ocean users might encroach upon it. The Regional Planning Body must now find a way to entice them in, and give them a productive place in the process.

Regional planning's birthright comes with responsibilities to both the public and the ocean itself. They must establish and maintain the high standards set forth in the National Ocean Policy, and for our part, we must see that they are funded and given the time to achieve them.

Richard C. Nelson  
Friendship, Maine  
F/V Pescadero  
Lobster Fishery