

Northeast Regional Planning Body: Response to Public Comment on the Draft Northeast Ocean Plan

This document summarizes the public comments on the draft Northeast Ocean Plan received by the Northeast Regional Planning Body during its May 25, 2016 to July 25, 2016 public comment period at a series of public meetings and through written letters. This document provides the RPB responses to the public comments, organized by major themes.

Introduction

On May 25, 2016, the Northeast Regional Planning Body (RPB) released the draft Northeast Ocean Plan (Plan) for public review. In June 2016, the RPB convened ten public meetings across New England to discuss the draft Plan and to take public comment. Hundreds of people attended these meetings in total, and a summary of these meetings (as well as presentation material) is available on the RPB web site (www.neoceanplanning.org). The RPB also presented at other, existing meetings in New England during the 60-day public comment period, which concluded on July 25, 2016. In addition to the discussions at the public meetings, the RPB also received over 150 written public comment letters during the comment period (with signatures from thousands of people). These comment letters also are available on the RPB web site.

This document provides the Northeast Regional Planning Body's (RPB) responses to comments received on the draft Plan during the public review period. Many of the comments led directly to changes in the draft Plan; these changes are briefly identified and, for these topics as well as other comments, this document summarizes the RPB's rationale. As a result, many of the responses reference Chapters or sections of chapters of the Plan, particularly Chapter 3 (Regulatory and Management Actions), Chapter 4 (Plan Implementation), and Chapter 5 (Science and Research Priorities).

The majority of the comments included general expressions of support for the draft Plan. The RPB acknowledges and is appreciative of this support. Commenters also generally provided opinions on one or more themes, which provide the organization for this document. These themes include:

1. Northeast Ocean Data Portal (Data Portal)
2. Important Ecological Areas
3. Plan Implementation

4. The Plan's relationship to ecosystem-based management
5. Public engagement in Plan implementation
6. Specificity on best practices for stakeholder engagement and government coordination
7. How the Plan addresses compatibility between human uses and natural resources, and among human uses
8. Science and data priorities
9. Monitoring and evaluation
10. Use of Plan data
11. Plan review process
12. Relationship of the Plan to the Antiquities Act

In addition to these twelve subjects, some comments also suggested factual corrections to incorporate into the Plan. The RPB appreciates those comments as well.

This document is organized according to these twelve themes. For each of the twelve themes, summary descriptions of the issues raised in comments are followed by the RPB response. It is also organized to first summarize those topics that were raised by the most commenters.

Theme 1: Data Portal: Commenters requested that the Plan identify agency commitments to maintain and update the Data Portal in the future, recognizing the Data Portal's importance for Plan implementation. Commenters also suggested potential expansion of the role of the Data Portal, such as to provide a location to identify proposed federal actions, to add a new climate change theme, and to serve as a future home for information developed to address identified data gaps. Finally, to enhance the Data Portal's utility in the future, commenters suggested that the Data Portal should include data-specific metadata and peer review processes.

Response: Chapter 4 describes actions the RPB will undertake during plan implementation related to the Data Portal, accompanied by an anticipated timeline of these activities through 2018. Consideration of the long-term viability of the portal is identified in this timeline, which also includes updating priority and contextual/ supporting data sets. The Plan identifies specific agency commitments to updating priority data sets in table 4.1 in Chapter 4. Sections in Chapter 3 also describe additional actions that will be taken to provide topic-specific data and maintain the Data Portal.

In general, the RPB believes the Data Portal will lead to better shared understanding of: (1) who or what might be affected by a given proposed activity or action; and (2) initial considerations about potential interactions, conflicts, or issues with existing human activities and/or natural

resources. To help with this understanding, the Data Portal contains important information on how specific data layers were developed, their limitations and caveats, and Federal Geographic Data Committee-compliant metadata. Data also went through peer review processes from experts in particular topics: e.g., data describing commercial vessel traffic was revised in response to the comments and suggestions from the maritime industry; marine life and habitat data methods and products were reviewed by approximately 80 regional scientists. These efforts are described in the Plan (e.g., in the sections of Chapter 3) and on the Data Portal.

With respect to any potential future roles of the Data Portal in addition to the ones described in the Plan, the RPB believes that maintaining the Portal is a first priority. In addition, the RPB will pursue additional updates or modifications to the Data Portal, as allowed by available resources. For example, the Plan identifies certain data gaps that need to be addressed in the future, and the RPB will seek opportunities to work with other partners to do so.

Theme 2: Important Ecological Areas: *The RPB notes that public comment was not uniform on the need to advance the identification of Important Ecological Areas. Some conservation interests advocated for IEAs on a fast timeline, while other people questioned the authority of the RPB to pursue IEAs at all. Most commenters called for clarity on how identification of such areas would be used by agencies in their ocean management decisions. Commenters suggested that the RPB’s purpose, methodology, and schedule for identifying Important Ecological Areas (IEAs) needed to be specified and suggested the need for transparency and public engagement in all related discussions. Commenters also suggested that coordination with other existing efforts should be a part of the IEA process, specifically identifying as an example the New England Fishery Management Council’s work on identifying essential fish habitat. Concerns also were specifically raised regarding the potential impact on fisheries and fisheries management under the Magnuson-Stevens Fishery Conservation and Management Act.*

Response: Plan edits to the Important Ecological Area (IEA) discussion, in the Marine Life and Habitat section of Chapter 3, include the following:

- Specification of the RPB’s intent to, as an immediate next step, convene a public discussion to focus on the IEA Framework, including a specific discussion of federal agency use of products resulting from the IEA Framework in their existing decision-making processes. Additionally, the RPB will discuss details of the process moving forward, recognizing the need to involve a wide array of interests and specifically focusing on the role and membership of the Ecosystem Based Management Work Group.
- Clarification that the RPB does not have the authority to identify discrete areas of the ocean for specific management objectives. Instead, the IEAs and their component maps represent important data products to guide and inform regulatory

and management decisions under existing authorities, similar to other data products featured in the Data Portal.

- Recognition that developing spatial representations of the components of the IEA Framework is iterative, and that the methodologies used need to clearly account for, and provide descriptions of, caveats, limitations, and uncertainty resulting from the use of existing data and methodologies. The use of peer review processes (for methods and products, similar to the approach taken with other marine life and habitat products), is partly intended to address this recognition.
- Clarification of the timeline for IEA discussion, recognizing the iterative nature of developing spatial products resulting from the Framework and the RPB's desire to ensure opportunity for public comment and peer review.
- Acknowledgement of the intent to coordinate with NEFMC and other existing, related efforts underway.

Theme 3: Plan implementation. Commenters requested additional details regarding various aspects of plan implementation, including: the roles and responsibilities of the RPB and work groups that will focus on specific topics; describing how federal agencies will update existing guidance documents and internal policies; ensuring opportunities for meaningful public engagement during plan implementation; long-term support for the Data Portal; addressing the science priorities in Chapter 5; and ensuring that agencies will commit to the actions that are described in the plan, while also being clear that existing mandates and processes (e.g., related to fisheries management) will continue; and ensuring long-term support for overall Plan implementation (including the Data Portal).

Response: Revisions to the draft Plan include the following:

- The Chapter 4 section on plan administration provides several additional details about the role of the RPB during Plan implementation, such as the approach the RPB intends to take for the Data Portal, its oversight of the work groups that are described in the Plan for advancing particular topics, and for moving forward with monitoring and evaluation of Plan performance and ecosystem health. These revisions include the RPB's desire to provide opportunities for public participation and engagement.
- Clarification in Chapter 4 of the RPB tasks and timeline regarding the issue of long-term support for the Data Portal.

With respect to the RPB's intent on addressing the science and data priorities in Chapter 5, the RPB will have a convening and coordinating role, recognizing and leveraging the many activities that relate to these priorities and that are already underway.

Additionally, the Federal Register Notice that announced that the final Plan has been submitted to the National Ocean Council commits federal agencies to use the Plan to inform and guide their activities under existing authorities. Specifically, the federal agencies represented on the Regional Planning body will, consistent and within existing statutory authorities: (1) identify, develop, and make publicly available implementing instructions, such as internal agency guidance, directives, or similar organizational or administrative documents, that describe the way the agency will use the Plan to inform and guide its actions and decisions in or affecting the northeast regional ocean planning area; (2) ensure that the agency, through such internal administrative instructions, will consider the data products available from the Data Portal in its decision making and as it carries out its actions in or affecting the Northeast regional ocean planning area; and (3) explain its use of the Plan and Data Portal in its decisions, activities, or planning processes that involve or affect the Northeast regional ocean planning area. For more on the use of plan data, see topic ten, below.

Finally, as is described throughout the Plan, and as provided for in the National Ocean Policy, the regional Plan does not create any new regulations or authorities and must be implemented through existing agency authorities. This extends to pursuing activities such as the science priorities in Chapter 5, which would be undertaken in a manner consistent with present agency mandates. As a practical result, this also means that the RPB will continue to seek opportunities to coordinate with existing federal, tribal, state, and other efforts to leverage resources.

Theme 4: The Plan's relationship to ecosystem-based management. Commenters requested clarification on how the Plan advances ecosystem based management (EBM) and how the RPB intends to further advance EBM during plan implementation. Some commenters suggested that to do so requires a focus on the identification of Important Ecological Areas.

Response: The Plan furthers the concept of ecosystem based management, which integrates ecological, social, economic, commercial, health, and security goals, recognizing that humans are key components of ecosystems and that healthy ecosystems are essential to human welfare (see the related discussion in Chapter 2 of the Plan). The Plan focuses on both human uses and marine life and habitats, recognizing that these are all components of ecosystem-based management. As described in the Plan, it provides regional context for consideration of the ecosystem, and thus is an additional source of information to complement subregional information regarding issues and processes at different scales. The Important Ecological Areas topic is thus one of many aspects of EBM.

In developing the Plan, the RPB was also cognizant of the gaps in human knowledge of the ecosystem—for example, as described in Chapter 5. Consequently, the RPB intends that the Plan will evolve as our understanding of the ecosystem does, through incorporating approaches based on the public, expert- and peer-review processes the RPB employed during the development of the Plan (including the role of the Ecosystem-Based Management Working

Group). Therefore, the Plan will continue to advance an ecosystem based management approach at a pace consistent with the advancement of science and as results from continued regional collaboration.

Theme 5: Public engagement in Plan implementation. Commenters emphasized the importance of public engagement during Plan implementation. Certain comments provided suggestions on ways to engage the public, such as setting up a Stakeholder Liaison Committee or organizing a formal advisory committee pursuant to the Federal Advisory Committee Act. Commenters also requested that there be public engagement opportunities with various work groups that the RPB tasks with aspects of implementation. Commenters also requested that the RPB develop a formal mechanism to enable stakeholders to raise issues for RPB attention.

Response: The RPB agrees with the premise that during Plan implementation, as was the case during Plan development, public engagement is vital. During the development of the Plan, the RPB continually assessed its public engagement activities and altered them as necessary to address particular needs. The RPB will continue this approach (which considers the need to be open, transparent, efficient, and practical) during Plan implementation as resources allow and, as described in Chapter 4, the different aspects of implementation will require specific public input and expertise.

For example, as described in Chapter 4 of the Plan, initial Plan implementation activities will focus on refinement of the approaches to plan performance monitoring and evaluation and development of an approach to assessing ocean health, and incorporating public engagement into that approach is an identified priority; the RPB will thus consider and employ specific vehicles to ensure public engagement in that activity. Similarly, the RPB will assess the need for public engagement and employ specific opportunities for discussion of topics such as Important Ecological Areas, best practices for stakeholder engagement and governmental coordination, and other work groups described in the Plan, all as described in Chapter 4 of the Plan.

Chapter 4 was also revised to include a statement that suggestions for plan updates or amendments, or for new or additional topics to be taken up by the RPB, can be submitted to the RPB at any time.

Therefore, with the commitments to public engagement during implementation described in the Plan, some of which are described in the preceding paragraphs, the RPB believes that the goals of an open, transparent, efficient, and practical public engagement process will be met. The RPB will continue to assess its efforts, however, and make adjustments as necessary to meet its goals and to continue to comply with existing administrative procedural requirements.

Theme 6: Specificity on best practices for stakeholder engagement and government coordination. Commenters requested further specificity regarding the best practices for stakeholder engagement and government coordination (best practices) that are described in Chapter 4, such as how ocean users may be identified and contacted to discuss proposed projects. There were also comments requesting that the public have the opportunity to participate in the discussions about further development of these best practices. Commenters also requested further explanation of how these best practices would be incorporated into existing agency practice.

Response: In response to the requests for further specificity regarding the best practices, the RPB revised Chapter 4 of the Plan to include establishment of a “best practices work group” to advance the stakeholder engagement and government coordination best practices. This work group will convene in the early stages of Plan implementation and, recognizing the interest in this topic, find ways to engage stakeholders on this topic. Part of the task of the work group will be to identify and evaluate how best practices are incorporated into agency practice and identifying opportunities (including through briefings with agency staff on the Plan and Portal) to strengthen the implementation of these best practices.

Theme 7: How the Plan addresses compatibility between human uses and natural resources, and among human uses. Commenters requested further explanation of how the Plan addresses compatibility-related issues, with some requesting a more systematic approach that would be similar across topics. Some commenters requested that the RPB make compatibility a priority during early stages of Plan implementation.

Response: Compatibility among human uses and between human uses and natural resources is a core component of the Plan and is addressed in many ways, sometimes using different terminology. The Plan recognizes that agencies, through the application of their existing authorities, will use Plan information in their final decision-making where compatibility concerns are ultimately determined. This is partly because available information, and input from various stakeholders, suggests that for each human use or species, the state of knowledge varies, especially when considering the regional scale of the planning area. Particularly in Chapter 3, discussions of compatibility occur in a manner commensurate with input received during the planning process and based on availability of science and data. For example, in the marine life and habitat portion of Chapter 3, several examples of compatibility-related considerations are presented: for example, the map of marine mammal species that are sensitive to various frequencies of sound. The sections of Chapter 3 focused on human uses indicate some likely interactions between activities and also describe how agencies will use Plan information and data to help identify and resolve compatibility concerns. Additionally, the best practices in Chapter 4 include a focus on engaging stakeholders to help identify potential

concerns early in the review of a proposed project. Finally, as discussed in Chapter 5, for many interactions between uses and natural resources, further scientific research would help inform further considerations.

The RPB chose these approaches to addressing compatibility in the Plan in recognition of four factors:

1. the geographic scope of the Plan (and the variance in intensity, pattern, and presence of certain human activities across the region)
2. the need for additional information (often at smaller and even site-specific scales) to fully make determinations of a proposed project's compatibility with existing human uses or natural resources, including the need for information regarding the proposed project itself
3. the need to engage specific communities or ocean users already or potentially active in a particular area to understand potential compatibility and other issues raised by a proposed project
4. the need to develop and implement the Plan through existing laws and regulations

The Plan generally presumes that early coordination and engagement, along with a shared understanding of data, is crucial to the identification and final resolution of any compatibility issues associated with a proposed project. Ultimately, resolving conflicts is a project-specific process during which agencies will use Plan actions and data, as appropriate, as well as apply additional information and data pertinent to the proposed project.

Theme 8: Science and data priorities. Commenters suggested various priority topics for Chapter 5, particularly identifying climate change and gaps in basic understanding of species distribution and abundance and certain human activities. Commenters also requested that the RPB involve stakeholders in any further deliberations on topics in Chapter 5. Finally, there was a comment that the science plan must reflect agency missions and be consistent with the intent of any future legislation that appropriates funds.

Response: Through the development of the Plan, the RPB held many discussions and heard many opinions regarding potential priority science and research topics, and an improved understanding of climate change-related effects on the ocean and basic understanding of existing conditions were certainly prominent. All of the topics discussed in Chapter 5 are considered priority, and the RPB also recognizes that in many of those topic areas there is a large amount of research activity already underway. For that reason, the RPB will take a coordinating and convening approach to addressing the topics included in Chapter 5. Finally, agencies are required by the Executive Order and National Ocean Policy to implement the Plan

in a manner consistent with their existing authorities, which extends to any agency actions that would address topics in Chapter 5.

Theme 9: Monitoring and evaluation. *Commenters requested additional detail on the future process for developing the ocean health index, as described in Chapter 4. Commenters also generally requested that public engagement be a part of further development of the Plan’s monitoring and evaluation activities described in Chapter 4, for both plan performance and ocean health. Commenters also suggested that socioeconomic indicators should be included in monitoring and evaluation efforts.*

Response: The RPB revised the Chapter 4 section on monitoring and evaluation to include the general timeline of activities the RPB will pursue through 2018. This timeline also identifies opportunities for public comment during the process of developing and implementing monitoring and evaluation efforts. The RPB acknowledges the suggestions for including socioeconomic indicators, which will be part of the discussion to further develop the ocean health and plan performance monitoring approaches.

Theme 10: Use of Plan data. *Commenters suggested that the actions regarding the use of Plan data and the Data Portal need additional detail, particularly regarding how agencies will conduct such actions within the context of their existing regulations and authorities. Commenters also requested that, for future proposed projects, the RPB consider the need for additional information beyond what the Data Portal provides. Commenters also requested that the RPB ensure that users of the Data Portal understand limitations and caveats associated with its data.*

Response: The Federal members of the RPB administer a wide range of statutes and programs that involve or affect the marine environment in the Northeast ocean planning area. These Federal departments and agencies carry out actions under Federal laws involving a wide range of regulatory responsibilities and non-regulatory missions and management activities throughout the Nation’s waterways and the ocean. Activities of Federal RPB members include managing and developing marine transportation infrastructure, national security and homeland defense activities; regulating ocean discharges; siting energy facilities; permitting sand removal and beach re-nourishment; managing national parks, national wildlife refuges, and national marine sanctuaries; regulating commercial and recreational fishing; and managing activities affecting threatened and endangered species and migratory birds.

The specific manner and mechanism each Federal agency will use to implement the Plan will depend on that agency’s mission, authorities, and activities. If the NOC certifies that the Plan is consistent with the National Ocean Policy, the Final Recommendations, and the Marine Planning Handbook, each Federal RPB member will use the Plan to inform and guide its

planning activities and decision-making actions, including permitting, authorizing, management, and leasing decisions that involve or affect the Northeast regional ocean planning area.

The introduction to Chapter 3 identifies the federal processes and programs where the Plan is most applicable, considering the recent past and reasonably foreseeable topics. In Chapter 3 (as well as elsewhere), the Plan states that the Data Portal is one source of information, providing spatial data at a regional scale, and that other data will be applicable and/or required for a particular action or activity. Additionally, the Plan describes limitations in existing data (e.g., in the individual topics in Chapter 3), and the Data Portal (through its metadata and text accompanying data products) also describes data limitations and other caveats. Links to methodological overviews for marine life data products are also provided, and the Plan provides that it may be necessary to consult with subject-matter and data experts.

Theme 11: Plan review process. *One commenter questioned the suitability of a 60 day comment period for achieving the National Ocean Policy's goals for informed public participation, and the need for NEPA documentation associated with the Plan.*

Response: In response to public request, the public comment period for the draft Plan was extended from 45 to 60 days. During this public comment period, the RPB convened a series of public meetings throughout New England, with a minimum of one in each coastal state, and presented the draft Plan at several other existing forums. The RPB also employed an enhanced social media and press outreach effort to maximize public awareness of the draft Plan. All of these efforts related to the RPB's desire to maximize public participation in the review of the draft Plan. The great majority of commenters expressed support for the Plan while also identifying substantive issues for the RPB to consider. For these reasons, the RPB believes that it met the National Ocean Policy's goals for informed public participation.

With respect to the need for NEPA documentation associated with the Plan, the RPB believes that the Plan is an intergovernmental planning effort that does not require NEPA documentation in and of itself. Federal agencies of the RPB may be subject to NEPA and other applicable authorities when taking actions to implement the plan. Also, if applicable, Federal RPB members will explain their use of the Plan and Data Portal in their decisions, activities, or planning processes that involve or affect the Northeast regional ocean planning area

Theme 12: Relationship of the Plan to the Antiquities Act. *Commenters raised the issue of the relationship of the Plan to the potential designation of a marine monument in the planning area, pursuant to the Antiquities Act. Within that context, some commenters also questioned if the Important Ecological Area framework could lead to the future designation of marine monuments.*

Response: The RPB developed the Plan pursuant to the National Ocean Policy and Executive Order 13547. Any designation of a marine monument occurs under the authority granted to the President through the Antiquities Act (16 USC §431-433). These are two separate federal processes. The RPB has no authority to designate marine monuments.