



New England Fishery Management Council

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MEETING SUMMARY

Habitat Committee and Advisory Panel

August 20, 2020

9:00 a.m. -1:12 p.m.

Via Webinar

The Habitat Committee and Advisory Panel met jointly to discuss offshore renewable energy development, Council policies on non-fishing impacts to habitat, NMFS aquaculture planning, and 2021 priorities.

MEETING ATTENDANCE: Committee: Eric Reid (Chair), Peter Aarrestad, Terry Alexander, Rick Bellavance, Peter deFur, Peter Hughes, Scott Olszewski, Melissa Smith, and Council chair John Quinn; Council member Mike Sissenwine; Advisory Panel: Chris McGuire (Chair), Beth Casoni, Rip Cunningham, Lane Johnston, Jeff Kaelin, Meghan Lapp, Elizabeth Marchetti, Drew Minkiewicz, Ron Smolowitz, Dave Wallace; Council staff: Michelle Bachman (Plan Development Team Chair), Rachel Feeney, Jonathon Peros; Sue Tuxbury, Chris Schillaci, Alison Verkade, David Stevenson, Pete Burns, Sharon Benjamin (GARFO); Julia Beaty (Mid-Atlantic Fishery Management Council staff). Twenty-four members of the public joined the webinar; those who asked questions or made comments are identified in the summary below.

KEY OUTCOMES:

- Members learned about the essential fish habitat (EFH) consultation process for offshore wind and had an opportunity for discussion with Sue Tuxbury, GARFO Habitat Conservation Division.
- Members received updates on aquaculture and submarine cable activities and environmental effects based on white papers prepared by the PDT, and some volunteered to help draft aquaculture and cable policies.
- Chris Schillaci, GARFO Aquaculture Coordinator, briefed members on the aquaculture sections of EO 13921, including plans for identification of aquaculture opportunity areas. Staff will keep track of a forthcoming request for information notice on this issue.
- Members discussed work priorities for 2021. All priorities identified by staff in advance of the meeting were suggested for continued Council consideration during September and October. The Committee may meet again prior to the October Council meeting to discuss this issue.

AGENDA ITEM #1: GENERAL UPDATES

No changes to the agenda were suggested. Mr. Reid noted the briefing materials prepared by Coonamessett Farm Foundation (CFF) staff on their camera/clam dredge survey work in the Rose and Crown area of the Great South Channel Habitat Management Area (HMA, document #12). There may be an opportunity at a later meeting to hear more from them on this project, once data have been analyzed. CFF hopes to move into Phase 2 of the project, potentially getting footage in the Davis Bank East area of the HMA.

Ms. Bachman noted that the final rule for the Coral Amendment remains pending; the amendment is still under review. She also noted that while an update was not planned for this meeting, the Northeast Regional Habitat Assessment (NHRA) project is ongoing, having just completed its first year. A more detailed update on this assessment can be planned for a future meeting once some modeling results are available.

AGENDA ITEM #2: OFFSHORE WIND UPDATES – FOCUS ON EFH CONSULTATIONS

Ms. Bachman and Ms. Tuxbury gave an overview of the EFH consultation process with a focus on how it works for offshore wind (document #3). One facet emphasized was the need for early coordination and planning given the timelines under FAST 41 and the concurrence points under One Federal Decision. While there is some additional time for NMFS to provide conservation recommendations given that these are expanded EFH consults (60 vs. 30 days), the timelines and milestones require being clear about information needs early on so that data about the project area are available when needed to evaluate potential effects of the project and suggest measures that will avoid, minimize, and mitigate these effects. This is consistent with NMFS ‘communicate early and often’ consultation approach. NMFS developed, and has continued to refine, habitat mapping recommendations so that they can have the information needed to understand the habitat types that occur in the project area. Ms. Tuxbury said there has been a benefit to writing and distributing the recommendations in terms of aiding early coordination with BOEM and developers.

Going forward, in the near term, the Council can support NMFS habitat conservation recommendations in terms of our communication with the Bureau of Ocean Energy Management (BOEM); longer term we can designate EFH and Habitat Areas of Particular Concern (HAPC) with an eye towards highlighting locations/features where non-fishing impacts including offshore wind development are a conservation concern. In terms of post-construction benthic monitoring, the Responsible Offshore Science Alliance (ROSA) may be a good venue for developing consistent and useful approaches to this type of monitoring work.

In response to a question, Ms. Tuxbury clarified that the habitat mapping recommendations are not part of BOEM’s formal benthic habitat survey guidelines, but that they have nonetheless been helpful for the EFH consult process. She guessed that revising BOEM’s guidelines would take quite a bit of time and that it seemed unlikely that a revision would happen soon. She agreed with a comment that it would be helpful to continue reiterating similar comments, e.g. the need for high quality data to support EFH consultations, etc. In response to a question about best available science, she noted that NMFS uses the best available scientific information and

incorporates any information that they can find or is provided to the agency when conducting an EFH consultation. Regarding NMFS mapping recommendations, a member suggested providing examples visually, for example providing sample habitat maps that would meet NMFS information needs.

A committee member asked about proprietary data as well as the possibility of conflicting habitat characterizations from different sources. Ms. Tuxbury indicated that developers generally mine available existing data prior to conducting surveys and build on those efforts. There are generally differences in scale, i.e. existing samples covering a broad area at low resolution, and project-specific sampling covering smaller areas at higher resolution. These can be challenging to reconcile. Also, survey results are not necessarily peer-reviewed, unless they are going to be published. Ms. Bachman noted that there are efforts underway to disseminate environmental data via regional data portals; this will require some time to determine formatting/standards but is under development.

In terms of coordination, Ms. Tuxbury affirmed in response to a question that they do work closely with the states to share information and discuss recommendations, especially for projects within or partly within state waters. This includes having state and federal fisheries and habitat staff at meetings with developers to discuss information needs.

An AP member recommended that we collectively pursue adaptive management and sampling in this context, with frequent reports on monitoring data/outcomes, so that we can learn from early projects as later ones continue to be developed. Another member suggested that both impacts and benefits to benthic habitats (specifically reef effects) should be accounted for during monitoring. Ms. Tuxbury noted that they are recommending before-after-gradient approaches to detect changes at varying distances from installed structures.

Council member Mike Sissenwine asked if the Council should be going further than participating in discussions about how to best design and coordinate benthic sampling efforts, and towards identifying quantitative thresholds for unacceptable levels of disturbance to different types of habitats.

Audience member Jason Clermont, CSA Ocean Sciences, observed that existing benthic surveys appear to be driven more by BOEM's guidelines than by NMFS' recommendations, and wondered who has the authority to request additional information from developers. Ms. Tuxbury said NMFS' goal was really to supplement BOEM's guidance, but that getting information early in the permitting process, and being specific about NMFS' needs for information, will make EFH consults better. They continue to learn how the geological and geophysical surveys are done, and what information can be gleaned from them for EFH work. Audience member Brick Wenzel (Saltys LLC) asked about co-location of aquaculture with offshore wind projects and asked how NMFS would be collecting information about such projects to estimate impacts. The question was deferred until the aquaculture portion of the agenda, but Ms. Tuxbury noted that none of the offshore wind projects were proposing co-located aquaculture installations, as far as she was aware.

AGENDA ITEM #3: DEVELOPMENT OF COUNCIL POLICIES ON NON-FISHING IMPACTS TO HABITAT

The Habitat Committee identified cables, aquaculture, and floating offshore wind as possible topics for Council policies to support consultation on non-fishing impacts to fishery habitats and resources. The Council approved development of these policies as a 2020 work priority last December. Ms. Bachman explained that the intent for the agenda item was to walk through the policy backgrounders on aquaculture and submarine cables (documents #4, #5, #6), take comments and questions, and then discuss next steps, including whether members were available to help draft the policies themselves (the prior aquaculture policy was provided as document #8). The documents describe (or will, when complete) each of the two activities, permitting and environmental review, and environmental impacts related to both habitat and managed species. Chris Schillaci, one of GARFO's aquaculture coordinators, helped present the aquaculture information and answered many of the questions raised by committee and advisory panel members.

Following the presentation, Mr. Reid chaired a discussion of the issues raised. In response to a question, Mr. Schillaci noted that NOAA is reviewing the recent 5th Circuit Court of Appeals ruling related to the Gulf of Mexico Fishery Management Council Aquaculture FMP and a decision had not been made yet on next steps. The permitting process laid out in the background document remains unchanged, however. For example, the US Army Corps of Engineers remains responsible for permitting structures in the water, the Environmental Protection Agency is responsible for discharge permits, NMFS does oversight under the Marine Mammal Protection Act, etc. There is state oversight as well. There was some unresolved discussion about the circumstances under which a Council aquaculture FMP might be needed, or what such an FMP could do. Mr. Schillaci said there was discussion on the topic at a recent Council Coordinating Committee meeting and he would need to consult with SFD and others in GARFO to provide a more detailed response.

In terms of potential offshore aquaculture projects, Mr. Schillaci was not aware of any proposed in conjunction with windfarms, but there has been siting analysis involving the National Ocean Service for one project off New York and another off New England; however, currently neither project has submitted permit applications. In state waters, there are permit applications under review for a University of New Hampshire-run Integrated Multi-Trophic Aquaculture (IMTA) project and a Department of Energy-funded kelp project.

An advisory panel member suggested looking at Scallop Amendment 5 (July 1996) which dealt with aquaculture, and also to be aware of DOE initiatives to use aquaculture for biofuel production.

Regarding cables, the group discussed the idea of coordinated transmission, where multiple offshore wind projects might run export cables in parallel through the same area, or, going further, where transmission might be bundled into a shared connection for connection to the grid. The Council could comment on the desirability of reducing the number of corridors. Ultimately, whether a coordinated system goes forward is an issue for BOEM to determine, although there is a role for the states as well in terms of procurement. An AP member noted that it was her understanding that the Massachusetts Clean Energy Center had recently decided not to go with a

transmission backbone, and it seems that New Jersey is also discussing coordinated transmission. It would be possible to place cables from multiple projects adjacent to one another along a single route, even if they do not connect to a shared export cable.

In terms of cables for floating wind, a committee member wondered if there were any particular impacts associated with mid-water cables (i.e. from a floating wind farm) where they enter the seabed as a buried export cable. Ms. Bachman said she did not have any knowledge on the subject but would research the issue. She also agreed to look into whether the at-sea transformers/sub-stations generate EMF.

Decommissioning issues with cables were also discussed, with concerns raised about leaving either cable or scour protection materials in place once the cable is no longer in use. Another AP member expressed concern that mobile fishing gears could be banned from wind farm areas due to cable issues.

Someone mentioned that NYSERDA has contracted TetraTech to prepare a comprehensive background report on submarine cabling for electricity transmission (reviewing an outline after the meeting, there are many parallels with our document, although it seems likely that the TetraTech report will be more detailed).

Audience member Brick Wenzel asked why cable effects were being framed as ‘minimal’, suggesting that the comparison to other activities and their impacts was not needed. He also suggested considering the possibility of sediment hardening above buried cables. He noted the existence of standards around cable temperatures and mitigation, suggesting we look at German standards that require additional mitigation under certain temperature change conditions. Audience member Ron Rapp (SubCom) said he would be happy to review the cable background information if that would be useful.

AGENDA ITEM #4: EO 13921 AND AQUACULTURE OPPORTUNITY AREAS

Mr. Schillaci gave an overview of the aquaculture aspects of Executive Order 13921 including planned work to identify Aquaculture Opportunity Areas (AOAs, document #7). Mr. Schillaci noted that the EO calls specifically for coordination with regional fishery management councils around identification of the AOAs. He emphasized work at the National Ocean Service on spatial siting tools to help determine suitability of different locations, paired with input from stakeholders and partners (i.e. a science- and community-based approach). Coincidentally, during the meeting, NOAA Fisheries released their announcement selecting federal waters off southern California and in the Gulf of Mexico as the areas of focused evaluation for the first two of ten Aquaculture Opportunity Areas in the United States.

He also noted that there will a request for information published soon that will look for input on the suitability of areas in other regions, and what factors should be the focus in terms of determining suitability of areas for aquaculture. The Council was welcomed to comment, but he noted there would be other opportunities for coordination as well, and that he would like to hear how the Council wants to be involved. Ms. Bachman will keep track of the RFI and ask about preparing Council comments.

In addition to questions about the timing of the RFI notice on aquaculture, a question was raised about interfacing with the regional ocean councils in terms of aquaculture spatial planning, since it seems these groups have the right people involved and are already considering questions like this. Mr. Schillaci said that they had already had some conversations about this and agreed it would be good to coordinate.

Finally, there was an audience question about ownership requirements for aquaculture facilities (foreign vs. domestic). Mr. Schillaci said he would investigate this offline.

AGENDA ITEM #5: 2021 COUNCIL PRIORITIES

Staff have developed a list of potential priorities for 2021 (document #10); habitat-related items were reviewed by the group and feedback provided. The purpose of the discussion was to review the listed items, identify any additional items, and, if desired, rank the items.

- Develop an action to revise Habitat Management Areas on Northern Edge of Georges Bank
- Participate in ROSA activities; collaborate with RODA and other offshore wind partners on fisheries issues
- Develop Council policies on additional non-fishing activities (offshore energy policies adopted 2018)
- Develop a plan for how the Council can engage with NMFS on aquaculture planning and development (including consultation on establishment of Aquaculture Opportunity Areas)
- Habitat impacts (NEPA analyses) of management actions
- SBNMS Advisory Council and ASMFC habitat committee
- Develop habitat and fishery related comments on non-fishing activities, particularly wind power, in consultation with other agencies, (including NMFS, BOEM, and MAFMC). This includes addressing offshore energy development issues.
- Co-chair Northeast Regional Habitat Assessment Inshore Work Team

A committee member asked about staff resources, and if an additional staff member could be put on these issues. Ms. Bachman noted that part of the priorities planning process last year was looking at staff time expected for each task, and that she expected the same analysis would be done this year, at which point such issues would be considered. In the context of ROSA, there was a reminder that the organization will also be looking to convene a research advisory board, and some Council members could be suitable for this role.

Members supported continued engagement on offshore wind and aquaculture issues and agreed that these were important priorities. An AP member noted that aquaculture isn't just a habitat issue, although the Habitat Committee could be asked to take the lead. Members generally agreed it would be useful to consider the need for a northern edge action, although there was some concern that mitigation in other locations would be required if habitat management areas were to change on the northern edge. An AP member strongly supportive of such an action noted that this issue has been under discussion since Omnibus EFH Amendment 2 was completed, and changes to the northern edge were disapproved by NMFS. He and others emphasized that while advisory work related to offshore wind and aquaculture was important, habitat management is directly under the Council's authority, and therefore should be prioritized. In summary, no additional items were suggested, and no items were removed from the list above. While there was general emphasis on wind, aquaculture, and the northern edge, the list was not ranked. The meeting adjourned at 1:12 p.m.