

Science, Service, Stewardship

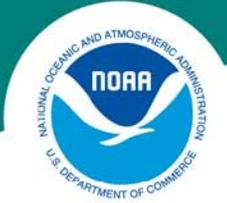


Overview of the NMFS EFH and ESA Consultation Process

Maine BOEM Task Force Meeting
December 8, 2011



**NOAA
FISHERIES
SERVICE**



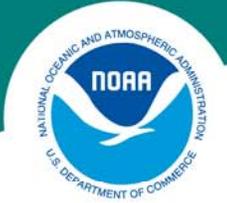
Overview

- Magnuson Stevens Fishery Conservation and Management Act
- Endangered Species Act
- Potential impacts on NMFS resources
- NMFS data



1996 Magnuson-Stevens Act Habitat Requirements

- Each fishery management plan must “**describe and identify essential fish habitat for the fishery... minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat**”
- New consultation and commenting requirements for Federal Action Agencies

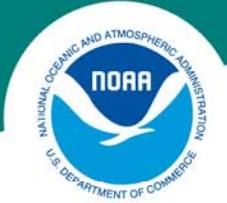


What is EFH?

- The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.



- EFH may be designated (by FMC’s) in waters of the United States (including state and federal waters) or in the exclusive economic zone.



EFH Consultations

- Federal agencies *must consult* with NMFS regarding actions that *may adversely **affect*** EFH
- NMFS must provide *conservation recommendations* to federal or state agencies on actions that would adversely affect EFH
- Federal agencies *must respond in writing*



EFH Assessment

- Federal agencies must prepare a written assessment of any action that requires consultation. The ***EFH Assessment*** must include:
 - 1) A description of the proposed action;
 - 2) An analysis of the effects of the action on EFH and associated species;
 - 3) The federal agency's views regarding the effects of the action on EFH; and
 - 4) A discussion of proposed mitigation, if applicable



Endangered Species Act (ESA)

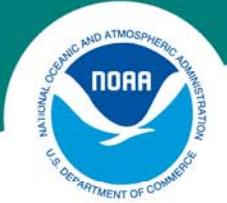
- Lists endangered and threatened species
- Prohibits “take”
- Designates critical habitat
- Implements recovery plans
- Section 7 consultations on all Federal actions within the potential to affect listed species
- Incidental take approval





Implications for Developers

- **“Take” of any listed species would be a violation of section 9 of the Endangered Species Act, unless exempted through an incidental take statement (section 7) or an incidental take permit (section 10)**
 - *Take means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect.*
 - *Incidental take – take of listed fish or wildlife that results from, but is not the purpose of, carrying out an otherwise lawful activity*



Take Authorization

Section 7 of the ESA

- Biological Opinion and Incidental Take Statement
- Federal Actions

Section 10 of the ESA

- Habitat Conservation Plan and Incidental Take Permit
- Non-Federal Actions



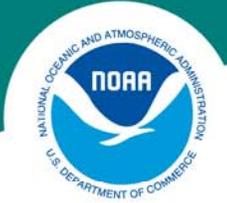
Section 7 of the ESA

- **7(a)(1)** – Federal agencies have an affirmative conservation responsibility. Directs federal agencies to have programs that support recovery
- **7(a)(2)** – Consultation process federal agencies go through to ensure that their actions do not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat. Includes any action funded, authorized, or carried out by a federal agency.



Section 7 Consultation

- Between the lead Federal agency (BOEM) and NOAA
- Concludes in issuance of a Biological Opinion
 - NOAA Fisheries determination as to whether the action *is not likely to jeopardize the continued existence of any ESA-listed species or result in the destruction or adverse modification of designated critical habitat*
 - *Jeopardy* - to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species



Biological Opinion

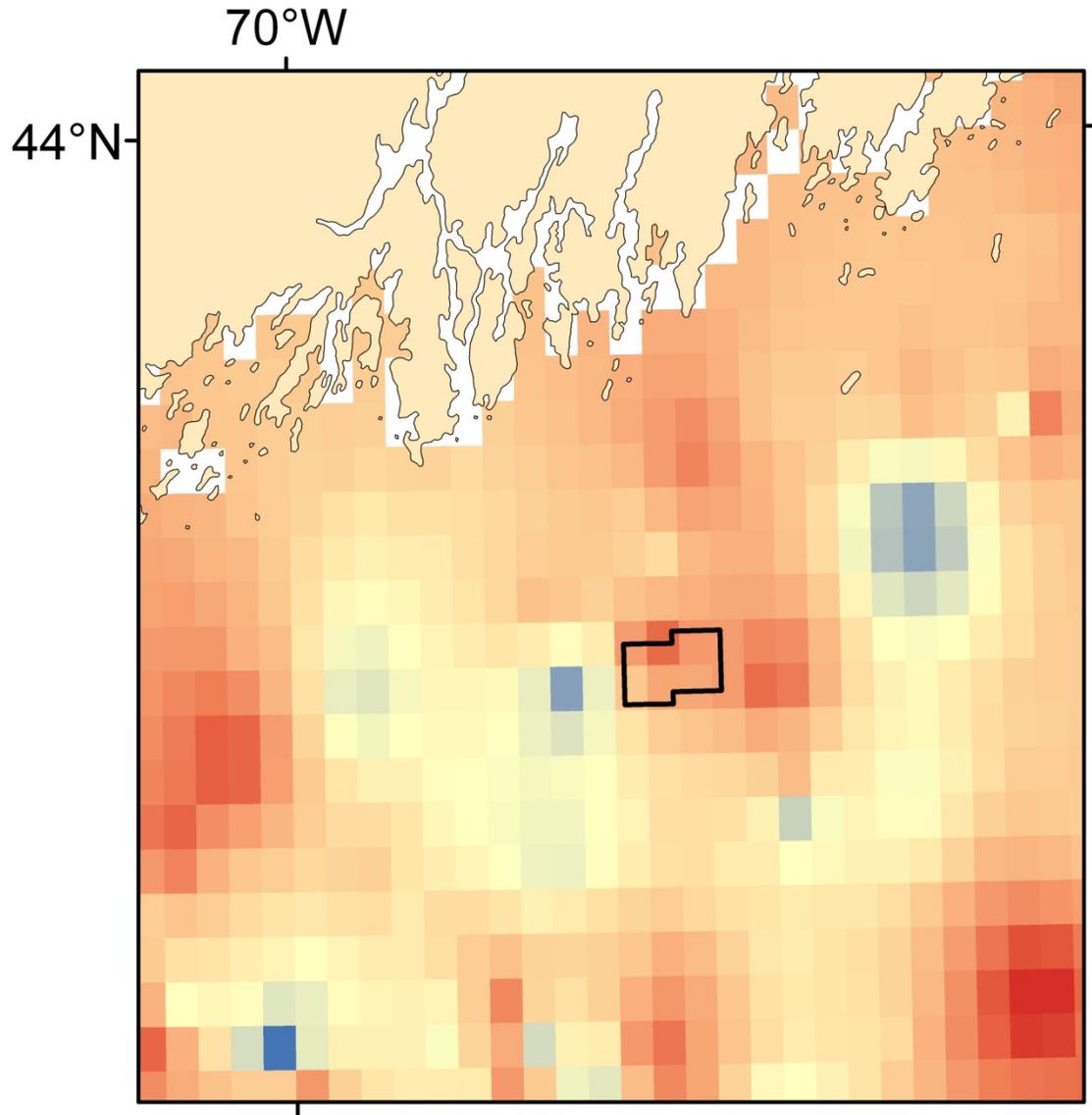
- Identify the nature and extent of the effects of the federal action on listed species and critical habitat
- Identify reasonable and prudent alternatives, if any, when an action is likely to result in jeopardy or adverse modification
- Provide an exception for specified levels of “incidental take” otherwise prohibited under section 9 of the ESA
- Provide mandatory reasonable and prudent measures to minimize the impacts of incidental take to listed species



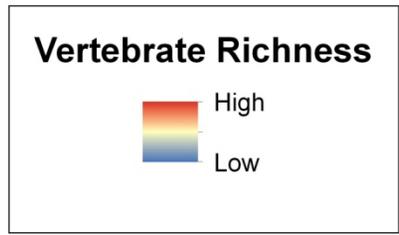
Potential Impacts

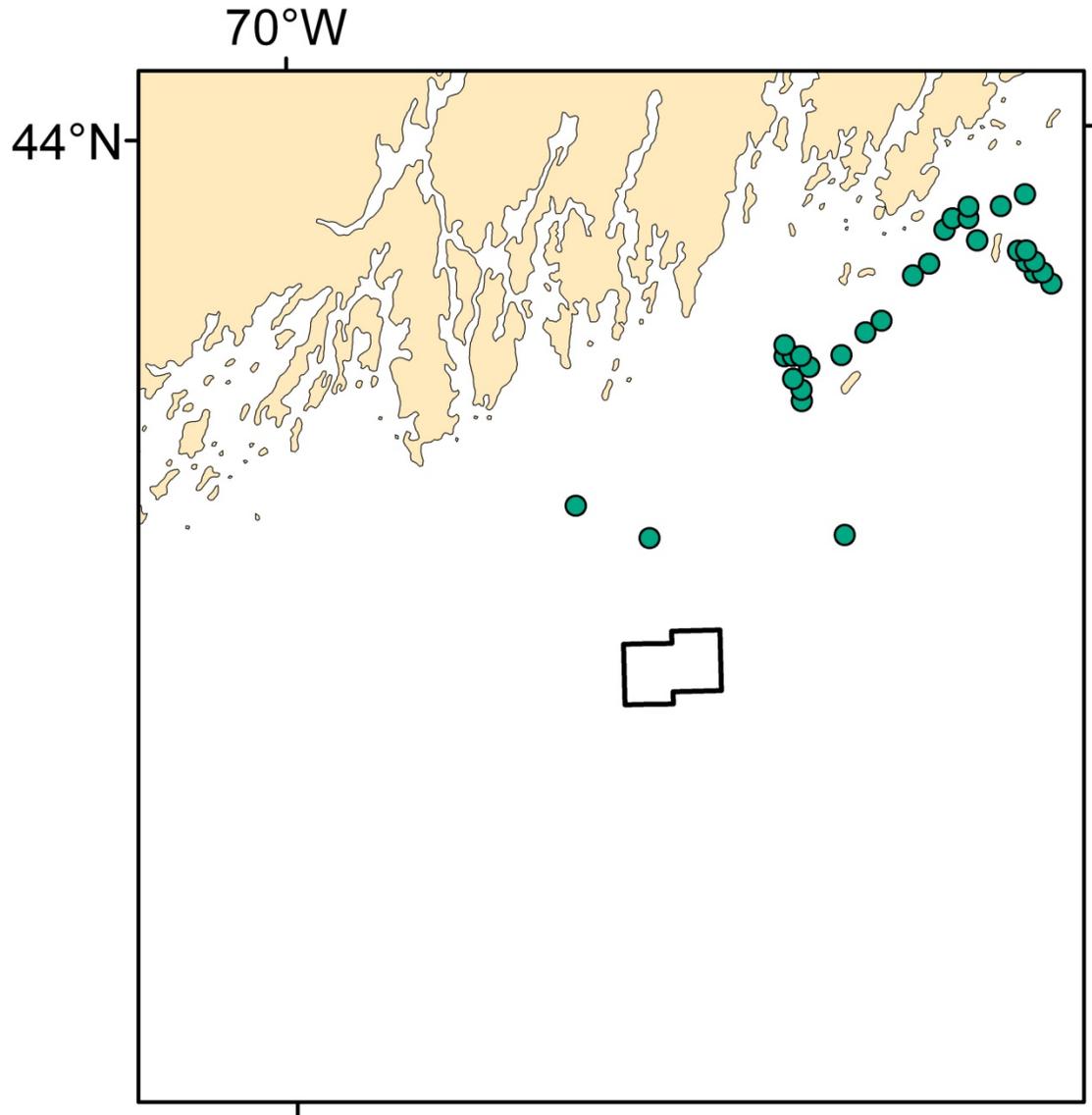
- Benthic Disturbance
- Turbidity
- Scour
- Habitat Alteration
- Change in Community Composition
- Reef Effect
- Direct Injury/Death
- Change in current dynamics
- Noise
- Electromagnetic Field
- Change in migration/feeding patterns





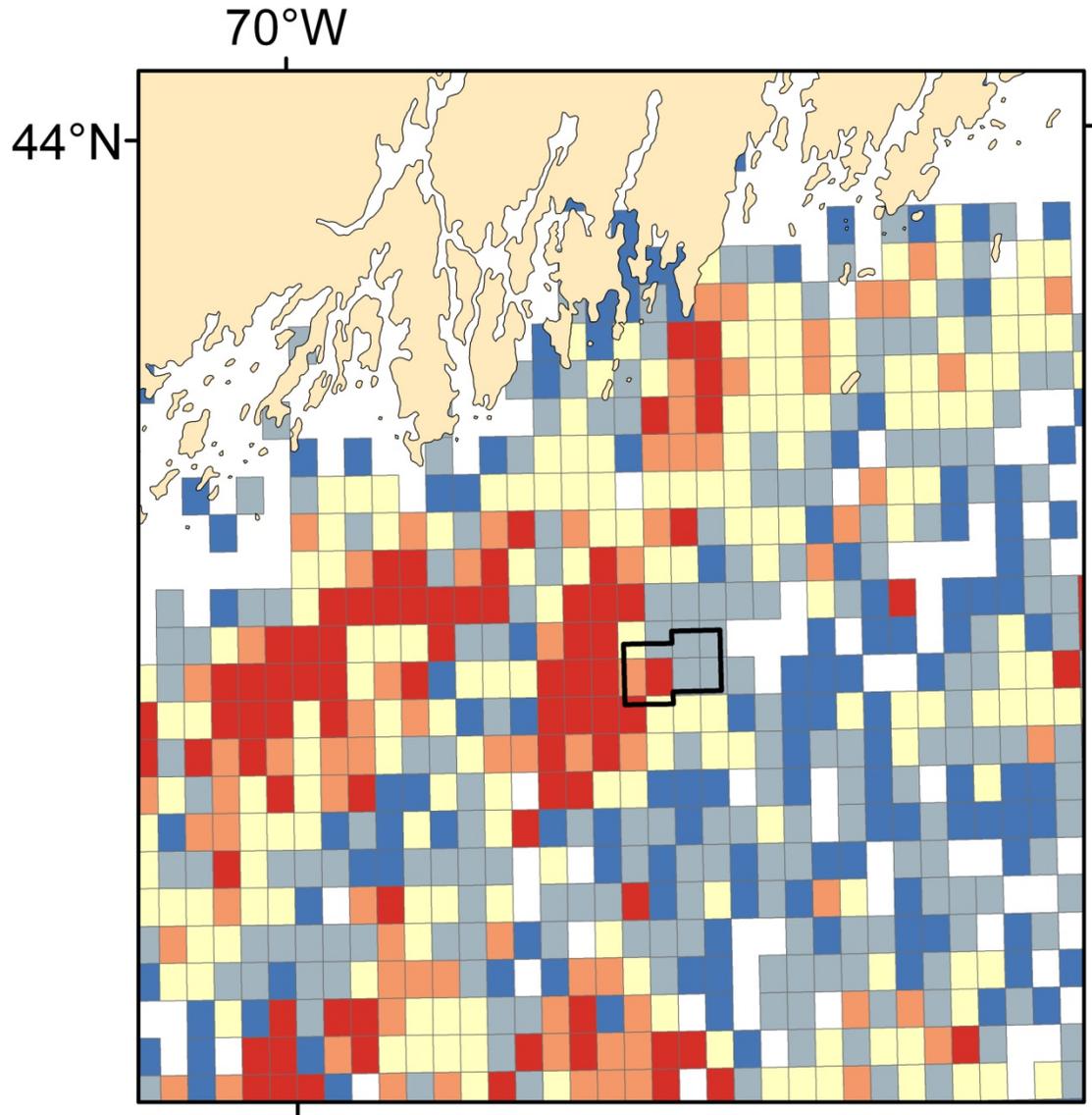
NEFSC Autumn Bottom Trawl Survey 2001 - 2008



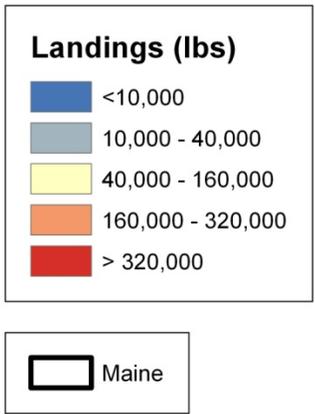


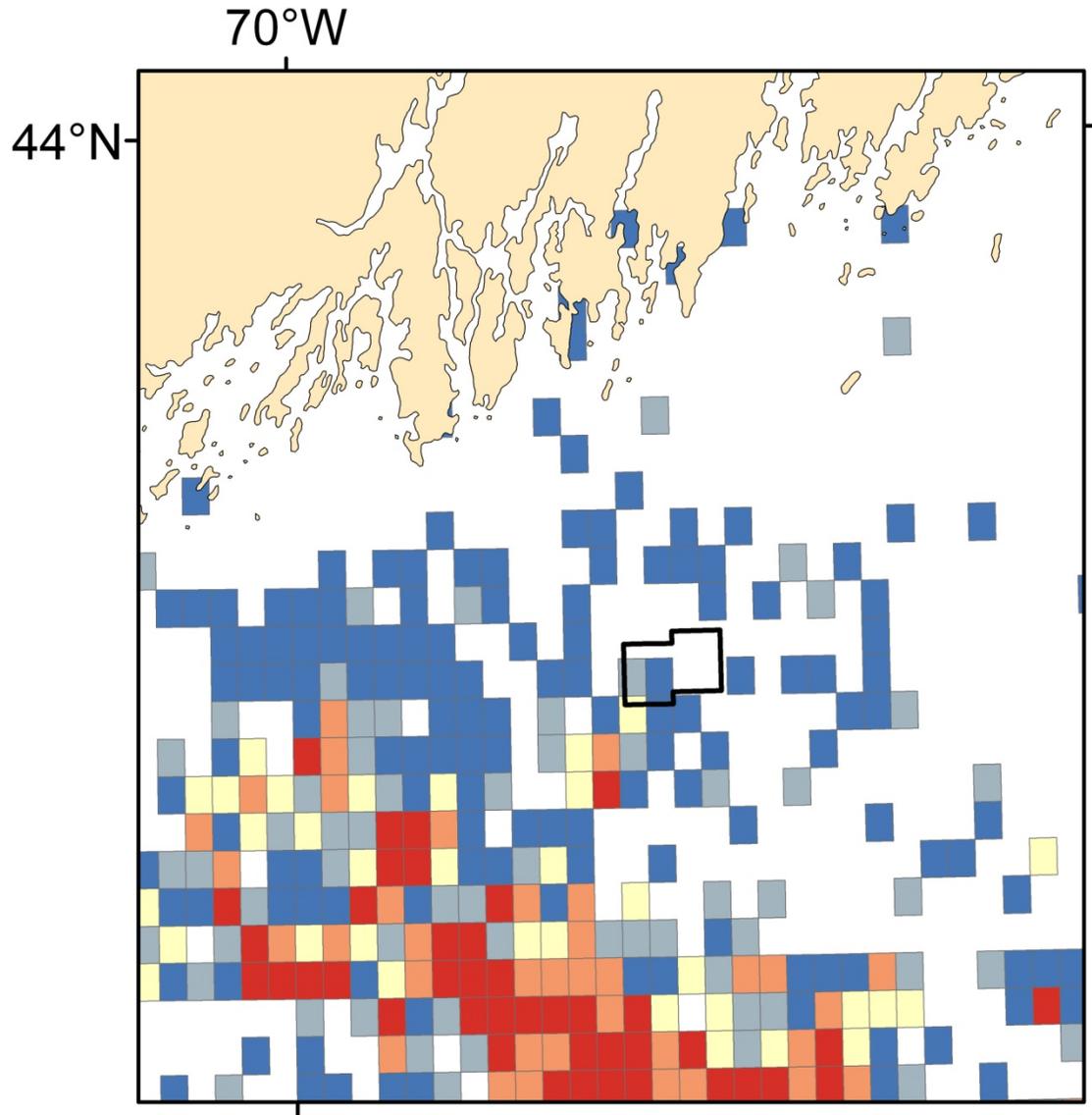
Harbor Porpoise
Ship Survey
Sightings
1998-2006

 Maine



Vessel Trip Reports Commercial Data Otter Trawl Gear 2001-2010





Vessel Trip Reports
 Commercial Data
 Gillnet Gear
 2001-2010

