

the Klamath-Siskiyou Mountains, and continuing east through the Southern Cascades (excluding the Sacramento Valley). This geographic area includes the following counties for new information: Coos, Curry, Douglas, Josephine, Jackson, Klamath, and Lane Counties in southern Oregon; and Butte, Del Norte, Humboldt, Lake, Mendocino, Plumas, Shasta Siskiyou, Tehama, and Trinity Counties in northern California. We will consider information from all interested parties. We are particularly interested in information concerning:

(1) The historical and current status, range, distribution, and population size of this DPS, including information on denning sites. This includes information regarding population trend studies or occurrence data specific to this DPS, information regarding areas that have been surveyed compared to areas that have not been surveyed, and all positive and negative survey results to help us assess distribution and population trends.

(2) The biological or ecological requirements for fishers, as well as information on population connectivity between occurrences of fishers across the NCSO DPS range.

(3) Anticoagulant and neurotoxicant rodenticides, and other toxicants, including law enforcement information and trend data.

(4) The threat of wildfire, including studies or information pertaining to current and future trends in wildfire frequency and severity, as well as information pertaining to the response of fishers to post-fire landscapes in the NCSO DPS of fisher.

(5) Changes in low- to mid-elevation forests within the range of the NCSO DPS of fisher, including scope and extent of vegetation management on Federal and non-Federal lands.

(6) The projected and reasonably likely impacts of climate change on the NCSO DPS of fisher and its habitat, including impacts to reproductive habitat.

(7) Any effects associated with population size and isolation relevant to the NCSO DPS of fisher (e.g., low reproductive capacity, inbreeding depression, demographic and environmental stochasticity), and information on genetic diversity on the fisher.

(8) Any conservation efforts designed to benefit fishers and their habitat within the NCSO DPS that have been planned or implemented after 2019, including both current, ongoing, or planned activities and possible effects of these activities on the species or its habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

You may submit information by one of the methods listed in **ADDRESSES**. We request that you send information only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Information and materials we receive will be available for public inspection on <https://www.regulations.gov> at Docket No. FWS-R1-ES-2023-0123.

#### Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

#### Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023-20826 Filed 9-25-23; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 230914-0218; RTID 0648-XR122]

### Listing Endangered or Threatened Species; 12-Month Finding on a Petition To Revise the Critical Habitat Designation for the North Pacific Right Whale

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, NMFS, announce a 12-month determination on a petition to revise the critical habitat designation for the North Pacific right whale

(*Eubalaena japonica*) under the Endangered Species Act (ESA). Based on our review of the best available information on North Pacific right whale habitat use, we intend to revise the critical habitat. This finding describes how we intend to proceed, particularly regarding analysis and review of the relevant data and information that have become available since North Pacific right whale critical habitat was designated in 2008.

**DATES:** The finding announced in this document was made on September 26, 2023.

**ADDRESSES:** Copies of the petition, 90-day finding, and list of references for this 12-month finding are available online at: <https://www.regulations.gov> or from the NMFS website (see <https://www.fisheries.noaa.gov/action/critical-habitat-north-pacific-right-whales>).

**FOR FURTHER INFORMATION CONTACT:** Jenna Malek, NMFS Alaska Region, [jenna.malek@noaa.gov](mailto:jenna.malek@noaa.gov) or (907) 271-1332.

#### SUPPLEMENTARY INFORMATION:

##### Background

In April 2008, we issued a final rule designating approximately 95,325 square kilometers (36,800 square miles) of critical habitat for North Pacific right whales in the Gulf of Alaska and the Southeast Bering Sea (73 FR 19000, April 8, 2008). On March 10, 2022, NMFS received a petition from the Center for Biological Diversity and Save the North Pacific Right Whale requesting revision to the critical habitat designation for the North Pacific right whale. The requested revision triggers a process for agency response as outlined in the ESA (16 U.S.C. 1531 *et seq.*) and explained below.

The ESA defines critical habitat as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Joint NMFS-U.S. Fish and Wildlife Service regulations for designating critical habitat at 50 CFR 424.12(b)(1)(ii) state that the agencies will identify physical and biological features essential to the conservation of the species at an appropriate level of specificity using the best available

scientific data. A physical and biological feature may be a single habitat characteristic or a more complex combination of characteristics, may include characteristics that support ephemeral or dynamic habitat conditions, and may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02). “Special management considerations or protection” means methods or procedures useful in protecting physical or biological features essential to the conservation of the species (50 CFR 424.02).

Section 4(b)(2) of the ESA requires the Secretary, through NMFS, to designate, and make revisions to, critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any particular area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Section 4(a)(3)(A)(ii) of the ESA provides that NMFS may, from time-to-time, revise critical habitat as appropriate. Section 4(b)(3)(D)(i) of the ESA requires, to the maximum extent practicable, that within 90 days of receipt of a petition to revise a critical habitat designation, NMFS make a finding on whether that petition presents substantial scientific information indicating that the petitioned revision may be warranted, and to promptly publish such finding in the **Federal Register**. On July 12, 2022 (87 FR 41271), NMFS published a 90-day finding that the petition, viewed in the context of the information readily available in our files, presented substantial information indicating that revising North Pacific right whale critical habitat may be warranted and initiated a review of the current critical habitat designation. To ensure that our review of critical habitat is comprehensive and based on the best available scientific and commercial information, we requested scientific and commercial information concerning the petitioned action.

Within 12 months of receiving a petition that presents substantial information indicating that a revision of critical habitat may be warranted, NMFS is required to determine how we intend

to proceed with the requested revision and promptly publish notice of our intention in the **Federal Register** (16 U.S.C. 1533(b)(3)(D)(ii)). The statute does not further specify any options or requirements regarding this determination, nor does it establish a timeline for issuance of any proposed rule to revise critical habitat in response to a petition. This notice describes the currently designated critical habitat and the petition for revision, summarizes comments on the 90-day finding, and describes how we intend to proceed with the requested revisions to critical habitat for the North Pacific right whale.

#### Current Critical Habitat Designation

Right whales in the North Pacific and North Atlantic were considered the same species, known as Northern right whales, until the late-2000s. North Pacific and North Atlantic right whales were listed as two unique species under the ESA in 2008 (73 FR 12024, March 6, 2008) based on genetic analysis conducted in the early-mid 2000s (Rosenbaum *et al.* 2000, Gaines *et al.* 2005, Kaliszewska *et al.* 2005). The critical habitat that had been originally designated for the North Pacific population in 2006 was finalized for the newly distinguished species in 2008 (73 FR 19000, April 8, 2008). The final critical habitat designation identified two areas within the area known to be occupied by the whales and which contained essential features. The first area consists of approximately 3,050 square kilometers (1,175 square miles) south of Kodiak Island. The second area is approximately 91,850 square kilometers (35,460 square miles) in the southeastern Bering Sea, just north of the Alaska Peninsula and the eastern Aleutian Islands.

The critical habitat designation for North Pacific right whales uses the term primary constituent element (PCE) (50 CFR 226.215; 73 FR 19000, April 8, 2008). In 2016, as part of revisions to critical habitat implementing regulations in 50 CFR 424, the term “PCE” was removed and the regulations maintained the statutory term, “physical or biological features” (PBFs) (81 FR 7414, February 11, 2016). The shift in terminology did not change the approach used by NMFS in determining what areas qualify as critical habitat under the ESA. While little was known about the PBFs that might be essential for North Pacific right whale conservation at the time critical habitat was designated, based on known natural history of the whale and its habitat needs, the PBFs necessary for conservation were identified as concentrations of the copepod species

*Calanus marshallae*, *Neocalanus cristatus*, and *N. plumchrus*, and the euphausiid species *Thysanoessa raschii*, in areas where right whales are known or thought to feed. In addition to the occurrence of large zooplankton, NMFS concluded that it is likely that certain physical forcing mechanisms are present in these areas and act to concentrate the identified prey species in densities that allow for efficient foraging by right whales (73 FR 19000, April 8, 2008).

In the final critical habitat designation, NMFS determined that the economic benefits of excluding any particular areas within the overall area designated as critical habitat did not outweigh the benefits of designation, and therefore did not exclude any areas based on economic impacts. The final critical habitat designation considered the impacts to national security and did not find any national security interests or other relevant impacts that warranted the exclusion of any particular areas.

#### Petition To Revise Critical Habitat

On March 10, 2022, NMFS received a petition from the Center for Biological Diversity and Save the North Pacific Right Whale requesting revision to the critical habitat designation for the North Pacific right whale. The petition lists recent sources of information on North Pacific right whale presence and habitat use in and around currently designated critical habitat in the northern Gulf of Alaska and the southeast Bering Sea. The petitioners proposed that the critical habitat be revised to connect the two existing critical habitat areas by extending the Bering Sea area boundary west and south to the Fox Islands, through Unimak Pass to the edge of the continental slope, and east to the Kodiak Island critical habitat area. The petitioners state that this revision encompasses “a key migratory point” and provides “connectivity between two essential foraging grounds” (Center for Biological Diversity and Save the North Pacific Right Whale, 2022, p. ii).

The standard for determining whether a petition includes substantial information is whether the information is credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(i)(1)(i)). Based on the information presented and referenced in the petition, as well as all other information readily available in our files, and pursuant to the criteria specified in 50 CFR 424.14(c) and (e), NMFS found that the petitioners had

met this standard. NMFS therefore published a 90-day finding stating the petitioned action may be warranted and requesting information to inform our review of the current critical habitat designation (87 FR 41271, July 12, 2022).

### Summary of Public Comments

The public comment period announced in the 90-day finding closed on September 12, 2022, and all of the comments received can be viewed at <https://www.regulations.gov> by searching for docket number “NOAA–NMFS–2022–0050.” NMFS received 11 comments from a variety of individuals and organizations, including researchers, concerned citizens, state and federal agencies, and nonprofit organizations. Of these, eight supported a revision of North Pacific right whale critical habitat. Three of the comments expressed concerns about the lack of data supporting the requested revision and the need to consider the economic impacts of such an action. Some commenters offered additional information, including information on recently funded projects on North Pacific right whales, sightings of North Pacific right whales since 1979, and reports describing organizational sustainability policies aimed at protecting marine mammals. The information included in the comments was taken into consideration during our review of the petitioned action and will be utilized in the process outlined in the “How We Intend to Proceed” section of this document. A summary of the substantive comments and information submitted is below. Where appropriate, we have combined similar comments.

#### Quantity and Quality of Currently Available Information

*Comment 1:* One commenter expressed that the petition overstates the quantity and quality of the information that is available with respect to the essential habitat needs of North Pacific right whales. Though additional research conducted since the original designation of critical habitat in 2008 suggests certain areas within the petitioned revision may be important for North Pacific right whales (e.g., Unimak Pass), the commenter stated that the data collected are still quite limited for making many of the assertions in the petition. For example, the commenter referred to the lack of data supporting connecting the currently designated critical habitat areas in the Bering Sea and Gulf of Alaska. The commenter urged that any revisions NMFS makes to critical habitat be based on the best available, albeit limited, data.

#### Restrictions to Marine Shipping and Commercial Fishing, and Potential Economic Impacts

*Comment 2:* Several commenters cautioned that any revision to critical habitat for North Pacific right whales needs to balance potential economic impacts with benefits to the species. Multiple comments addressed the implications in the petition that a revision to critical habitat for North Pacific right whales would allow NMFS to implement regulatory measures and protections that could affect commercial shipping and fishing activities, leading to economic impacts. Commenters stated that many communities in rural Alaska rely upon arrival of goods through commercial shipping and that changes to shipping regulations, such as reduced speeds through major transportation corridors (e.g., Unimak Pass), would cause financial and logistical difficulties in maintaining timely and efficient services to Alaskan ports and residents, while having little benefit for North Pacific right whales.

Commenters pointed out that fishing is an economic driver for many coastal Alaskan communities. One commenter described how the designation of critical habitat for Steller sea lions (58 FR 45269, August 27, 1993), and resulting fisheries closures, severely impacted commercial fisheries and the economies of communities that rely on this industry. The commenter expressed concern about similar impacts occurring as the result of a revision to North Pacific right whale critical habitat. It was also pointed out that there are multiple commercial fisheries of high value in the petitioned area that could suffer from substantial economic loss should closures or restrictions occur as a result of changes to critical habitat.

#### Scope of Regulatory Requirements

*Comment 3:* One commenter pointed out that the petition cites 50 CFR 424.12(d) as support for adding all of the habitat between the two currently designated areas into a revision of critical habitat, but noted that these areas are over 350 mi (563 km) apart and therefore do not fit the regulatory criteria of being “in proximity to one another.”

The same commenter also referenced NMFS’ criteria for designating critical habitat under 50 CFR 424.12, asserting that the petitioned revision to North Pacific right whale critical habitat would be different from other NMFS designations due to its very large size. Additionally, the commenter stated that the petition provides no evidence that the essential PBFs of North Pacific right

whale critical habitat are present in large portions of the petition’s proposed area, and that NMFS must adhere to the requirements of the ESA by demonstrating that these features are present in any areas included in a critical habitat revision.

#### Adequacy of Existing Regulatory Mechanisms

*Comment 4:* Multiple commenters stated that the current regulatory mechanisms in place are inadequate to mitigate death and serious injury of North Pacific right whales from threats such as vessel strikes and entanglement in fishing gear, which are known to be the two biggest anthropogenic threats to North Atlantic right whales. Revision of critical habitat for North Pacific right whales could allow NMFS to require reasonable and prudent measures for avoiding threats from vessel strikes, entanglement in fishing gear, oil and chemical spills, and exploratory activities associated with the oil and gas industry.

*Comment 5:* One commenter conducted their own analysis of vessel traffic in the petition’s proposed area and currently designated critical habitat. That comment contained a figure showing Unimak Pass as a bottleneck for vessel traffic, which could overlap with whales migrating through this area. Though the commenter acknowledged that NMFS could implement conservation measures and protections such as restricting ship speeds, they also acknowledged there would be challenges to enacting regulations and that proper analysis (i.e., economic, national security impacts) must be conducted and notice given to potentially affected parties.

#### New Information on North Pacific Right Whale Habitat and Habitat Use

New information on habitat use has become available since critical habitat was designated for North Pacific right whales in 2008. NMFS has been collecting passive acoustic data in the Bering Sea, as well as in parts of the northern Gulf of Alaska, that has advanced the scientific understanding of North Pacific right whale habitat use, including in currently designated critical habitat. Sightings have been reported through dedicated research surveys (2007–2010), opportunistic research cruises, and opportunistic reports from fishers and local community members. While there have been sightings of North Pacific right whales in the currently designated critical habitat areas since 2008, numerous sightings have occurred outside of the critical habitat in both the

Gulf of Alaska and the Bering Sea. For example, between 2010 and 2020, there were three sightings in the Gulf of Alaska in Shelikof Strait and along the Alaska Peninsula (J. Grance, NOAA Alaska Fisheries Science Center, personal communication, April 2023), as well as a sighting of two right whales feeding just north of Unimak Pass in February 2022 (NMFS 2022). Additionally, acoustic monitoring with sonobuoys (expendable sonar buoys) indicated that right whales were present outside the boundaries of critical habitat near Kodiak Island in the Gulf of Alaska in 2021, and off St. Lawrence Island in the northern Bering Sea in 2018 (Wright et al. 2019). These sightings and acoustic detections suggest that North Pacific right whales are utilizing habitat outside of the currently designated critical habitat areas. Given that the 2008 designation relied on right whale sightings as a proxy for the presence of the essential features for determining the critical habitat boundaries (73 FR 19000, April 8, 2008), the areas where North Pacific right whales have been sighted or detected in the last 15 years are likely candidates for critical habitat designation, and will be considered further in conjunction with other available scientific information.

The North Pacific has undergone substantial oceanographic shifts since 2008, including marine heatwaves in 2013–2016, 2017–2018, and 2019–2021, that have affected the distribution and abundance of zooplankton, multiple species of which are the essential feature NMFS identified for the existing North Pacific right whale critical habitat. There has also been a trend toward decreasing sea ice extent in the Bering Sea, with 2018 having the lowest sea ice extent on record (Stabeno and Bell 2019). As discussed below, the extent of sea ice and resulting ocean temperature conditions are closely linked to the abundance and distribution of zooplankton species that North Pacific right whales rely on for prey. Using the best available information, all of these factors need to be considered, along with the potential impacts of a revised critical habitat designation, to assess any revision NMFS will propose for North Pacific right whale critical habitat.

#### How We Intend To Proceed

Given the acoustic detections and sightings supporting North Pacific right whales' use of areas outside of the currently designated critical habitat and the recent shifts in the essential features of critical habitat (*i.e.*, certain zooplankton species), we intend to revise critical habitat. We will proceed

by analyzing the available acoustic detections, sightings, and relevant habitat data with the expectation of developing a proposed rule to revise critical habitat for North Pacific right whales. Below, we identify key steps we will take to help ensure that, in developing a proposed rule, we rely on the best scientific and commercial data available and meet the statutory requirements for designating or revising critical habitat.

#### *Step 1: Analyze Acoustic Data Collected in Areas Recommended by the Petitioners and Currently Designated as Critical Habitat*

NMFS has been using year-round passive acoustic moorings to collect data in the Bering Sea since 2007, and in the western Gulf of Alaska starting in 2019. Acoustic data relevant to the revision that can be processed and summarized in a timely manner will be made available in a report. NMFS anticipates that this report will be one of the best sources of information to aid in the decision on how to revise critical habitat (Baumgartner et al. 2013, Wright et al. 2018, 2019).

#### *Step 2: Assess Spatial and Temporal Patterns of Prey Species (i.e., Copepods and Euphausiids) in Conjunction With Oceanographic Information*

The PBFs for currently designated North Pacific right whale critical habitat include prey species (*i.e.*, copepods and euphausiids) in areas where right whales are known or believed to forage. In the original designation of critical habitat, evidence of right whales feeding for prolonged periods in a specific area in spring and summer was used as a proxy for the existence of densities of prey suitable for foraging whales.

Oceanographic conditions have shifted since the initial designation of critical habitat, with changes occurring in sea ice distribution and timing, impacting the availability of zooplankton species that make up the PBFs of North Pacific right whale habitat (*e.g.*, Kimmel et al. 2018). As North Pacific right whales are dependent on certain zooplankton as prey, understanding how copepods, specifically *C. marshallae*, *Neocalanus spp.*, and euphausiids (krill) have and are responding to environmental cues in the Bering Sea and northern Gulf of Alaska is central to assessing how to revise the critical habitat. We will utilize available data on spatial and temporal zooplankton trends in our analysis outlined in Step 4 below.

#### *Step 3: Analyze Sighting Data for Evidence of Feeding Behavior*

As described in the previous section, we used sightings of feeding North Pacific right whales as a proxy for suitable abundances of prey in the 2008 critical habitat designation. There have been some subsequent sightings for which it can be confirmed by photo or video, or through visual confirmation of the reporting party, that North Pacific right whales were feeding. We will analyze available sighting reports to better understand where right whale feeding activity has been documented since critical habitat was designated.

#### *Step 4: Synthesize Available Acoustics Data, Trends in Zooplankton, and Sightings Data To Identify Areas That Meet the Definition of Critical Habitat*

Available acoustic data, relevant information on zooplankton and oceanographic features, and sighting records providing evidence of feeding will be evaluated by NMFS together with any other best available scientific data. This synthesis will help identify where zooplankton prey species and North Pacific right whale foraging are likely to occur and provide support for the revision of critical habitat, as well as any revisions to the PBFs that may be appropriate. These results will then be used to identify areas that meet the definition of critical habitat and will be included in the proposed rule described in Step 6.

#### *Step 5: Section 4(b)(2) Impacts Analysis*

Section 4(b)(2) of the ESA requires us to use the best scientific data available in designating critical habitat. It also requires that we consider the economic impact, impact on national security, and any other relevant impact of designating any particular area as critical habitat. Therefore, we will analyze and consider potential economic, national security, and any other relevant impacts prior to proposing any revisions to the designated critical habitat. This analysis will inform our decision whether to propose the exclusion of any areas that fit the definition of critical habitat.

#### *Step 6: Develop Proposed Rule for Public Comment*

Steps 1–5 will inform our determination of what areas qualify as critical habitat for North Pacific right whales and thus what revisions to propose to the currently designated areas. The underlying science will be subject to peer review according to the Office of Management and Budget Bulletin for Peer Review, implemented under the Information Quality Act (Pub. L. 106–554). We will publish a proposed

rule in the **Federal Register** and seek public comment on all aspects of the proposed revisions to North Pacific right whale critical habitat prior to issuing any final revision.

#### References Cited

The complete citations for the references used in this document are available (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: September 14, 2023.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2023-20794 Filed 9-25-23; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 230921-0230]

RIN 0648-BM51

#### Fisheries of the Northeastern United States; Framework Adjustments to Northeast Multispecies, Atlantic Sea Scallop, Monkfish, Northeast Skate Complex, and Atlantic Herring Fisheries; Southern New England Habitat Area of Particular Concern Designation

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This action proposes to implement the New England Fishery Management Council's Framework Adjustment that would identify a Habitat Area of Particular Concern offshore of Southern New England. This rule would adjust the following fishery management plans: Northeast Multispecies; Atlantic Sea Scallop; Monkfish; Northeast Skate Complex; and Atlantic Herring. The proposed Habitat Area of Particular Concern would be within and around wind lease areas in Southern New England, including Cox Ledge, to focus conservation recommendations on cod spawning habitats and complex benthic habitats that are known to serve important habitat functions to Council-managed fishery species.

**DATES:** Comments must be received by October 26, 2023.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0101, by the following method:

**Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov>, and enter "NOAA-NMFS-2023-0101" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). If you are unable to submit your comment through <https://www.regulations.gov>, contact Sabrina Pereira (see **FOR FURTHER INFORMATION CONTACT**).

Copies of the Southern New England Habitat Area of Particular Concern Framework and other supporting documents for this action are available upon request from Dr. Catherine O'Keefe, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: <https://d23h0vhsm26o6d.cloudfront.net/220822-SNE-HAPC-Framework.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Sabrina Pereira, Marine Habitat Resource Specialist, email: [Sabrina.Pereira@noaa.gov](mailto:Sabrina.Pereira@noaa.gov); phone: (978) 675-2178.

#### SUPPLEMENTARY INFORMATION:

##### Background

This action proposes the identification of a Habitat Area of Particular Concern (HAPC) in and around offshore wind lease areas in Southern New England (SNE), including Cox Ledge. The New England Fishery Management Council (Council) recommended the HAPC designation due to concerns about the potential adverse impact on essential fish habitat (EFH) from the development of offshore wind energy projects. The proposed designation would focus on important cod spawning grounds and areas of

complex habitat that are known to serve important habitat functions to federally managed species within and adjacent to offshore wind development areas. Complex benthic habitat provides shelter for certain species during their early life history, refuge from predators, and feeding opportunities.

HAPCs highlight specific types or areas of habitat within EFH that may be particularly vulnerable to human impacts. HAPC designations should be based on one or more of the following criteria: (1) The importance of the ecological function provided by the habitat, including both the historical and current ecological function; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) the rarity of the habitat type (50 CFR 600.815(a)(8)). As detailed below, if adopted, the HAPC designated by this action is based on all four of these attributes.

An area's status as an HAPC should lead to special attention regarding potential adverse effects on habitats within areas of particular concern from various activities (*e.g.*, fishing, offshore wind energy). An HAPC designation does not provide any specific habitat management measures, such as restrictions on gear types, harvest levels, fishing locations, offshore wind survey and construction activities, or other activities with adverse effects on habitat in the area.

#### Proposed Habitat Area of Concern Designation

This action proposes the Council's preferred alternative for the Southern New England HAPC designation, which would identify as an HAPC certain habitats in the area overlapping offshore wind lease sites in southern New England. The spatial extent of the HAPC is based on the footprint of the lease areas, buffered by approximately 10 km on all sides, combined with the footprint of the Cox Ledge spawning ground, which is based on recent evidence of cod spawning activity. Maps for the proposed HAPC designation are provided in the Council's document (see **ADDRESSES**).

The HAPC area would be designated EFH for the following species that occupy complex habitats within the footprint: Atlantic cod egg, larvae, juveniles, and adults; Atlantic herring eggs; Atlantic sea scallop eggs, juveniles, and adults; little skate juveniles and adults; monkfish juveniles and adults; ocean pout eggs, juveniles, and adults; red hake juveniles and