



## 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*

# FINAL MEETING SUMMARY

## Habitat Committee

Four Points by Sheraton, Wakefield, MA

August 28, 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, Peter deFur, Libby Etrie, Peter Hughes, Matthew McKenzie, Scott Olszewski, Michael Ruccio (for Lou Chiarella), Melissa Smith, Terry Stockwell, John Quinn (Council Chair); Michelle Bachman (PDT Chair), Rachel Feeney, Chris Quartararo (NEFMC staff); Doug Potts, David Stevenson, Sue Tuxbury, Alison Verkade, (NMFS GARFO staff); Mitch McDonald (NOAA General Counsel). In addition, approximately 25 members of the public attended including Habitat AP member Dave Wallace and Habitat PDT members Jessica Coakley, Kathryn Ford, and Julia Livermore.

### **KEY OUTCOMES:**

- The Committee tasked the PDT to analyze five of the areas proposed by the clam industry (Rose and Crown, McBlair, Zone A, Zone B, and Zone D) for development into a rotational area management scheme, which should:
  - Minimize adverse effects on essential fish habitat (EFH) per the goals/objectives of Omnibus Habitat Amendment 2 (OHA2);
  - Consider historical fishing effort;
  - Develop 2-3 distinct areas for rotation with a timeframe of a minimum of 7 years open per area in succession;
  - Consider age distribution of clams in these areas.
- The Committee recommended that clam and mussel exemption areas developed at their May 22 meeting be moved to considered but rejected, but that sections on monitoring and sunset provisions be retained in the document. The recommended amending the section on enhanced VMS monitoring for the clam fishery to require 5-minute vs. 1-minute polls.
- The Committee recommended that the area fishable under a mussel dredge exempted fishing permit (EFP) be limited to any exemption areas approved for the surfclam fishery. They recommended drafting a letter for Council approval summarizing their support for a mussel dredge EFP and suggested attributes of the experimental fishery.

***AGENDA ITEM #1: CLAM DREDGE FRAMEWORK***

Chairman Doug Grout began the meeting by asking for any changes to the agenda and none were suggested. Regarding the clam framework, he noted the Regional Administrator's concerns raised that the June Council meeting that the alternatives previously developed by the Committee might not meet the objectives of the action. After the June Council meeting, members of both the clam and mussel industries were asked to develop exemption area proposals.

Michelle Bachman gave an overview of the status of the framework, summarizing the timeline for the action, correspondence between the Council and industry members, and a recent meeting with clam industry members. She explained proposals for exemptions suggested by both clam and mussel fishermen in correspondence dated August 23 and showed maps of each. She also referenced Dr. Eric Powell's ongoing work on age and growth of surfclams in the habitat management area, noting that smaller clams are abundant in certain locations within the HMA. In terms of timing, final action needs to occur by December to have the best chance of implementation before (or close to) April 9, 2019. A second approach to clam exemptions including a rotational option was provided to via hardcopy to Committee members during the meeting but was not covered as part of the presentation as it was not received ahead of time. Ms. Bachman emphasized that the PDT had not reviewed any of the proposals yet.

The Chair suggested that Committee members ask questions of staff, and then asked Chris Shriver and Domenic Santoro to speak to the clam and mussel industry proposals, respectively.

Terry Stockwell asked about the apparent correspondence between clam dredge fishing effort and depressions, and whether the depressions are high or low energy areas. Ms. Bachman responded that the entire habitat management area is high energy, but that the depressions are likely to have relatively more stable habitats because of the larger sizes of the sediments present. Mr. Stockwell asked if the PDT had looked at the relationship with spawning areas for species other than cod, and she responded that they had not.

Chris Shriver of Atlantic Capes Fisheries, Inc. spoke to the clam industry proposals, noting that many people had worked on them.

Terry Alexander commented that the areas were irregularly shaped. During development of the Omnibus Habitat Amendment we heard that large areas with straight lines were best. Have you sought feedback from the Coast Guard? Audience member Chad Brayton (also from Atlantic Capes) commented that they were working with NOAA Office of Law Enforcement (OLE) on implementing 5-minute polling intervals for vessels working in the area, and that the more frequent polling should be operational the first week of September. In terms of the shapes of the areas, he emphasized that they reflect the distributions of clams; drawing rectangular boxes doesn't work as well to target clam beds. Their aim is to test whether the irregular shapes are enforceable.

Eric Reid asked for clarification about the two different clam proposals – one has nine smaller areas and the other (received at the meeting) is different. Audience member Dave Wallace

## FINAL

(Wallace and Associates) provided some background on the second proposal, which he had helped to develop along with David Borden and various fishermen, including Lou Legace. Mr. Wallace commented that in June, the Regional Administrator told us what he would approve and what he wouldn't. I don't represent everyone who fishes on Nantucket Shoals. However, the advantage to having clam dredging occur on the shoals is that the fishing effort is not going to go away if the shoals are closed, it will just move into less productive areas where catch per unit effort is lower. Mr. Cohen came up with the idea of discrete areas, defined based on VMS data and enforced using high frequency tracking. That was out of the realm of what we had worked on. We had a call yesterday and finalized the proposal provided at today's meeting. The Committee reviewed the charts provided in their document. To summarize, this proposal closes three sections of the habitat management area that contain cobble and boulder habitats (Areas 1, 2, and 3 in the letter), in addition to the northeastern corner already closed. The remainder of the HMA is divided into three sections, with the western part of the HMA open every year (Area 4), and the eastern part divided north vs. south (Areas 5 and 6), with the northern and southern areas open one at a time for four years each. Eric Reid asked if both proposals would be acceptable to industry members, and Mr. Wallace agreed that they would. He suggested that the Committee could select elements from both (e.g. the nine smaller areas from the first proposal with the rotational management features of the second one).

Mr. Alexander asked about the distribution of clams in the management area. Ms. Bachman commented that the nine areas in the first proposal overlap with the August 2017 industry-based survey, and that the methods used were roughly comparable with the federal survey, which has worked in areas to the south. Surfclams are highly abundant in the industry-based survey areas.

Mr. Reid asked about dropping certain areas out of the first (nine area) proposal, including Areas C and E as well as the Old South area, which overlaps cod spawning grounds identified by DeCelles et al<sup>1</sup>. Dave Wallace commented that he didn't know how much clam dredging interfere with cod spawning because the gear doesn't catch groundfish.

Mr. Reid then asked about the locations of smaller clams. Audience member Lou Legace responded that Area 5 in the second proposal has a relatively large number of small clams. The August 2017 industry-based clam dredge survey was done from his boat. They didn't survey part of the area to the south because it was closed (Nantucket Lightship Habitat Closure Area). They also confined the survey to federal waters and worked where the big boats (and the NMFS survey vessel) could not fish. He further explained that the suggested 4-year rotational time frame usually allows the clams in an area to recover. He added that through last years' survey they found compelling evidence that there wasn't critical habitat there. Not much epifauna. He referenced Eric Powell's comments that the boreal habitat is presently migrating to deeper water. Overall, he argued there is incomplete evidence to support the need for habitat protection, and the issues warrant further study.

Audience member Chad Brayton added that he fished on the shoals in the 1980s and 90s. When I first got fishing in Area 5, clams were mature, but small. We just went back there, and clams are still small. Mr. Legace added that these clams will grow larger, and Dr. Powell's estimate was

---

<sup>1</sup> DeCelles, G. R., D. Martins, D. R. Zemeckis and S. X. Cadrin (2017). "Using Fishermen's Ecological Knowledge to map Atlantic cod spawning grounds on Georges Bank." ICES Journal of Marine Science 74(6): 1587-1601.

FINAL

that these smaller animals are about 13 years old. In the 1980s and 90s, we crisscrossed those shoals many times. Couldn't find any there. Now many clams are there.

Peter Hughes asked if there are density dependent population dynamics with these small clams, or if their dynamics are more climate-related. Mr. Brayton commented that the small clams on the shoals are very densely distributed, on top of each other, which is different than off New Jersey, where densities are lower. Mr. Legace offered that Mr. Brayton had discovered the clam set to the east. That area was a desert before, but now they can load the boat easily. He described the dynamics of the fishery, that they judge catch rate in cages (32 bushels each) per hour, moving fishing locations based on economics. Tide, air pressure, wind direction, current speed and direction are the most important determinants of fishing location. A boat can be harvesting at an exceptional rate and then get nothing as things shift. In many instances they leave an area alone for a week to a year, go back, and its brand new. These are the realities of fishing for clams.

Peter deFur commented that we are trying to mentally superimpose lots of data. Do we have information on the multiple uses of these areas? Is the PDT looking at other spawning areas for species other than cod? Also, can you overlay drop camera surveys with the industry-based clam survey? Ms. Bachman commented that the Omnibus Habitat Amendment included an analysis of hotspot tows where large numbers of large fish occurred between 2002 and 2012, and the PDT can revisit this work, however there were few hotspots identified inside this management area. The DeCelles et al work considers a longer time frame.

Dr. deFur asked if the Habitat Amendment included all species managed by this Council, or other species managed by the MAFMC and the states, wondering whether we should consider effects on other species. Ms. Bachman noted that OHA2 focused on groundfish, but that certainly we can explore effects on other stocks, and this could include specific species of interest to the Committee. (Note that from an impacts analysis perspective, the Habitat Amendment considered effects on a broad suite of species, not only those managed by NEFMC.)

Libby Etrie asked Mr. Shriver, Mr. Brayton, and Mr. Legace what metrics they were using to determine when to reopen a rotational area – surfclam productivity? A time interval intended to minimize adverse habitat impacts/promote habitat recovery? Mike Ruccio asked if industry members had considered making Area 4 a rotational area as well. Mr. Legace responded that the point of doing area rotation would be to establish that the areas are not as important [in terms of habitat value] as the Council asserts. The rotational program would allow data to be collected. They are looking for continued access to the resource while more data are being gathered.

Ms. Etrie followed up, asking if the science isn't being done, would the areas remain closed? Mr. Legace responded that they'd put in the effort to make the research happen. The whole purpose of closing clam beds is to get evidence that this area isn't as critical as everyone thinks it is. Mr. Ruccio asked if the four-year interval would be fixed, or adaptive based on data collected. Mr. Shriver commented that they'd have to look at that and provide an answer later. Mr. Ruccio asked again if Area 4 could be rotated as well, and Mr. Shriver agreed the committee could consider that if desired. Mr. Legace commented that Area 4 has been fished for decades, is

**FINAL**

shallow, and has a low abundance of cobble or boulder habitats. It is also the area closest to port and is important in the winter for this reason.

Matthew McKenzie asked if right whale critical habitat overlaps the HMA. After looking at the overlap between the designation and the HMA, Ms. Bachman responded that the eastern half of the HMA is critical habitat for right whales.

The Chairman then asked Domenic Santoro to speak to the mussel dredge exemption he was suggesting. This exemption includes a single area along the western edge of the HMA. Mr. Santoro started by stating that any mussel dredge exemption should have a VMS component and reporting requirements (VTR), and that vessels should be outfitted with declumpers to return small mussels to the seafloor. I chose the western area (I had originally proposed an exempted fishing permit to survey the entire area) using the complex habitat information provided by staff, and looking for where known, previously fished mussel beds were located outside of these complex habitat areas.

Dr. deFur asked if the areas identified as current mussel beds in Mr. Santoro's letter are the only areas where the mussels are currently harvested. Are there other areas? Mr. Santoro clarified that the areas identified with circles on the charts are those where there is recent industry information about mussel presence, but that the areas are not currently being fished. He commented further that other than inside the HMA, I haven't found any mussel beds outside Cape Cod Bay, despite a lot of exploratory fishing in the last few months. He said that he did find a few seed beds adjacent to the HMA.

Mr. Grout asked why the exemption proposal (i.e. the rectangular area on the western side of the HMA) extended so far south, when no beds are known from the southern section of the area. Mr. Santoro commented that station D4 from the August 2017 industry-based clam survey had a large catch of mussels, and adjacent areas to the south are similar in terms of depth and other characteristics, so he assumed those areas to the south were very likely to have mussel beds as well.

Dr. McKenzie clarified that the mussel fishery is under development in this area, and Mr. Santoro agreed. He commented that mussel dredge vessels aren't required to report catches currently via vessel trip reports (unless the vessel carries another federal permit), and that he hadn't been aware the habitat closure was being developed until January 2018.

Mr. Alexander asked how the Council could grant an exemption for mussel dredges when we don't regulate the mussel fishery. Mitch MacDonald replied that the habitat closures are based on gear restrictions, regardless of how the fishery is managed, so would be granting a gear-based exemption. Mr. Stockwell asked if that would be true under an exempted fishing permit as well, and Mr. MacDonald said that yes, that would be a gear exemption as well, but for a specific research program and affiliated vessel(s) (in this case, a single vessel).

Mr. Stockwell agreed that Mr. Santoro should be encouraged to pursue the EFP, but commented that he was concerned about participation in the fishery potentially increasing in the future, arguing that creating an exemption area through this framework could open Pandora's box. Other

**FINAL**

industry members could then join the fishery without any effort controls. He suggested that any exemption should have clear boundaries; this sounds like a good situation for an EFP. Mr. Santoro agreed, and that's why he had suggested that any exemption should be in the form of a letter of authorization so that only one (or two, or whatever number is appropriate) exemption could be issued.

Ms. Etrie asked what NMFS needs from the Council in terms of feedback on the EFP request. She commented that she wasn't comfortable with a blanket exemption for a fishery without controls on who may be participating, but that she supported an EFP to gather data, and bring information back that could be used to support a future action. What does the Council need to do to move this along? Mr. Ruccio referenced the August 23 letter from Regional Administrator Mike Pentony to Executive Director Tom Nies. The letter gets at this issue. Domenic has done a ton of work getting us to understand what he wants to do, and many of us are interested, but we're not really sure how to proceed with this because it is a unique situation. It's not a regulated fishery, and the species that Domenic is interested in fishing for are themselves a habitat feature. We did something unusual here, in that we wrote a letter to the Council looking for guidance about what questions you want to see answered (normally we do a preliminary determination that we have enough information to proceed, and then issue a notice in the Federal Register and seek comments that way. Domenic has a general idea of what he wants to do, but we don't know to what end, and what additional information we might gather. For example, should we ask for side scan sonar data? Should there be a specific survey design in terms of the station layout? We want to set up the EFP so it is valuable not only for Domenic but for the Council.

Mr. Stockwell reminded the Committee that we struggled with getting OHA2 out the door. The previous regional administrator was adamant on protecting these areas. Is NMFS advocating starting a fishery in this area? That's a slippery slope. But this is not to say we can't work together through your office and this council to enable Domenic to have a fishery offshore, but not sure about using the closed area as a place to begin.

Mr. Ruccio commented that if there is a reluctance to outwardly say no, it's in part because we are allowing clam dredges in the area now, and that is a somewhat similar gear. When the Committee met last time, you were receptive to at least considering an exemption for the fishery, as we are trying to be responsive to that, and find a way to make it work. If the Committee thinks we should say no to this exemption, we are open to that as well, but we didn't want to close the door on it. It's been an unusual process, and this issue was raised towards the very end of the OHA2 process. Mr. MacDonald noted that there are regulations that specific the process for issuing EFPs at 50 CFR §648.12 (Experimental fishing). If you're thinking about allowing mobile bottom tending gear in this area, the Committee and Council should consider similarities and differences between mussel dredges and gears allowed and prohibited in the HMA.

Mr. Santoro emphasized that he would have been thrilled to find mussel beds, and would like to work outside the HMA, but that he hasn't found other mussel beds. There are a lot of mussels inside the HMA, such that a balance between having a fishery and maintaining mussels as habitat can be achieved. I know mussels are habitat, but they are also a fishery. The video I sent to staff shows that we make very short tows.

Scott Olszewski asked if the EFP was intended to be for the entire HMA, or just the rectangular area along the western side. Mr. Santoro said the EFP was for the entire area, to identify mussel beds throughout the HMA. But since the EFP is under review and the timeline for that is unknown, he suggested an exemption to be designated through the framework in just the western portion.

Ms. Etrie commented that she is not opposed to an EFP for an emerging fishery – it's how you gather data – but that she not sure about the area in which the EFP should apply. In terms of the actual fishing, she asked if there would be an observer on board to do data collection, and commented that a structured, gridded sampling approach makes sense.

The Chair said he was looking for a Committee recommendation on this issue. Mr. Reid asked if the McBlair area suggested by the clam industry might be large enough for an EFP. Mr. Santoro commented that he was confident he could isolate smaller areas that would support a fishery, but not without additional opportunities to fish in the HMA and identify the location and size of the mussel beds.

#### **1. Motion: Reid/Alexander**

**Move to task the PDT to analyze five of the areas proposed by the clam industry (Rose and Crown, McBlair, Zone A, Zone B, and Zone D) for development into a rotational area management scheme, which should:**

- a. Minimize adverse effects on EFH per the goals/objectives of OHA2;**
- b. Consider historical fishing effort;**
- c. Develop 2-3 distinct areas for rotation with a timeframe of a minimum of 7 years open per area in succession;**
- d. Consider age distribution of clams in these areas.**

Mr. Reid explained that he chose a 7-year rotational frequency because that would allow 14 years for habitat recovery under a three-area system.

Mr. Stockwell commented that he had a similar idea, and he wanted to ensure that cod spawning areas were protected. He expressed some angst about rotational management generally and commented that he would like to see the wording as “a minimum of 7 years”. Mr. Reid agreed that this language would work for him.

Dr. McKenzie was opposed to the motion, because he was not convinced the approach would be approvable. This action has been sucking up three years of staff time. This was supposed to be about high energy sand, per the purpose and need statement. I'm not convinced this meets the OHA2 objectives. Also, the exemption areas include cobbles and boulders. There's mission creep here. We don't have PDT analysis. I'm concerned about the precedent to allow gear into habitat management areas that we spent hundreds of hours developing.

**FINAL**

Dr. deFur asked how much of this is approvable? Hate to waste PDT time. What's the purpose of the rotational timeframe? Is there a measurable threshold that would be used to trigger rotation? Does an area stay closed until it has measurable cod spawning or clam set?

Mr. Ruccio commented that the proposal doesn't appear to directly address the Regional Administrator's comments from June. He suggested that the PDT evaluate rotational management from a habitat perspective. He was willing to support the approach for analysis.

Ms. Etrie asked if the Committee would be asked to choose all the areas in combination, or if they could be mixed and matched. Ms. Bachman responded that the PDT could characterize the areas individually and in aggregate. We might have low sample sizes from some data sets without combining the areas.

Ms. Etrie commented that she was willing to support the approach for analysis. I will be evaluating alternatives based on the problem statement. Maybe we can find middle ground. This is not a clam biomass action.

Mr. Alexander noted that there will be an enforcement committee meeting in October, which would provide an opportunity to discuss the feasibility of the size/shape/number of areas. I support the motion so we can have that discussion. The industry has worked hard to come up with a proposal. I'd like to have a fishery. I've been thrown out (using bottom trawl), but that doesn't mean everyone should be.

Mr. Stockwell agreed with Dr. McKenzie's concerns about mission creep, but noted that we asked industry to come up with an idea, and they did. Need the analysis. We owe this to the industry and ourselves.

The Chair asked for public comment.

Dave Wallace: I appreciate the Committee's willingness to consider this. Hope you will support it so PDT can analyze. This is a reasonable compromise to having all these small boats put out of business.

Erica Fuller (Conservation Law Foundation): Concerned about the slippery slope. We have eliminated other closures, would there be a new practicability analysis? Mr. Ruccio clarified that she was asking if they would redo the analysis completed for OHA2. Ms. Fuller responded that practicability (approvability) was considered by sub-region. Mr. Ruccio agreed that they would reconsider practicability when approving this action. He wasn't sure how that evaluation would be updated.

Chad Brayton: To the point about mission creep, we were asked to identify our areas. We want some grounds open to stay in business. There was no clam fishing for many years on Nantucket Shoals. The effect we have had on cod has been minimal. I question what kind of habitat we are trying to save. On Rose and Crown, there are lots of vessels and the bottom is so diverse. Moon tide and nor'easters have similar impacts [to clam dredges].



**FINAL**

Dr. deFur asked what other options are there? Ms. Bachman responded just these, today. He agreed that the Committee needs to set the terms. The Chair agreed that the options on the table at this point were No Action, and this motion.

Lou Legace commented that he appreciated the PDT and Habitat Committee for accommodating our request for more study. It takes a great deal of time and effort. We are trying to help. I don't see mission creep as a bad thing in all cases. We can get better science. We want more time to gather the information.

**Motion #1 carried 8/1/1.**

The Chair asked if the group wanted the analysis brought back to the Committee for review, or if we should have a committee of the whole at the September Council meeting. Ms. Bachman noted that a PDT meeting has been scheduled for September 18, and the team could put some evaluation together, although the report might come out close to the Council meeting.

Mr. Stockwell commented that he was not in favor of the committee of the whole approach. The PDT should report back to the Habitat Committee. We could do final action in January. We already have a 4-day meeting in September.

Peter Hughes noted that Eric Powell has information to share with the PDT in September, and that Kevin Stokesbury will be there (he has been asked by the clam industry to do a BACI study). This is a framework. In the future, as additional science presents itself, this can be revisited. Correct?

Mr. Ruccio commented that yes, the measures could be revised in a subsequent framework, subject to Council priorities.

Ms. Etrie noted that she didn't want all the May Committee motions off the table. But I'm not sure which to include. We don't have a clear winner in terms of meeting the problem statement.

The Chair commented that the message he heard in June was that the options from May wouldn't pass muster. Council didn't put these things in the framework, which is the whole reason we are back here.

Ms. Etrie asked if any of those alternatives with modifications would be approvable? We have a high bar to hit. Mr. Reid responded that we did just tweak them through this motion. We have four portions of a motion and five areas. Several options within that.

Mr. Hughes acknowledged that the 1-minute cellular-based VMS polling is not approvable, but there is already 5-minute pinging in the South Atlantic region, and that capability is available here. I don't want the 5-minute ping to fall out of this. The fleet is already releasing their confidential information and are in process of making a study fleet. Excellent for all fisheries going forward, to be able to fish on a finer scale. The Chair agreed that monitoring options should be considered here. Dr. deFur commented that was his reason for asking about the analytical criteria. I want the PDT to look at monitoring, habitat restoration and preservation,

enforceability, etc. Ms. Bachman commented that the PDT can work through these issues with industry and OLE, but there should be a monitoring alternative specified in the document.

The Chair asked when the Committee would get feedback from OLE on feasibility of enforcing these areas. Bill Semrau (OLE) responded that it was tough to say exactly, but that they area willing to work with industry on this. We need to set up a monitoring plan. Audience member Chad Brayton commented that he had been talking with Woods Hole Group. They do 5-minute pings. Skymate does it too (Boatrac does not). He noted that we should be doing 5-minute pings on the Lori Ann next week.

## **2. Motion: Stockwell/Alexander**

**Move existing alternatives under sections 4.1 and 4.2 of framework document (clam and mussel exemption areas developed at May 22 Committee meeting) to considered but rejected, retaining 4.3 and 4.4 (monitoring and sunset provisions). Also, amend section 4.3.2 (enhanced VMS monitoring for clam fishery) to require 5-minute vs. 1-minute polls.**

Ms. Etrie asked if this would mean striking 4.3.3 (monitoring for the mussel fishery), since there are no alternatives related to mussel dredge exemptions on the table. The Chair commented that we will discuss such alternatives next. Ms. Etrie confirmed that enforceability considerations would be included, and the Chair agreed. There was no public comment on the motion.

**Motion #2 carried 10/0/0.**

The Chair then asked for motions on mussel exemption alternatives, or recommendations on the EFP request.

## **3. Motion: Stockwell/Alexander**

**Move to recommend to the Council that the area fishable under a mussel EFP be limited to any exemption areas approved for the surfclam fishery.**

There were no public comments immediately after the motion was made (but see Bill Silkes' comment, below).

Dr. deFur asked if the Committee needed to make a motion on supporting the EFP in general? Mr. Ruccio responded that he was taking the motion to mean that NMFS would not issue an EFP until the Council takes final action, which is not awful. But I take from the discussion that there is support for the EFP. There would be public notice further in the process.

Dr. McKenzie commented that he had similar concerns about mussel and clam exemptions, and in general is gravely concerned about fishing in the HMA. I want Mr. Santoro to succeed, but I oppose issuing an EFP in an HMA.

Ms. Etrie asked if the intent with the EFP was to allow only this one vessel to participate or any vessel? Mr. Ruccio confirmed that the application is for the single vessel. Mr. Reid asked if we

## FINAL

should mention a letter of authorization as well, or if the EFP is enough. Mr. Ruccio replied that one outcome of the EFP process would be a long-term letter of authorization.

Ms. Etrie was supportive of the motion, and of an EFP. She noted that it was important for the data from the EFP to come back to the Council. Mr. Ruccio noted that he didn't think this needed to be made explicit; i.e. if the EFP is issued, there isn't anything that automatically turns an exempted fishery into a longer-term exemption, although this could be one outcome of the EFP process. We ask for documentation associated with the EFP so there will be some sort of report that can be provided to the Council with results of the experimental fishing.

The Chair asked for clarification on the purpose of the EFP. Mr. Santoro responded that the purpose was to take twelve trips to identify the distribution of mussel beds throughout the HMA. He clarified that the intent of the motion was to support an EFP in any areas identified for surfclam exemption, not to create a long-term mussel dredge exemption in those same areas, and the Chair agreed. Mr. Santoro commented that this could delay the EFP by several months, and Mr. Ruccio agreed that it would make the EFP contingent on Council approval of the clam exemption areas, noting that final action was planned for December, and there would be a few months between that meeting and publication of the final rule.

Audience member Bill Silkes (American Mussel Harvesters) commented on the motion. Been in business 33 years. Domenic Santoro was proposing the EFP and then the fishing exemption as two separate things. I fear we are forgetting the exemption proposal [and just focusing on the EFP]. I've heard the comments about a "slippery slope." During the 1980s and 90s, I had one of the three vessels fishing the shoals. At that time, US landings represented 95% of the market. It's now owned by Canada. There were only three boats in the Nantucket Shoals mussel fishery's heyday, maybe a \$10-12M fishery. The Council granted a mussel dredge exemption [from the regulated mesh area] in 1997. This exemption covered a larger area, including the HMA. The Council's finding was that the exemption wouldn't negatively impact cod. The exemption has been in place for 21 years and only recently, 50% of the areas have been taken away. We harvested mussels there in 2016. I've heard a number of people talk about habitat dynamics. In 1992, there were five days of gusts [that changed the character of the mussel beds]. Where I fished last week, there are boulders the size of Volkswagens where there were mussel beds. When I look at the overlays and see areas labeled as complex or stable and long-lived epifauna, we are looking at history. Boulders of today could be sandy bottom tomorrow and vice versa. We need a good understanding of the sedimentation. If mussels were a managed species would they be a fishery or a habitat?

### **Motion #3 carried 7/1/2.**

Ms. Etrie asked if it would be appropriate to strike section 4.3.3 on mussels? Ms. Bachman agreed that she assumed this alternative was not in the document given the prior motion and lack of alternative for an exemption area.

The Chair asked for input from the Committee on the information to obtain with the EFP.

## FINAL

Mr. Stockwell asked if the EFP would require VMS, and Ms. Bachman clarified Mr. Santoro supported VMS if a long-term exemption is granted.

Ms. Etrie commented that she wanted to understand the economics of how fishing in the HMA related to the mussel fishery overall. The Committee agreed this would be useful to know.

Mr. Ruccio asked if the Committee/Council needed to know the spatial distribution of mussels. He acknowledged that the agency had taken some feedback from today's conversation.

Ms. Etrie emphasized that she wanted the EFP to go forward because if we create a clam exemption, we have opened the question of exemptions for the mussel fishery as well.

Mr. Reid confirmed that the sense of the group is that NMFS won't do anything with approving the EFP until after clam action is completed. He suggested that instead, NMFS move ahead now to get data. Certain Council members want the EFP to move forward independent of the framework.

Mr. Hughes noted that a fundamental question is whether mussels are food, or habitat? We have to weigh the benefits to the nation. An EFP should move forward. I view mussels as food.

Mr. Stockwell commented that the timing of the EFP appeared to be concurrent with the flow of the framework. It seems that EFP can't move forward until spring. An HMA is an HMA.

Ms. Etrie expressed her view that the mussel discussion is entirely different. Mussel beds are habitat, based on OHA2. This is the most prudent course of action. I'm fine with waiting. Hopefully in the end the EFP will be workable.

Ms. Bachman confirmed that the PDT will work on the analysis and bring it back to the Committee. She asked if the EFP discussion should move to the December meeting, assuming final action on the framework might be delayed beyond that meeting. The Chair agreed that the intent was to bring analysis of clam exemptions back to the Committee first, but that the EFP discussion should move forward at the next Council meeting. Ms. Bachman agreed to draft a letter to the Regional Administrator with the Council's response to his questions about the EFP.

### ***AGENDA ITEM #2: EFH CONSULTATIONS***

Sue Tuxbury (GARFO Habitat Conservation Division) updated the Committee on their EFH consultation activities. Projects of interest include harbor dredging in New Haven, CT, where they are looking to mitigate losses of winter flounder habitat, working with the US Army Corps of Engineers and the Long Island Sound Regional Dredge Team. They are also evaluating a sand mining project on the north side of the Cape Cod Canal to be used as fill for a 41-acre beach nourishment project for Town Neck in Sandwich, MA. The current project footprint includes a substantial amount of habitat consistent with the new nearshore juvenile Atlantic cod HAPC including complex gravels, cobble and boulder, and eelgrass. GARFO and the Corps previously agreed that complex habitats would not be impacted and that the current nourishment footprint would be modified to avoid impacts to habitats consistent with the cod HAPC. The Corps is

currently proposing to authorize sand mining north of the nourishment site but has not provided GARFO with the habitat information or a modified nourishment footprint. The sand mining action is currently out for public comment. They are also looking at three navigation projects in Maine, on the Great Chebogue River, Piscataqua River, and in Wood Island Harbor, as well as hydropower relicensing in Lowell, MA, on the Merrimac River. In addition, they are working to improve fish passage for shad through Turners Falls Settlement negotiations on the CT River.

Ms. Bachman clarified that the purpose of the dredging in New Haven was to deepen the harbor. Alison Verkade, HCD staff, agreed. The deepening was evaluated in an environmental assessment but that work was completed in the late 1980s and early 1990s. The existing depth is 35 ft, and they are considering deepening up to 42 ft at most. HCD is concerned about subsurface blasting. Dredged material will be beneficially reused to restore and create new wetland (saltmarsh) areas and winter flounder spawning habitat.

***AGENDA ITEM #3: OFFSHORE ENERGY DEVELOPMENT***

Ms. Tuxbury also updated the Committee on offshore wind team activities, summarizing the status of offshore wind development at various sites. The wind team is comprised of staff from all GARFO divisions, plus Jessica Coakley from MAFMC and Michelle Bachman from NEFMC, and has been holding monthly calls. She emphasized the large number of BOEM solicitations and generally that there is a lot of activity on offshore wind development. Highlights are listed below.

- ***Massachusetts***
  - Vineyard Wind
    - BOEM is working on the draft EIS (original was early October, but will likely be later)
    - Working with BOEM on “concurrence pts” for One Federal Decision resulting from EO 13807. After some back and forth, we have reached concurrence on purpose and need and draft alternatives to move forward
    - Vineyard Wind is beginning to provide information on construction scheduling
    - Process moving very quickly as BOEM has committed to do the EIS in a year timeframe
    - Will be opportunity to comment during Draft EIS stage
  - Bay State Wind
    - Modified spacing and layout to an E-W orientation with 1 mile spacing
    - COP anticipated end of this year or very early 2019
  - Unleased Areas
    - Expect auction by the end of this year
- ***Rhode Island/Massachusetts WEA***
  - South Fork Project
    - BOEM has received the COP and will be holding interagency meeting on September 11<sup>th</sup>
    - Anticipate Notice of Intent to be issued in October with scoping meetings in early November

- Revolution Wind
  - Working on survey plans for site assessment (geophysical/geotechnical)
  - COP may be submitted to BOEM in early 2019
- ***New York***
  - New York Bight Call for Information
    - BOEM is going through information received in CFI for New York Bight
    - They will be modifying the area ahead of designated leases and may be contacting NMFS for additional analysis on the revised areas
    - NYSERDA is working on setting up fisheries working group
  - Empire Wind
    - Recently received SAP for review and provided comments
    - Did talk with them about sequencing G&G to avoid high fishing/squid spawning times in hotspot that overlaps with area
    - COP is anticipated in 2020
- ***New Jersey WEA***
  - US Wind
    - SAP was extended a year and due 2019
    - COP date not yet anticipated
  - Ocean Wind
    - Had a kick off meeting with agencies over the summer
    - COP anticipated as early as April 2019
    - Want to start construction early 2021
- ***Delaware WEA***
  - Skipjack
    - Have only had preliminary meeting which covered this and South Fork, starting to meet with our Protected Resources team
    - COP is due June 2019
    - Cable to MD (and MD site selling to DE)
- ***Maryland WEA***
  - US Wind
    - SAP approved in March 2018
    - Construction of Met tower this summer
    - COP anticipated end of this year or early 2019
- ***Virginia***
  - Coastal VA Offshore Wind
    - Research Lease – 2 turbines
    - Now working with Ørsted so turbines are changing from jacket pile to monopole which may require re-initiation of consultations. BOEM is making that determination
    - Interagency meeting was held over the summer
  - Commercial lease
    - SAP approved end of 2017
    - Anticipate buoy installation in 2019

- COP is due 2022
- *North Carolina*
  - Avangrid Renewables
    - Received 1-year SAP extension in May 2018
    - COP date not yet anticipated

Responding to a comment of Sue's about the short timelines for development of NEPA documents, Terry Alexander asked how does BOEM get away with a 40-page EIS? She responded that their EIS documents have page limits owing to a Secretarial order, but there will be lots of appendices. (Note the Vineyard Wind EIS is likely to be longer than this; around 150 pages. We understand that the Essential Fish Habitat Assessment and Biological Assessment sections will be included as appendices.)

Peter deFur asked what sorts of information GARFO sent on the NY Bight call areas. Ms. Tuxbury responded that they worked with NEFMC and Katie Connelly at NEFSC to provide revenue data by area. Ms. Bachman added that the wind team has been working out how to prioritize analytical efforts and what sorts of information to provide – ultimately, it's BOEM's job in conjunction with the developers to do environmental review for their NEPA documents. Is the role of NMFS to provide analysis already completed? Or should the focus be on providing guidance?

Ms. Tuxbury added that NYSERDA is setting up a fisheries working group, and has already established an environmental technical working group which focuses on wildlife and habitat. We are an observer to that process.

Ms. Bachman noted interaction with the wind team has been very helpful. She asked if the Committee had any guidance on where to focus Council staff efforts? She noted that NEFMC and MAFMC staff have discussed hosting a workshop to work through certain issues related to offshore wind but are uncertain about the scope/goals of such a meeting.

Dr. deFur responded that in the Mid-Atlantic, we hear from the commercial sector wanting the process to accommodate their needs. What is the mechanism to have their voice heard and considered? How will change happen? What door do we go through? Ms. Tuxbury responded that BOEM does require a fisheries liaison for each developer. There are a lot of projects though. We have discussions with BOEM on decision-making. We have been advocating for that. The newly formed Responsible Offshore Development Alliance (RODA) may help. Eric Reid agreed, but noted that the Alliance is in its infancy. A good portion of the Habitat Committee is on the board of directors. Annie Hawkins is the executive director. She introduced RODA to the MAFMC. When you have a 40-page EIS, no one is listening to you. That is why RODA was formed.

Ms. Tuxbury noted that NMFS has commented extensively on a regional approach to collaborative fisheries-related research. RODA may be a good group to help with that. Massachusetts project timelines are moving ahead quickly.

## FINAL

Audience member Dave Wallace commented that his concerns about clam dredge access on Nantucket shoals (which are many) pale in comparison to his concerns about wind energy. Green energy isn't green when there's huge steel structures in the water, and the overall carbon footprint is worse than a gas or nuclear plant. NMFS cannot jump up and down to complain about these issues and their impacts on fisheries because the Administration supports wind development. I'm shocked that the Councils aren't jumping up down. Many of the state governors have bought into the idea that wind energy is a great idea. BOEM is allowing energy developers to change the nature of fishing unless we do something about it. There is no way to get through an array of turbines if they are 2,000 feet apart. Don't know how the Council is going to stop this, because of the state agency members and state support for these projects. We are set up to be severely damaged. Plans don't change based on our comments.

Julia Livermore (RIDEM) and Kathryn Ford (MADMF) gave slides on MA/RI fisheries research priorities for offshore wind.

John Quinn asked if there is research from Europe that is transferrable on the topics of insurance, radar, cables interfering with fishing. We are not starting from scratch. Dr. Ford replied that the first stage is to assess what we have for background information and existing work. BOEM has already done some of that. Specific to radar, she had heard feedback on both sides of the issue, some suggesting that the turbines cause interference and other sources suggesting that they don't cause a problem.

Dr. deFur asked if the developers required to meet with stakeholders in public. Are there representatives of both commercial and recreational fishing communities? There should be coordination between the two sectors.

Ms. Livermore noted that BOEM has best management practices, and that some states require certain engagement on the part of developers as part of their power purchase agreements. For example, in RI engagement with the fishery group is required; in MA it is strongly suggested, and developers have complied.

Next, Lyndie Hice Dunton briefed the Committee on NYSERDA's activities related to offshore wind development over the past two years, beginning with their blueprint document in 2016.

Mr. Reid asked if she knew the total ex-vessel value for the fisheries working in the NY Bight Areas identified by NYSERDA. Ms. Hice Dunton commented that it was certainly in the millions, but she didn't know the exact value offhand.

Mr. Alexander asked how long wind leases are held for. She responded that they are for 25 years. He asked about compensation payments to fishermen; she noted that they have been investigating compensation approaches used in European wind farms. In some cases payments are made only during construction, in others they occur over a longer period, or there is community-level compensation.

Mr. Alexander asked about fishing revenue analysis, and whether they are assuming that revenue for a trip only overlaps the area if the reported coordinates fall inside it. She responded that they



have evaluated many data sources, but VMS data seem to be preferred for understanding effort distributions, although VMS data are not available for all fleets.

Dr. deFur asked about the state-federal interplay on these issues. Ms. Hice Dunton noted that they have been consulting with the Coast Guard on navigational safety. Most of the areas are in federal waters, and BOEM has most of the regulatory authority. In NY, developers must consult with the state.

***AGENDA ITEM #4: OTHER BUSINESS***

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.

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