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# Habitat Hotline Atlantic

Issues of Concern for Atlantic Marine Fish Habitat

August 1996, Issue No. 15

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## ASMFC Steps Up Habitat and Fishery Management Integration in Weakfish FMP

Some of the greatest challenges facing fishery managers, habitat managers, and marine resource managers in general lie in the development of holistic approaches to marine resource management issues. In the past, common sense has dictated that by teasing issues apart into smaller, manageable units; compact, individual management strategies could be developed and pieced back together to solve the original puzzle. Based on this same thought process, separate management agencies have evolved to manage fisheries, wetland, and water quality issues. However, in practice marine resource managers have found that the old adage "A whole is greater than the sum of its parts" rings true. Consequently, when managers attempt to solve the original puzzle by assembling individually derived management strategies, there are some missing pieces.

The concept of ecosystem management was developed precisely to address these issues. Many state and federal agencies, with the help of the private sector, are struggling to refine the broadbased concept of ecosystem management into a realistic, workable approach to resource management. From the efforts thus far, it is clear that many of the gaps in the current system can be bridged with improved communication between managers, accompanied by a broader distribution of responsibilities.

ASMFC has been working to implement both of these solutions as they relate to conservation of fisheries and fish habitat. The Commission has supported proposed changes to the Magnuson Act, which would provide the National Marine Fisheries Service with a stronger voice and more opportunities to conserve fish habitat. As we go to press, the Senate is considering action on this legislation. Improved communication between habitat managers and fishery managers has been facilitated through undertakings such as the Habitat Managers

Workshop, and the Commission's current focus on the integration of habitat issues into the fisheries management process.

Specific actions for the integration of habitat into the Commission's fishery management process were recognized during a roundtable discussion at the Commission's 1993 annual meeting. Commissioners and other interested parties identified the need for improving the habitat information available in fishery management plans (FMPs), and ensuring its communication to habitat managers as necessary steps in addressing the integration of habitat and fisheries management. Since that time, an outline for habitat information to be included in FMPs was developed and implemented in both the striped bass and weakfish FMP amendments, and a first cut at development of an Atlantic coast habitat managers database has been completed.

Amendment #5 to the striped bass FMP was the first plan to incorporate the new habitat section outline. As a result, fourteen recommendations were included under the categories of *Preservation of Existing Habitat, Avoidance of Incompatible Activities and Habitat Restoration, Improvement and Enhancement*. "Essential habitats" were generally described as those coastal habitats within which striped bass occur, from New Hampshire down to North Carolina. These areas were mapped using historical qualitative data, and included known spawning habitat. "Essential habitat" is a term that has very specific meaning under pending Magnuson Act reauthorization language. Although the Commission adopted a definition along with the outline for habitat sections in FMPs, discussions on translation of the literary definition into graphic representations are in still process, in conjunction with work being coordinated by the



National Marine Fisheries Service (NMFS).

Some of the work on identifying essential habitat underway at NMFS was incorporated during the development of Amendment #3 to the ASMFC weakfish FMP. As outlined in a prototype identifying summer flounder essential habitat (Schreiber and Gill, in prep.), quantitative trawl survey data from state and federal monitoring programs and qualitative interpretations provided by the National Ocean Service's Estuarine and Living Marine Resources Program (ELMR) were displayed graphically using a Geographic Information System (GIS). These relative abundance data indicating weakfish distribution were considered a surrogate for weakfish habitat preference.

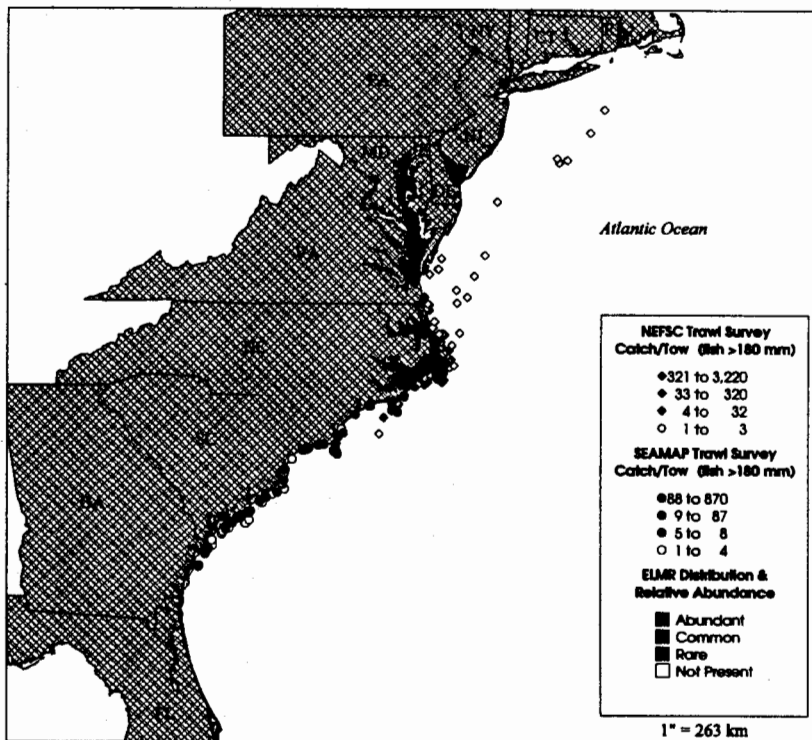
This method of depicting important or essential habitat has a number of drawbacks, the most obvious of which is the amount of background information needed to correctly interpret the produced figures. Since each trawl survey is performed using distinct operating procedures and gear, data from the surveys are usually not comparable. In addition, surveys are usually based on some kind of random sampling design, so the indicated absence of weakfish in a certain area could be because no weakfish were captured, or simply because the area was not scheduled to be sampled. A complete set of the sampling procedures for each survey must be on hand to understand what the figures are really showing. Although the appropriateness of this approach in the identification of essential habitats is still under deliberation, the figures produced are extremely useful in unequivocally identifying habitats used by weakfish, and the coastal

distribution of weakfish in general.

In both the weakfish and striped bass amendments, most of the habitat protection recommendations are the ultimate responsibility of state or federal agencies other than the fishery management agencies which are participating in the development and implementation of the amendments. For this reason, a table of state habitat management agencies and authorities was included in the weakfish amendment. By including this information, state fishery managers, fishermen, and the general public will know who to approach in cases of habitat loss or degradation. In addition, state habitat managers may more readily recognize the importance of their role in conserving fisheries through protecting fish habitat. The weakfish source document will also contain the federal agencies for habitat management, and state and federal agencies and authorities for water quality protection.

Amendment #3 to the weakfish FMP included the Commission's most recent steps in integrating fish habitat management into the fishery management process. As FMPs and amendments are prepared, this issue will continue to be of paramount importance for the Habitat Program, and the Commission as a whole.

*The figure below is one of many graphics showing weakfish distribution and relative abundance found in Amendment #3. This figure shows adult weakfish distribution and relative abundance from Massachusetts through Florida during March and April. Northeast Fisheries Science Center (NEFSC) and Southeast Area Monitoring Assessment Program (SEAMAP) trawl survey data are represented by points for the years 1985-1995 and 1989-1995, respectively; Estuarine Living Marine Resources (ELMR) Program data are represented by toned areas, and are mapped in estuarine areas only. Data for greatest relative abundance for each data source during the indicated time periods are depicted. For a complete description of the data and methodology used in map development which is necessary to understand map application and utility, please refer to the source document, currently in preparation.*



< Adult weakfish distribution and relative abundance from Massachusetts to Florida during March and April.

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## Vice-President Gore Announces Compromise: *NJ Mud Dump to Close, Ports Remain Open, Minimal Changes to EPA Regulations*

On July 24, the hard work of New Jersey and national ocean advocates, and NJ Representatives Pallone, Torricelli, and Menendez paid off as Vice President Al Gore announced the September 1, 1997 closing of the ever-contentious Mud Dump Site off the coast of New Jersey. The Vice President also announced that most of the controversial changes proposed to EPA's Ocean Dumping Regulations earlier this year would be abandoned.

In a letter dated July 24 from EPA Administrator Carol Browner, Department of Transportation Secretary Frederico Pena, and Department of the Army Secretary Togo West to Congressman Frank Pallone, the administration outlined conservation measures which have been hailed by ocean advocacy groups, as well as a commitment to keep the Ports of New York and New Jersey open and viable.

The letter proposed a three-point plan, the first of which was the Mud Dump closure. The Dumpsite has been nearing capacity for Category II or "toxic" materials, and EPA is in the midst of preparing an Environmental Assessment for the proposed expansion of the area in order to provide for continued dumping. Under the administration's new plan, the area will be closed to dumping of contaminated sediments, and remediated with clean material. Under the second point in the plan, short-term use of the site for

disposal of contaminated sediments may continue; a compromise conceded by the ocean advocacy groups in order to maintain port viability; however, use of the site will be limited to materials for which no other disposal options are available.

Earlier in the year and in the wake of a lawsuit awarded to NJ ocean advocacy group Clean Ocean Action, EPA proposed "clarifications" to ocean dumping regulations. These included an expansion of the definition of bioassays to allow mathematical modeling in addition to laboratory testing, and the use of "similar" sediments for toxicity testing instead of actual samples of the sediments under contention. The current compromise abandoned most of these proposed changes; however, it will reduce the number of species to be used in toxicity tests from three to two.

In the final point in the plan, the administration assured its commitment to the health of the Port and the environment for the 21st Century. The administration pledged to take steps in the implementation of a feasibility study for increasing Port depth to 50 feet, to implement a study of cargo diversion causes from East Coast ports, to continue the development of cost sharing for upland contaminated sediment disposal sites, to further develop decontamination technologies, and to fund watershed planning efforts aimed at pollution reduction in the New York/New Jersey Harbor estuary.

## Mid-Atlantic Fishery Management Council Opposes Lease Sales off New Jersey

In recent letters to the Secretaries of Commerce and Interior, the Mid-Atlantic Fishery Management Council strongly opposed the Minerals Management Service's proposal to lease areas off the New Jersey coast for sand and/or gravel mining.

The area under consideration includes a tract from Surf City north to Sandy Hook, beginning three miles offshore and extending seaward for up to 45 miles. The Council identified this area as the center for two important fisheries and fisheries resources: surf clam and ocean quahogs. In addition, the Council named nine species or species groups of finfish which could also be impacted. The letter stated,

"Although most fish could maneuver out of the way of a slow moving dredge, we are greatly concerned for the benthic shellfish resources that generally inhabit prime sandy areas that would be the most desirable to be mined." The Council also pointed out the ironic fact that the northern part of this area contained the Mud Dump Site, which has been a hotbed of political dispute over the dumping of contaminated sediments dredged from the Port of New York and New Jersey.

The proposed sand sale is the first ever for federal waters of the Atlantic. In its federal register notice, the Minerals Management Service (MMS) requested information about the ecologi-

cal importance of the area. A MMS spokesperson stated that because the project is a new venture, it was expected that a full environmental impact statement would be prepared, which could take more than a year. The Council's letter recognized that the federal register notice was a call for information, but countered "...we cannot see how a project like this could be beneficial to the nation. Numerous alternative sources of construction material are available without ruining significant fishery resources." The Council's letter was dated July 16, 1996. *For further information, contact Tom Hoff, Mid-Atlantic Fishery Management Council, 302/674-2331 x-15.*

## Legislative Update

### **Private Property Rights/Takings -**

A private property rights bill was introduced into the Senate during July by Senator Orrin Hatch (R-UT). "The Omnibus Property Rights Act of 1996" or S.1954 replaces S. 605, which had been introduced earlier in the Congress by ex- Senator Robert Dole.

Significant issues in S. 1954 include compensation of property owners whose property, or a portion thereof is devalued 50 percent or more as a result of any government regulation. This legislation provides private property owners the right to make administrative appeals of wetland decisions under the Clean Water Act.

Support for S. 1954 is garnered from groups such as the housing industry, who claim that environmental regulations are overly restrictive. However, environmental groups charge that this bill will make it impossible for federal agencies to protect wetlands and other habitat for wildlife, including endangered species. It is questionable whether this bill will reach the Senate

floor by the end of this Congress. For further information on the property rights issue see *Habitat Hotline Atlantic, No. 5*.

**Magnuson Act** - Before the August recess, the Senate verbally agreed to compromise language for S. 39, which had been held up because of an allocation issue disagreement between the Congressional delegations of Alaska and Washington.

Both the House and Senate bills have strengthened habitat protection, although they have fallen significantly short of giving the National Marine Fisheries Service or the regional fishery management councils authority over fish habitat protection (see *Habitat Hotline Atlantic, No. 9*).

In order for reauthorization to be completed in this Congress, the Senate compromise must pass in a floor vote, and a House/Senate conference bill must be approved by each of the bodies and go to President Clinton by October 4th. There is guarded optimism that

this will be achieved.

**Mitigation Banking Bill** - A bill concerning mitigation banking for wetlands, H.R. 3692, has been introduced into the House of Representatives by Walter Jones, Jr. (R-NC). This bill does not appear to be on a fast track; however, there are still some major concerns about its contents.

Criteria for describing wetland functions are not designated, thus there is no guarantee that wetlands created for mitigation purposes will replace the functions of those being lost. Although bankers would be required to report annually to the Army Corps of Engineers, public access to these reports is not guaranteed. Finally, bankers would be allowed to pay for the preservation of existing wetlands; wetlands which are already protected by law.

Wetlands mitigation banking is a complex topic which has generated great concern because of its unsuccessful history. For further information on mitigation banking, see *Habitat Hotline Atlantic, Nos. 10 & 11*.

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## NMFS National Habitat Plan Approved

On August 30, 1996, NOAA Assistant Administrator for Fisheries Rollie Schmitt signed into effect *A Strategic Plan to Strengthen the National Marine Fisheries Service's National Habitat Program*. The plan was developed in response to general concerns about the effectiveness of the National Marine Fisheries Service's Habitat Protection mandate and programs.

"Current policy does not allow us to effectively halt the continued loss of marine habitat that is so vital to maintaining a viable fishing industry and nursing many endangered species back to health," stated Schmitt. These concerns echo findings outlined in reports by the Department of Commerce Office of the

Inspector General and the National Fish and Wildlife Foundation.

The plan was prepared with broad public input and constituent support. Final copies will be available in the near future. For further information, contact the NMFS Office of Habitat Conservation at 301/713-2325.



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## Alliance Working to RESTORE AMERICAS ESTUARIES

Eight environmental organizations have joined forces to put the restoration of estuarine habitat on the nation's agenda for urgent action. The alliance formed from the common realization that achieving this goal would take a national grassroots campaign; thus *Restore America's Estuaries* (RAE) was created by coastal environmental organizations including the Atlantic coast's American Littoral Society, Chesapeake Bay Foundation, Conservation Law Foundation, North Carolina Coastal Federation, and Save the (Narragansett) Bay.

The mission of RAE is to both raise public awareness about the value and plight of estuaries, as well as

prod Congress and others into making the commitment needed today to save these national treasures. This mission includes a goal of catalyzing the rehabilitation of one million acres of estuarine habitat by the year 2010. This is clearly an ambitious goal, and based on their past successes, these coastal organizations are just the ones capable of attaining it.

In order to kick off this national campaign, a press conference is scheduled for Wednesday, September 18 from 9 a.m. until noon at the Holiday Inn on The Hill, 415 New Jersey Avenue, NW, Washington, DC. To RSVP or for further information, contact RAE Assistant Director Melissa Sagun at 202/289-2380.

## Corps of Engineers Proposes Changes to Nationwide Permit Program

The Army Corps of Engineers (Corps) has just closed the period for comments on proposed changes to its nationwide permits program. The Corps is considering reissuing existing nationwide permits (NWP) and associated conditions with some modifications, and issuing four new NWP.

Nationwide permits are nationally applicable general permits which provide exemptions from the requirement of individual wetland alteration permits mandated under the Section 404 of the Clean Water Act. The Clean Water Act provides for the use of general permits for activities which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Persons conducting activities under a general permit need not obtain an individual permit as long as the activities are in compliance with the general permit's requirements and standards.

There are 37 existing NWP, covering such things as impacts to isolated and headwater wetlands of less than 1 acre, and single family housing/half acre impacts. According to the Corps, several of the proposed clarifications are the result of the modification of the definition of discharge of dredged material. The newly proposed NWP include exemptions for recreational mining, maintenance of existing flood control projects, moist soil management for wildlife, and minimal effects from the food security act.

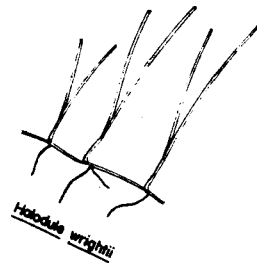
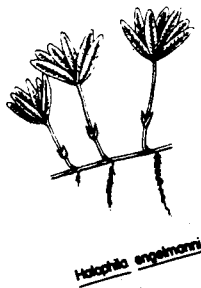
The NWP program was developed to allow activities

without significant wetland impacts to move quickly through the system. Environmentalists are supportive of this goal, but maintain that NWP frequently do result in significant impacts to wetlands. The Corps responded to the environmental community's concerns over the NWP proposal by extending the comment period for an additional two weeks, and adding six regional public hearings, which were completed before September 3. A Corps spokesman reported that approximately 2500 written comments were received, which is an order of magnitude greater than the anticipated number.

The Corps will be reviewing the comments provided by the public, and will respond to them internally. Next they will meet with the White House Wetlands Working Group, which includes representatives from the Fish and Wildlife Service, Environmental Protection Agency, Department of Agriculture, Council on Environmental Quality, and Corps of Engineers. The final policy will be developed in concert with the Working Group, and will appear in the Federal Register no later than November 21, 1996.

For further information on general permits, consult the 33 Code of Federal Regulations (CFR) Part 330. Information on proposed NWP program changes can be obtained by contacting Tim Zimmerman, Corps of Engineers, at 202/761-0199 or Grady McCallie, National Wildlife Federation, at 202/633-1331. Further information is also available on the Corps of Engineers Regulatory Program homepage, [HTTP://wetland.usace.army.mil/](http://wetland.usace.army.mil/).

## Seminar

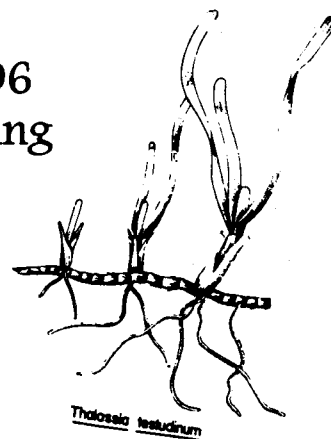
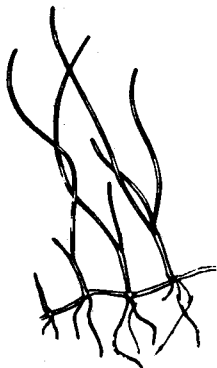


# Submerged Aquatic Vegetation

Ecological Value  
Importance to ASMFC Managed Species  
Impacts  
State Conservation Programs

Zostera marina

Ruppia Maritima



1- 2 p.m.  
Monday, October 21, 1996  
ASMFC 55th Annual Meeting  
Hyannis, MA

Syringodium filiforme

**Lunch Will Be Provided**

Presented by the ASMFC Habitat Committee

For further information, contact Dianne Stephan, 202/289-6400 or email [dstephan4@aol.com](mailto:dstephan4@aol.com)

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## EPA Promotes Watershed Based Pollution Trading

In a draft framework released in May 1996, the Environmental Protection Agency (EPA) outlined its proposal for watershed based pollutant trading, the concept of which was introduced in a January 1996 policy statement. This approach is similar to one currently employed for air pollution, and was developed in response to President Clinton's "Reinventing Government Regulation."

In the air pollution scenario, which was authorized under the 1990 rewrite of the Clean Air Act, EPA has authority to set an annual cap on the total amount of a pollutant which can be released nationwide. Polluting companies then obtain permits creating "pollution rights" which become the property of that company. If the total amount of the pollutant released by the company is under the permit level, the company can bank the difference as pollution "credits," and may sell these credits to other companies in danger of exceeding their own permit level.

The stated purpose of the draft framework is to encourage trading and assist in evaluating and designing trading programs. The framework provides a background on trading and its benefits, and a series of conditions that are necessary for trading including those that assure protection of water quality comparable to the protection that would be provided without the trading. Pollutant trading is described as a way for communities to meet water quality objectives quickly and more cost effectively than would be possible through current approaches.

EPA defines trading as "any agreement between parties contributing to water quality problems on the same waterbody that

alters the allocation of pollutant reduction responsibilities among the sources." Five types of trading are outlined in the framework, including Point/Point Source, Intra-plant, Pretreatment, Point/Nonpoint Source, and Nonpoint/Nonpoint Source Trading. Point Source discharges require EPA permits, and are defined as those coming from a source you can "point at," such as a pipe from an industry. Nonpoint Sources are not as easily defined, and include stormwater runoff from roads and agricultural fields.

The Clean Water Network, an organization made up of citizen's groups and other organizations concerned about water pollution, has voiced a number of concerns about the draft framework. The network cites the lack of definition for "watershed," and the omission of enforcement mechanisms as more than just minor oversights. The network also maintains that the concept of pollution trading does not support the Clean Water Act's original goal of eliminating toxic discharges.

Final comments on the draft framework are due September 11. A copy of the framework can be obtained from the EPA's Office of Water Home Page at <http://www.epa.gov/ow/watershed> or by faxing a request for publication number "EPA 800-R-96-001" Draft Framework for Watershed-Based Pollutant Trading to the National Center for Environmental Publications at 513/569-7186.

### Resources:

Trading Pollution Rights: A Good Deal? by John Tibbetts. Coastal Heritage 10(4):10-12. SC Sea Grant Publication, 287 Meeting Street, Charleston, SC, 29401.

## National Association of Counties Sponsors Coastal Watershed Initiative

Almost 50 percent of the US population resides in the 451 ocean or Great Lakes coastal counties. Along with recent population growth, these areas have experienced a corresponding decline in coastal water quality, loss of wetlands, and closure of shellfish beds and recreational areas because of pollution. In response to surges in coastal county growth and subsequent water quality issues, the National Association of Counties (NACo) launched the Coastal Watershed Management Project. This project was introduced in 1994 to assist counties with coastal watershed planning and management.

Coastal county officials are an integral part of the decision-making process which balances the needs of economic development and environmental health in coastal communities. Local governments use tools such as planning and zoning to manage growth and protect public health in their counties. Counties must also respond to state, federal and regional regulatory requirements and legislative mandates to manage the use of coastal resources. These multiple interests often overlap, providing opportunities for collaborative efforts to achieve sustainable development for coastal communities.

NACo's Coastal Watershed Project is funded by the Environmental Protection Agency. The goals of the project are:

1. To elevate county officials' awareness of coastal issues and federal and state coastal policies, and programs designed to provide technical assistance and information transfer;
2. To develop in partnership those tools needed by private and public leaders to sustain coastal communities;
3. To develop a network to promote local government coastal initiatives;
4. To serve as a feedback mechanism for county officials to communicate with state and federal officials on coastal matters.

Recently the program released a report entitled *Watershed Management and Sustainable Development in Coastal Counties*, which is available from NACo. During the coming year, the project will work with state county associations to provide coastal protection training sessions; to develop coastal management policies for adoption by NACo, and to document local government involvement in coastal watershed planning and management efforts. For more information on this program, contact Abby Friedman at NACo, phone 202/942-4225 or email [abbyf@spaceworks.com](mailto:abbyf@spaceworks.com). Adapted from *County Environmental Quarterly*, Vol. 2, No. 2, NACo, 440 First Street, NW, Washington, DC 20001-2080.

## NMFS Habitat Managers Address Barge Overflow

The discharge of turbid waters from a dredge barge during loading, or *barge overflow*, has become an issue of concern in situations where dredged materials are contaminated or the disposal site is in close proximity to sensitive habitats or resources. In an attempt to quantify the nature and extent of the issue, National Marine Fisheries Service (NMFS) habitat managers have reviewed the available literature and discussed the matter with industry representatives and scientific researchers.

It appears that authorization of barge overflow is an appropriate management technique in situations such as capping operations, and open water disposals where water column dispersions are to be expected; and where dredging sites are in quiescent waters and habitat alteration is not a major concern. A synthesis paper on the subject has been developed, and is currently undergoing peer review. *For a copy of the draft, contact Mike Ludwig, National Marine Fisheries Service, 203/783-4228.*

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## Habitat Hotline Atlantic

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