



New England Fishery Management Council

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

Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

MEETING SUMMARY

Habitat Committee

March 17, 2022

1:00 pm - 5:00 pm

Via Webinar

The Habitat Committee met on March 17, 2022 via webinar to discuss 1) a framework to designate a Habitat Area of Particular Concern (HAPC) in Southern New England, 2) feedback on the clam industry's progress report on their Exempted Fishing Permit work in the Great South Channel Habitat Management Area, 3) updates on offshore development, 4) habitat-related Council research priorities and 5) any other business.

MEETING ATTENDANCE: Eric Reid (Committee Chair), Peter Aarrestad, Togue Brawn, Lou Chiarella (GARFO), Libby Etrie, Peter Hughes (MAFMC), Scott Olszewski, Cheri Patterson, Geoff Smith, and Melissa Smith, and Kate Wilke (MAFMC); NEFMC staff: Michelle Bachman (Plan Development Team Chair), Jamie Cournane, Jenny Couture, Angela Forristall, Robin Frede, Chris Kellogg, Tom Nies, and Janice Plante; NOAA General Counsel: Mitch MacDonald; NOAA GARFO: Sharon Benjamin, Douglas Christel, Laura Hansen, Jay Hermsen, Doug Potts, David Stevenson, and Alison Verkade. MAFMC staff: Jessica Coakley. In addition, one other Council member, four AP members, and 17 members of the public attended.

KEY OUTCOMES:

- The Committee recommended that the Council consider a range of Habitat Area of Particular Concern designation alternatives within Southern New England at its next meeting in April. Preferred alternative(s) were not identified.
- The Committee was briefed on the interaction between the Plan Development Team (PDT) and Coonamessett Farm Foundation related to a progress report on research conducted in the Great South Channel Habitat Management Area. The Committee will review the final report at its next meeting.
- The Committee received updates on offshore wind, aquaculture, and cable projects, including the Maine/New Hampshire/Massachusetts Port Access Route Study (PARS), the New York Bight auction, etc. The Committee recommended sending comments on the PARS.
- The Committee briefly discussed habitat-related research priorities and asked the PDT to consider whether the priorities adequately capture the need to consider shifts in species ranges and densities due to climate change.

AGENDA ITEM #1: HABITAT AREA OF PARTICULAR CONCERN (HAPC) IN SOUTHERN NEW ENGLAND

Note: Alternatives will be reconfigured following the Committee meeting so the numbering in the document provided for the Council meeting may not match exactly with what is presented below.

Presentation – HAPC

Ms. Bachman updated the Committee on development of the Southern New England HAPC designation framework. Her presentation reviewed the problem statement and objectives of the action, draft alternatives developed by the PDT on March 9, and identified supporting information to consider during development of the action. This information includes recent acoustic data on cod spawning, cod stock structure, essential fish habitat designations, and fishery-independent survey data, as well as relevant literature.

Discussion

A Committee member asked about the multispecies alternative (Action 2); does this include all life stages. Yes, the alternative could include a range of species and life stages with a strong overlap with SNE, as noted in the draft document/slides. Responding to a point made during the presentation, they asked if it would include juvenile cod and their preferred habitats, since offshore wind development could impact them. Staff noted that both spawning and juvenile cod were focuses of the EFH consultation for the South Fork Wind Farm and would be important to include. Juvenile settlement habitat occurs inshore of spawning habitats, generally, and the maximum depth of the designation extends to 120 m.

Another member asked about the inside only vs. inside and outside of wind energy area options (Options A and B under Action 1, Alternatives 2 and 3). Over time due to climate change, haven't there been shifts in species distributions that should be accounted for? Staff noted that the PDT hasn't had a specific discussion on how individual species life stages are shifting over time in this context – however, the EFH designations are based on older data through mid-2000's which is why we're aiming to use more recent data to support these HAPC designations. While we need to stick to the footprint of our existing EFH designations as a starting point for any new HAPCs (HAPCs are a subset of designated EFH), we can compare survey data from more recent timeframes to understand potential shifts. Action 1 Alternative 3 which is a broader designation to account for future areas could help with this; also the broader designations under Option A (inside and outside wind energy areas) could better account for distribution shifts. The Chair commented that the PDT had discussed noise impacts potentially affecting large areas, within and beyond development sites, which would be a consideration when determining the footprint of the HAPCs. The Committee member agreed that they preferred broader and therefore more precautionary designations.

Public Comment:

Ron Smolowitz asked if the acoustic study had shown any tag returns from the Habitat Management Area overlapping Nantucket Shoals. Staff responded no, the gliders and fixed receivers were not deployed in that area and thus there was no data from that site. However, the study will continue and there are plans to deploy receivers further east of the current site,

centered on Cox Ledge. She noted that the spawning sites on Nantucket Shoals are based on historical data.

Drew Minkiewicz asked for a summary of what information is new since development of the Omnibus EFH Amendment. Staff responded that the cod tagging/acoustic study is new, the extent of offshore wind development has increased, and the cod stock structure analysis is new.

Chris McGuire, a collaborator on the acoustics project, agreed that areas off RI have been the focus of their acoustic work to date, but that they are deploying additional receivers soon, and that there is some limited evidence for occurrence of ripe cod in areas further east.

Additional Committee discussion

A Committee member expressed support for the alternatives but preferred the more focused approach (Action 1, Alternative 2); however, they thought designations both inside and outside wind energy areas (Option A) was most appropriate (vs. Option B0. HAPC should be a subset of EFH so we need a strong rationale for the areas that are designated. Other members agreed that Option A was preferable to Option B. A member reiterated that juvenile cod should be included in an alternative under Action 2. Another was concerned about developing an analysis to support the more precautionary ‘future-proofed’ approach envisioned in Action 1 Alternative 3, feeling that Alternative 2 would be more straightforward.

1. MOTION: PATTERSON/G. SMITH

Recommend that the Council designate an area in Southern New England as a Habitat Area of Particular Concern. This designation is focused on protection of cod spawning and encompasses known spawning areas within and outside wind energy areas as well as spawning areas identified using historical information and that may be identified in future data collections. This is Action 1 Alternative 3a in the draft framework document. These spawning areas should be protected between November through March.

Discussion on the Motion: A member asked if this was the only alternative being moved forward to the Council, or if other alternatives should continue to be considered. They were also concerned about including the time of year restriction directly in the designation, although they recommended referencing the time of year when spawning occurs in the rationale and supporting information. Staff commented that she viewed the motion as a recommendation for action; however other motions could be made to include additional alternatives for analysis. She noted that the intent with the time of year restriction was not to put any limitations on NMFS as they conduct EFH consultations, so can include that information in the designation document wherever it is more appropriate. Another member also wondered if it would be better to add all alternatives for analysis before discussing preferences. Others agreed with this.

Public comment:

Drew Minkiewicz commented that he was confused about the process the Committee was going through.

MOTION 1 WAS WITHDRAWN BY THE MAKER.

2. MOTION: CHIARELLA/ETRIE

Recommend analysis of the following alternatives in the HAPC framework: Action 1, Alternative 1 (No Action), Alternative 2a, and Alternative 3a, and Action 2, Alternative 2.

Discussion on the Motion: The Committee noted that this should include No Action alternatives, as needed throughout the document. Staff clarified that the intention was to consider taking final action at the April Council meeting. A member confirmed that juvenile cod could be included under Action 2, Alternative 2. Staff commented that keeping a spawning cod HAPC designation separate from a juvenile cod or multi-species designation would be clearest in terms of application to EFH consultation, since the designations would have different spatial boundaries. Committee members were supportive of multiple designations.

Public comment:

Ron Smolowitz felt the Committee was moving too quickly, and that we don't know what the impacts from wind farms will be yet to be able to analyze this action. He expressed concern about temperature shifts associated with offshore structures and impacts to egg survival. Given so many unknowns, we need a different strategy to deal with ecological impacts from wind farms; an HAPC won't accomplish anything.

Additional Committee discussion

A Committee member agreed that there are many unknowns, but that it seems important to have some type of acknowledgement of the importance of certain areas, species, and impacts. Staff noted that we expect this action to be categorically excluded under NEPA, such that the analysis will be simple: how does the HAPC meet the designation criteria, what information supports the designation, and qualitatively, how will an HAPC designation benefit fish and associated fisheries.

Public comment:

Drew Minkiewicz asked if HAPC designation actually changes the conversation with BOEM. Lou Chiarella responded that yes, while HAPCs don't have regulatory protections and are not silver bullets, they provide a better foothold to elevate certain issues with BOEM.

MOTION 2 CARRIED BY UNANIMOUS CONSENT.

3. MOTION: M. SMITH/G. SMITH

Recommend that the Council consider Sub-option B for Action 1, Alternatives 2 and 3 (HAPC designation inside wind areas only), as considered but rejected.

MOTION 3 CARRIED BY UNANIMOUS CONSENT.

Additional Committee discussion

Next, the Committee discussed Action 2. There was some interest in keeping the list of species and lifestages broad. Staff noted that the list includes both benthic and water column lifestages,

and that the impacts of offshore development noted in the rationale below the alternative cover both benthic and water column effects. The species list currently in the document only includes those with a meaningful degree of overlap with SNE; more occasional species are not included. The Committee agreed this was appropriate. Staff confirmed that analysis of this alternative would be doable; she noted that the PDT would identify the range of depths and habitat characteristics within the EFH designations for the listed species and lifestages, and combine them into a single HAPC description and map. She also noted that while some Northeast Regional Habitat Assessment products are still in development, that we can use the underlying survey datasets compiled for the assessment to inform this action.

Audience comments

Chris McGuire noted that the TNC's marine mapping tool showing areas of fish persistence and abundance could be useful here.

4. MOTION: M. SMITH/PATTERSON

Recommend that the Council consider final action on the HAPC framework at their April meeting.

Rationale: Want to avoid delay; better off to complete this action now given pace of offshore wind development.

Discussion on the Motion: Committee members agreed that it was important to take final action sooner than later if possible.

MOTION CARRIED BY UNANIMOUS CONSENT.

AGENDA ITEM #2: REVIEW OF CLAM INDUSTRY'S EXEMPTED FISHING PERMIT

Presentation

Ms. Couture updated the Committee on the Plan Development Team's (PDT) review of the progress report of the clam industry's Exempted Fishing Permit's (EFP) work in the Great South Channel Habitat Management Area (HMA). Staff summarized input provided to Coonamessett Farm Foundation (CFF) by the PDT. As next steps, CFF is planning to issue a final report in late May including analysis of additional data and responses to some of the PDT's feedback. Staff noted that the Committee will review CFF's final report during its next meeting and will discuss the utility of the study for management of the HMA. Consideration of changes to the HMA are not a 2022 Council priority, but during its February meeting the Council asked the Committee to review this report.

Discussion

A Committee member asked what is meant by the "high and low dredge impact areas" referenced in CFF's project goals, as listed in the February PDT meeting summary. CFF staff explained that two small areas were designated as reference, no fish areas in the northwest and southeast corners of the research area. The Committee member clarified that the project describes the habitat types in both areas where fishing occurred and also the reference areas where fishing did not occur. CFF staff agreed with this characterization.

AGENDA ITEM #3: UPDATES ON OFFSHORE DEVELOPMENT

Offshore Wind Presentation

Lieutenant Tom Davis gave an overview of the upcoming Port Access Route Study (PARS) for the approaches to ME, NH, and MA. An advance notice of the PARS was recently published to encourage maximum stakeholder participation in the study in the upcoming 45-day comment period. The comment period should begin soon.

Ms. Couture presented a series of offshore wind-related updates including a short summary of recent work and near-term issues that will require staff or Committee work. Updates included leasing in the NY Bight, New York's 2022 Offshore Wind solicitation (more information [here](#)), Central Atlantic call area development, the upcoming Gulf of Maine taskforce meeting, and other updates.

Discussion

The Committee Chair asked Lieutenant Davis if the PARS analyzed cumulative effects of all of the potential lease areas in the ME, NH, and MA Bay areas as it relates to navigation and vessel safety. The short answer is yes, the U.S. Coast Guard is looking at projected future lease sites for offshore wind and also aquaculture. Another Committee member agreed this was important that that they felt cumulative effects were not considered in the previous MA/RI PARS.

Cable, Aquaculture Presentation

Staff provided an update on the Amitie telecommunications cable. The Council provided comments expressing concerns about the cable project to the U.S. Army Corps of Engineers related to the EFH consultation for this project. NOAA Fisheries is awaiting additional information necessary to complete their essential fish habitat consultation, which should be provided soon by the Army Corps project manager. NOAA Fisheries will then continue the EFH consultation for the project. Staff also noted that installation of the cable in the Canadian EEZ is underway.

Staff also provided a few aquaculture updates. The Blue Water Fisheries project, which proposes to grow steelhead and Atlantic salmon off the coasts of NH and MA, is working with an interagency team to gather additional project details ahead of the Notice of Intent (NOI) and public scoping. NOAA Fisheries is currently doing pre-scoping. The NOI for the environmental impact statement (EIS) is expected to be published in June at the earliest. The timing of a Council action on Atlantic salmon aquaculture authorization is directly related to the timing of the EIS for the Blue Water Fisheries project. Staff noted there are no updates related to the Running Tide project and that a new Guide to Permitting Marine Aquaculture in the U.S. was published last month.

Discussion

No questions were asked by the Committee or members of the public.

CONSENSUS STATEMENT

The Committee recommends that the Council submit comments on the ME-NH-MA Port Access Route Study.

Rationale: Cumulative impacts are a concern and the Council has submitted similar comment letters in the past.

Discussion on the Consensus Statement: The Committee Chair asked the other Committee members if there is interest in preparing a comment letter on behalf of the Council. Several members thought this was a good idea given the Council submitted a comment letter on the RI/MA PARS project and this project did not account for cumulative effects, which is an important consideration. One member asked if staff received feedback from previous comment letters on offshore development and if this feedback can be incorporated such that the Council can continue providing constructive comments. Staff were unaware of any feedback.

The PARS will likely be published end of March so comments will likely be due in early May; staff can prepare draft comments for the April Council meeting.

The Committee unanimously agreed to the consensus statement.

AGENDA ITEM #4: COUNCIL RESEARCH PRIORITIES

Ms. Bachman provided updates to the Council research priorities including minor staff updates. The PDT has not had a chance to discuss these priorities yet but plans to do so in detail during their March 28th meeting. The Committee can review the PDT's revisions via email before the recommendations are provided to the Scientific and Statistical Committee in May.

Discussion

A Committee member asked if aquaculture impacts on fish, habitats, and fisheries are included in any of the existing research priorities and if the climate-related priorities include both range and density shifts. Staff noted research priorities do include aquaculture impacts and that the PDT can discuss if priority 101 includes density and species range changes.

AGENDA ITEM #5: TIMELINE OVERVIEW, OTHER BUSINESS

Council staff provided a short update on the status of 2022 work.

Discussion

The Committee members did not have any discussion and no other items were discussed.

The Habitat Committee meeting adjourned at approximately 4:15 p.m.