



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

MEETING SUMMARY

Habitat Committee

Crowne Plaza, Warwick, RI

November 7, 2018

The Habitat Committee met to recommend alternatives for further development in the clam framework, get updates on offshore renewable energy development activities, and discuss 2019 work priorities.

MEETING ATTENDANCE: Doug Grout (Committee Chair), Eric Reid (Vice Chair), Terry Alexander, Lou Chiarella, Peter deFur, Libby Etrie, Peter Hughes, Matthew McKenzie, Scott Olszewski, Melissa Smith, Terry Stockwell, John Quinn (Council Chair); Michelle Bachman (PDT Chair), Rachel Feeney (NEFMC staff); Doug Potts, David Stevenson, Mike Ruccio (NMFS GARFO staff); Mitch McDonald (NOAA General Counsel). In addition, approximately 25 members of the public attended including Habitat AP members Chris McGuire and Dave Wallace and Habitat PDT member Kathryn Ford.

KEY OUTCOMES:

- The Committee recommended three alternatives be included in the clam framework, in addition to Alternative 1/No Action:
 - Alternative 2 – Five exemption areas encompassing 7 of 9 areas recommended by the clam industry, but with modified boundaries to facilitate enforcement. Clam and mussel dredges would be authorized in the areas for five years. Enhanced monitoring including 5-minute VMS required. Council to develop a research agenda to be funded by clam industry with results within 3 years.
 - Alternative 3 – One exemption area (Rose and Crown), with modified boundaries to facilitate enforcement. Clam dredges would be authorized with no sunset date; mussel dredges could also be authorized by selecting a sub-option. Enhanced monitoring including 5-minute VMS required.
 - Alternative 4 – Four exemption areas encompassing 5 of the 9 areas recommended by the clam industry, with modified boundaries to facilitate enforcement. Clam dredges would be authorized with no sunset date; mussel dredges could also be authorized by selecting a sub-option. Enhanced monitoring including 5-minute VMS required.
- The Committee requested that the Council send a letter in response to the Notice of Intent to prepare an EIS for the South Fork wind energy project. The comment period closed and the letter was sent on November 19.

- The Committee did not recommend any changes to the initial list of 2019 work priorities. However, they recommended that a wind energy workshop should only be held if it fills a specific gap, given numerous other technical and policy meetings already being held related to fisheries and offshore wind.

AGENDA ITEM #1: CLAM DREDGE FRAMEWORK

The chairman called the meeting to order and asked for any revisions to the agenda. Ms. Bachman gave two presentations related to the framework, the first (document 4) based on PDT work around a series of potential alternatives (document 3), and the second to explain the feedback provided by the Enforcement Committee and Advisory Panel (document 2e).

One question on the PDT presentation was about hours fished; a member observed that hours high seemed unusually high in 2016. Ms. Bachman noted that 2016 does have the highest number of hours fished of any year in the data set, and high revenue values as well. Note that the revenue values for 2014-2017 in Table 5 of the PDT memo for Area D need to be corrected; the percentages are accurate, but the values are missing a digit and should be in the hundreds of thousands, vs. tens of thousands.

Another member asked if the number of vessels working in the area is increasing. The number of permits appears to be relatively stable since 2012, with revenue data from as many as 19 permits inferred to the potential seasonal exemption areas (see Table 6 in PDT memo). The total number of vessels participating in the surfclam fishery coastwide was 26 in 2017 (MAFMC surfclam fishery information document, 2018). He referenced the Council's risk policy, which suggests that the risk of long-term impacts should be low. He asked whether the fact that this area is high energy is a mitigating factor in terms of fishery impacts to habitat. Ms. Bachman agreed that it was, to a certain extent.

There was some discussion of the meaning of habitat stability, which is discussed on pages 13-14 of the PDT memo.

A member asked if the Council will have a sense at final action if the habitat impacts of specific alternatives are 'minimal'. She expressed concern about whether mitigation might be required for impacts deemed 'more than minimal', as previously suggested by NMFS. Ms. Bachman agreed that the PDT would attempt to characterize the extent of impacts in the draft framework document. Mr. Chiarella noted that NMFS would rely on the Council's analysis and use that as a starting point for their evaluation to see if they agree with the Council's conclusions about whether impacts are minimal and whether any expected adverse effects to EFH are sufficiently minimized. In response to a follow up question about whether a preliminary agreement with the Council's findings would be provided prior to or at the Council meeting, he wasn't certain, but noted that they have been trying to provide feedback throughout the amendment development process. He indicated that they would be looking for alternatives that reduce the footprint of the fishery in the HMA.

A member asked whether the annual percent of the HMA fished by clam dredge gear had been calculated. Ms. Bachman replied that while the PDT had estimated swept area, assuming no

overlaps between fishing events, that they had not calculated the percentage of the HMA contacted by the gear each year. The area swept data from Table 8 of the memo can be compared to the exemption area sizes in Table 3 to provide some perspective on this issue.

Ms. Bachman then summarized the Enforcement Committee and Advisory Panel recommendations (document 2e), and Mr. McGuire provided a summary of the AP meeting (document 2f). There were a handful of questions on each report but generally the Committee found that the advice provided was straightforward.

The Chair asked if the group preferred to get an initial motion on the board before lunch to think about, or if members wanted to wait until after a break to start with motions for alternatives. A member recommended the latter but asked if NMFS staff could give some advice before the break on what might or might not be approvable, and in what cases mitigation might be required.

Mr. Chiarella commented that their general advice is that under Omnibus Habitat Amendment 2 (OHA2) the Council determined that the HMA was important habitat and closed it to bottom gear with the 1-year exemption. Do those alternatives have more than minimal adverse effects on the habitat? If they do not, fine. If they do, then how do we minimize those effects? If the Council agrees that an alternative has minimal impacts, what is the rationale for that determination? In response to a question, Mr. Chiarella agreed that the definition of ‘adverse effects’ in the EFH regulations is broad, and that the Council has some discretion.

Another member asked if the question was whether cumulative effects of fishing on habitat were expected to change, as a result of the action taken in this framework. If we allow continued clam dredging in the GSC HMA, how does that affect the overall minimization of impacts associated with OHA2? Mr. Chiarella commented that they would be considering the Council’s original recommendation that the GSC HMA is vulnerable to the impacts of fishing and needed to be closed to certain gear types in order to minimize impacts. The EFH consultation for the framework would consider whether the action proposed would have adverse impacts to EFH and if so, the agency would provide guidance for minimizing those impacts. Mr. Chiarella suggested that if the Council wants an alternative that has a more than minimal impact, the Council will need to consider other approaches to minimize impacts or reevaluate the area’s designation more generally. If the Council goes forward with an alternative that maintains the current footprint of the fishery in the HMA, that would be concerning. He agreed that effects on the spawning aspects of habitat should be part of the Council’s analysis and would be considered by the agency.

A Committee member observed that merely implementing a habitat management area with gear restrictions doesn’t guarantee that conservation benefits are achieved. She suggested that disturbance could be having a positive impact by increasing the availability of prey species.

The Committee broke for lunch, and upon returning from the break began a discussion of specific alternatives.

1. Motion: Hughes/Reid

Move that the Habitat Committee recommend to the Council:

- 1) Adopt all the Enforcement Committee recommendations with the exception that areas A and B be combined as discussed by the Habitat Advisory Panel (including monitoring, partial stowage, mussel dredge exemption recommendations).**
- 2) Task the PDT with reviewing the Cod spawning areas and ask them to select the months and duration of the closure (not to exceed six months).**
- 3) Approve a 5-year limited exemption for the clam and mussel fishery as specified above.**
- 4) Task the PDT to develop with the Clam Industry a prioritized list of research needs to address the impacts of clam fishing in the HMA with a list of deliverables in 3 years. The Clam Industry is expected to fund reasonable research costs.**

Rationale: Intent to provide very limited and discrete access for a short period of time while various research programs implemented. Some aspects of the research program are expected to take years, and when concluded, the Council would have the ability to take additional action.

A member asked what type of research, and Mr. Hughes responded before-after-control-impact studies of gear effects. Another member asked what the Council could actually do in terms of requiring the fishing industry to fund research costs. It was noted that sometimes with exempted fishing permits research costs are funded using the catch from the trip.

A member expressed concern about the equity of the alternative, in that it seemed to allow the fishery to just keep going when other types of fishing have already been prohibited from the area. He was also concerned that this alternative might not be approvable and wanted the Council to be able to avoid the need for mitigation of any adverse effects.

Another member asked what percentage of these areas are used by the fishery. He also noted that some areas have no habitat data.

The Chair asked if members of the public wanted to comment on the motion.

Tom Alspach (Seawatch International): Been coming to these meeting sporadically. Hearing the same questions asked from 1.5 years ago. If you don't provide a means for exemption, you are closing part of the fishery...looking for preservation of a small niche fishery. We've already spent money on research. If we don't do additional research, we will be closed down. We've worked hard this past year to develop these approaches and provide information.

David Frulla (Kelley Drye and Warren LLP, legal counsel for many of the boats that rely on this area): The view of OHA2 now isn't consistent with when it was passed. There is an evolving understanding of Nantucket Shoals. You have an alternative here. Saying that this is just the footprint isn't true – it is a reduction.

Dave Wallace (Wallace and Associates): How did we get here? Years ago, the PDT suggested that a large portion of the GSC be closed to bottom-tending gear because it's cod habitat. Our

proposal is reasonable. High catches in cages/hour justifies the fishery here. When clams and cobbles come up together in the dredge together they need to be manually sorted (which is costly). Many more clams are caught per tow vs. cobbles/rocks.

Ron Smolowitz (not representing an organization): I support the motion because it has a sunset and it makes us take another look at this area if the impacts change due to climate change. It's a historic cod spawning area, but something is happening there. We need to look at recent data. Used to be a big fixed gear fishery. It's gone. Why? I developed the NMFS survey clam dredge. I've ridden the dredge. It's a net positive to the clams and feeds other species. We had a big mussel fishery. The potential for a mussel fishery is \$100M annually.

Lou Legace (clam fishermen): In support of alternative. I appreciate the chance to express my opinion. I'm a small operator. We got hit with this banishment and the entire burden of proof was put on us. It's an area of a lot of unknowns. I'm upset. We will give you the data you need. I think in the end everyone will gain with this alternative, because we will know a lot more about the area.

Chris Shriver (Atlantic Capes): New to the process. I've sat through many meetings. I'm concerned about shutting the fishery down when there are statements like "it looks like". We are willing to keep going. We want the chance to do research so the right decision can be made.

A Committee member commented that something Dave Wallace said struck me. The original alternatives for the Great South Channel had four individual boxes. Decided to go with one big area, larger than the individual ones. We closed non-complex bottom to keep other areas open to the north. I want to support this motion.

Another member commented that he remembered we heard we needed to work with an industry that was fishing in high energy sand. We are now talking about cobble, gravel and boulder. I've been concerned about mission creep and precedent.

Another member asked if any mitigation be on the groundfish and scallop fisheries, and Mr. Chiarella agreed that it would be.

The Chair clarified that this was just an alternative, and not the preferred alternative, and the Committee agreed. The Committee also clarified that their intent was to include various enforcement aspects as recommended by the Enforcement Committee and Advisory Panel.

Motion #1 carried 5/4/2.

2. Motion: Etrie/deFur

To propose an alternative that limits an exemption area to Rose and Crown (year-round) with boundaries as modified by the Enforcement Committee, and adopts the Enforcement Committee's recommendations for VMS, LOA, VMS declarations and polling triggers, and gear stowage.

FINAL

Rationale: narrowly focused alternative to get feedback on, to get more feedback on what constitutes minimal impacts. Previous motion is too broad and seems like it wouldn't have minimal impacts on habitat. Concerned about potential need for mitigation. Rose and Crown is the best candidate for a single area because it has had the most effort of all the areas. Ms. Bachman clarified that the area did not overlap with consensus cod spawning grounds, and the maker agreed that there is no need to make part of the area seasonal as with the prior motion because the Old South area would not be designated under this alternative.

A Committee member commented that Rose and Crown includes numerous observations of cobble habitat with epifauna, and that he couldn't see how an exemption in the area could work from a habitat impacts perspective.

Another member agreed that everyone wants some input on what's approvable, but we are playing poker with clams. The Rose and Crown area has been very important to the fishery.

Mr. Chiarella noted that this alternative would allow us to compare habitat vs. fishery impacts, and that he would support the approach for analysis.

Motion #2 carried 9/1/1.

3. Motion: Etrie/Stockwell

To propose an alternative that includes the Enforcement Committee recommendations for exemption areas, but excluding Rose and Crown, and adopts the Enforcement Committee's recommendations for VMS, LOA, VMS declarations and polling triggers, and gear stowage.

Rationale: want to consider a full range of alternatives for analysis.

A member agreed he would support this alternative for analysis, since it appears to mostly avoid areas of more stable, cobble habitat.

Motion #3 carried 8/2/1.

A member commented that any exemptions approved should have a research component. It seems that they need to be able to fish in Rose and Crown to have the money for research. Mr. Chiarella commented that the agency really supports the idea of research. But from a process perspective, how do we fold that into the exemption program? Probably best to do so through an exempted fishing permit.

4. Motion (deFur/)

The Committee recommends a research program that includes industry and NMFS involvement to better inform our decision making on this matter.

Motion #4 failed for lack of a second. While Committee members were somewhat supportive of this concept, there was concern that if only limited exemptions were granted that industry would be less able to fund research activities.

The Committee agreed that it was not necessary to further develop rotational management approaches, and passed the following motion:

5. Motion: Alexander/Hughes

Recommend that the Council move rotational management of exemption areas to considered but rejected.

Motion #5 carried 10/0/1.

The Committee discussed how mussel dredge exemptions should be folded into the range of alternatives and passed the following motion to make mussel exemptions a sub-option for the alternatives specified via motions 2 and 3. Ms. Bachman noted that the analysis would discuss the habitat and fishery implications of the two gears separately. The group affirmed that mussel dredge exemptions and the research program were combined with clam dredge exemptions under motion 1.

6. Motion: Etrie/Reid

With respect to Motions 2 and 3 that there be a sub-option to allow exemptions for mussel dredges, with monitoring requirements as identified by the Enforcement CTE/AP.

Motion #6 carried 9/0/1.

Audience member Scott Lang (Lang, Xifaras, & Bullard) commented that industry has reached out to have a public/private partnership. It's very important for the sustainability of the fishery. The industry supports motion #1. Motion #2 may be more narrow than it needs to be. Motion 3 is deminimus to the point where vessels may not go out there. It's very dangerous and difficult. If the yield isn't enough, it won't support the fishery. There is opportunity for compromise. If it's a 5/4 vote out of here out of Motion 1, that gives low confidence for passing at the Council. I wish there had been a second to Motion 4. The industry is willing to do the work. They are here to sign on the dotted line.

A Committee member agreed that research was important but was afraid that if the only thing that was approvable was eliminating Rose and Crown, then the industry wouldn't be able to pay for it.

Mr. Lang agreed, and commented that this action is a golden opportunity to get these [questions about impacts] resolved.

A Committee member asked if the Council had done anything to preclude the ability to access habitat management areas with EFPs. Ms. Bachman noted that on the contrary, the Council

specified in OHA2 that its intent was to allow habitat-related research to occur in habitat management areas.

Finally, on the topic of the framework there was a brief discussion of what defines a mussel dredge. The existing mussel and urchin dredge exemption area specifies a maximum width of 8 feet. A member noted that these are not hydraulic dredges, and more similar to a scallop dredge. Ms. Bachman commented that the question of whether you could harvest mussels with a hydraulic dredge came up at a recent PDT meeting. Industry members in attendance agreed that mussels were catchable with clam dredge gear but that product quality was poor due to shell breakage, so it was unlikely that mussels would be harvested with hydraulic dredge gear.

AGENDA ITEM #2: OFFSHORE ENERGY DEVELOPMENT

Ms. Bachman briefed the Committee on council staff engagement on offshore wind energy development. Staff from both NEFMC and MAFMC have been engaged with NMFS staff from the regional office, science center, and headquarters to analyze fishery and habitat aspects of specific wind energy areas and lease areas, and to provide guidance on development of NEPA documents. She emphasized the tight timelines for development of these products.

She suggested that the Council may wish to comment on the South Fork notice of intent to prepare and EIS (due November 19) and on the Vineyard Wind EIS (should be available first week of December). Chris McGuire said that the advisory panel appreciated that staff time was being spent staying on top of these issues. There was no objection to drafting a letter on the South Fork project.

AGENDA ITEM #4: 2019 COUNCIL PRIORITIES

The Committee reviewed the draft habitat-related priorities list for 2019, which includes the following items:

1. Initiate action to revise habitat management areas on the Northern Edge of Georges Bank
2. Complete framework action to address surfclam access to Great South Channel HMA
3. Brief Habitat Committee and Council on 2017-18 updates to the SASI model, and identify next steps
4. Develop Council policies on additional non-fishing activities (offshore energy policies adopted 2018)
5. Develop habitat and fishery related comments on non-fishing activities, particularly wind power, in consultation with other agencies (including the Bureau of Ocean Energy Management)
6. Host a workshop on wind/fisheries issues, in collaboration with the Mid-Atlantic Council
7. Write habitat impacts analysis for Council management actions
8. Participate on Stellwagen Bank National Marine Sanctuary Advisory Council and Atlantic States Marine Fisheries Commission Habitat Committee

No additions or removals were suggested, and the Committee did not feel it was necessary to rank the items. Ms. Bachman clarified that item 1 referenced the disapproved measures for

FINAL

eastern Georges Bank from OHA2 and a Committee member commented that the vote on the clam framework will inform what can be done on the northern edge in terms of habitat areas and gear exemptions. The Committee recommended that item 6 only be pursued if it fulfilled a specific gap in communication, information need, or other function, since there are many other offshore wind-related meetings being held at this time.

.....

The meeting adjourned at approximately 3:30 p.m.