



New England Fishery Management Council

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

MEETING SUMMARY

Joint Habitat Advisory Panel & Committee

November 18, 2022

9:00 am – 12:45 pm

Webinar

The Habitat Advisory Panel (AP) and Committee met jointly on November 18, 2022 to receive updates on and discuss: 1) the Atlantic salmon aquaculture framework action considering authorization of salmon aquaculture in the EEZ, 2) retention or removal of the Georges Bank Dedicated Habitat Research Area, 3) 2023 habitat work priorities with possible ranking for Council consideration, and 4) any other business.

MEETING ATTENDANCE: Committee: Eric Reid (Committee Chair), Peter Aarrestad, Togue Brawn, Lou Chiarella (GARFO), Michelle Duval (MAFMC), Libby Etrie (Vice-Chair), Eric Hansen, Peter Hughes (MAFMC), Geoff Smith, and Melissa Smith; Advisory Panel: Gib Brogan, Ben Haskell, Lane Johnston, Jeff Kaelin, Meghan Lapp, Andrew Minkiewicz, Ron Smolowitz, and Dave Wallace. NEFMC staff: Michelle Bachman (Plan Development Team Chair), Sam Ascii, Jenny Couture, Janice Plante, and Jonathon Peros; NOAA General Counsel: Mitch MacDonald; NOAA GARFO: Laura Deighan; MAFMC staff: Jose Montanez; PFMC staff: Kerry Griffin. In addition, about 14 members of the public attended.

KEY OUTCOMES:

- Regarding the Atlantic salmon aquaculture framework, the AP and Committee supported ensuring that existing regulations and permitting conditions across federal agencies are considered and that wild versus farmed salmon can be identified. They suggested that the Council's Enforcement Committee review any potential enforcement issues with farmed salmon.
- Regarding the Georges Bank Dedicated Habitat Research Area, the AP and Committee recommended the Council request NMFS maintain the area and associated mobile bottom-tending gear restrictions for an additional three years.
- Regarding 2023 priorities:
 1. The AP recommended that the Committee forward all eight priorities to the Council, ranking revisions to the Northern Edge Habitat Management Area first followed by the EFH review; the remaining habitat priorities were either ranked lower or not at all.
 2. The Committee recommended the Council adopt all habitat priorities without any order of prioritization.

AGENDA ITEM #1: ATLANTIC SALMON AQUACULTURE FRAMEWORK

Presentation

Ms. Bachman reviewed the purpose of the Atlantic salmon aquaculture framework and provided an overview of the Atlantic Salmon Fishery Management Plan (FMP). She outlined draft goals and objectives developed by the Habitat Plan Development Team (PDT) and introduced the North Atlantic Salmon Conservation Organization (NASCO) standards, which the Council has recommended the framework should be consistent with. Monitoring and enforcement issues to consider as part of the action were described at length along with a review of the framework timeline. She noted other issues the Council will address via consultation that are likely beyond the scope of the framework.

Discussion

A Committee member asked about the role of the Army Corps of Engineers (Corps) and the EPA as it relates to enforcing possession of Atlantic salmon. Atlantic salmon is a Council-managed species with existing rules under the Magnuson Stevens Act prohibiting possession, thus, the Council needs to determine how possession and tracking of farmed salmon (versus wild salmon) is deemed acceptable. The PDT recommended tracking farmed salmon from pens to shore and then via dealers in order to be consistent with how other FMPs track fish harvest and landings. The PDT does not want to duplicate permit conditions from other agencies so the framework is not expected to focus on monitoring escapement, water quality issues, or other farm operations, rather how salmon enter into the seafood system. The Committee member also asked what is meant by the suggestion to require Vessel Trip Reports (VTRs). Ms. Bachman noted that based on initial PDT discussions, requiring a VTR when salmon are transferred from the pens to shore might be one approach to keeping track of farmed salmon, but there could be other mechanisms. The PDT suggested maintaining consistency with the monitoring requirements of our other FMPs whenever possible/appropriate.

An advisor suggested considering a visual way to identify farmed versus wild salmon by clipping one of the fins, similar to what is done for Pacific farmed salmon. Later in the discussion, a Committee member commented that biologists clip fish fins for other reasons and to not assume clipping a fin would be sufficient for distinguishing farmed versus wild salmon. Staff suggested including various methods in which farmed versus wild salmon can be identified in the framework, for context, and that the alternatives could include any requirements deemed necessary for enforcement purposes. Requiring authorized farm operations and transit vessels to carry documentation that the salmon are farmed is one suggestion. The PDT had discussed that we probably want to focus on the objectives for monitoring, and be somewhat flexible if possible about how monitoring is actually done to ensure that the measures in the framework have longevity as monitoring approaches change over time.

Another advisor suggested spending time carefully understanding requirements that are already in place for the salmon industry, especially in Maine, to avoid adding even more regulatory complexity to farmed salmon. He noted that escapement is not likely a big issue and that a VTR requirement would be unnecessarily burdensome. Learning more about the states' roles in being able to land farmed salmon was suggested by another advisor who noted that tracking and tagging can be very complex based on his experience with oyster farming. A Committee member also suggested involving the U.S. Fish and Wildlife to understand their role. Ms. Bachman agreed that staff should and will spend time understanding the various requirements from

different state and federal agencies and to recommend complementary requirements as part of this framework action.

The Committee Chair summarized the discussion as follows: existing regulations and requirements from various agencies should be considered when developing this action; methods for discriminating between farmed versus wild salmon should be identified; and the Council's Enforcement Committee should review any enforcement-related issues with farmed salmon and recommend whether additional tracking (e.g., VTR or AIS) is needed. One Committee member mentioned a potential enforcement issue around minimizing escapements and what happens if escaped salmon end up in other fishermen's gear; staff suggested this can be called out in the document accordingly.

AGENDA ITEM #2: GEORGES BANK DEDICATED HABITAT RESEARCH AREA

Presentation

Ms. Bachman reminded the AP and the Committee that the Council designated two Dedicated Habitat Research Areas (DHRAs) via Omnibus Habitat Amendment 2. These were implemented in 2018 with a three-year sunset provision, which was written to give the Regional Administrator the authority to remove a DHRA under certain conditions. GARFO recently conducted a review of the work occurring in the DHRAs and the Council reviewed the findings in September. The Council agreed that the Stellwagen Bank DHRA should be retained for three years but did not reach a conclusion about the Georges Bank DHRA, sending this issue back to the Committee for further discussion. Ms. Bachman presented information on prior AP, Committee, and Council discussions to inform the decision on whether to retain or remove the Georges Bank DHRA.

Discussion

An AP member asked how much data have been collected since the DHRA went into place in 1995 and expressed the importance of having an area serve as a control. Staff were not sure but commented that there has been a mix of broader and fine scale drop camera surveys, and likely 1-2 Northeast Fishery Science Center survey tows per year but needed to confirm this. The area has been continuously protected since 1995 (unless there has been overlap with a scallop access area) and was been closed to all fishing gear capable of catching groundfish until Omnibus Habitat Amendment 2 went into effect in April 2018, after which fixed gear was permitted and the area became a mobile bottom-tending gear closure.

A couple of advisors recommended keeping the DHRA in place to serve as a control area for any future BACI studies. The area is interesting due to the area's lack of productivity relative to surrounding areas lying east, north, and west of it. A Committee member later asked how the area can serve as a control to other, more productive areas. The advisor noted that the environment is in continuous movement with productivity regularly changing. He referenced Coonamessett Farm Foundation's (CFF) scallop transplant/enhancement work in partnership with SMAST¹. Another advisor did not think the designation was necessary and thought a BACI study was unlikely to take place in this area in the future.

¹ https://www.coonamessettfarmfoundation.org/files/ugd/1910a2_b7cb1a70f4a6433d954aa7102c14133d.pdf,
https://www.coonamessettfarmfoundation.org/files/ugd/1910a2_eb7b1b28823443ac8839985a4caf492e.pdf,
https://www.coonamessettfarmfoundation.org/files/ugd/1910a2_e00997d414e44f88947200166944a7ac.pdf

1. ADVISORY PANEL MOTION: SMOLOWITZ/WALLACE

The Advisory Panel recommends to the Committee that the area remain closed for an additional three years, and that the Habitat or Scallop PDT be tasked with making a recommendation about how to use data already collected, and what additional information to collect.

Rationale: There has been data previously collected but not analyzed, and the area can serve as a control area for future studies.

Discussion on the Motion: No other discussion on the motion.

Roll call:

Yes – Haskell, Kaelin, Johnston, Lapp, Smolowitz, Wallace

No – Minkiewicz

Motion 1 carried 6/1/0.

2. COMMITTEE MOTION: G. SMITH/BRAWN

The Committee recommends that the Council request NMFS maintain the Georges Bank Dedicated Habitat Research Area and associated mobile bottom tending gear restrictions for an additional three years.

Rationale: There is value in maintaining to provide a control for BACI studies and other research in the area. Easier to maintain the closure than to redesignate it.

Discussion on the Motion: There was some discussion whether NMFS should maintain the DHRA for another three or five years. Several Committee members suggested three years to be consistent with the Stellwagen Bank DHRA review and consistent with the Regional Administrator’s requirement to review DHRA’s every three years.

Motion 2 carried by consensus with an abstention from the GARFO Committee member.

AGENDA ITEM #3: 2023 COUNCIL PRIORITIES

Presentation

Ms. Bachman reviewed a list of possible 2023 work priorities to help the AP and Committee members better understand what some of the actions and activities might be and what information staff have to support their development. She went into detail on the Northern Edge Before-After-Control-Impact (BACI) study, results, and management considerations and implications from the additional contracted work conducted by Dr. Gallager in summer and fall 2022. Ms. Bachman also reviewed details regarding required updates to Essential Fish Habitat (EFH) designations, including roles and responsibilities of the Council and NMFS, new information to support updating EFH text and maps (namely Northeast Regional Habitat Assessment outputs), opportunities for collaboration with the Mid-Atlantic Fishery Management Council, and approaches to conducting this work. She provided an overview of the Great South Channel Habitat Management Area (HMA) and the EFP 19066 discussion with prior

recommendations; a summary of offshore wind work including collaboration and comment opportunities; and a short summary habitat staff work on NEPA analyses and membership on the Atlantic States Marine Fisheries Commission Habitat Committee.

Discussion

Regarding the Northern Edge BACI study, a Committee member asked about the meaning of the percent recovery rates and significance levels. Staff recommended reviewing Table 3 in the final report for additional information. An advisor clarified that the last survey was done 5 years 8 months after initial impact, not six years. He questioned if some habitats recovered after two years; Ms. Bachman responded that yes, some habitats did recover after two years but the results are nuanced and based upon individual taxa. The advisor reiterated a finding from the presentation that scallops were found to be associated with less complex habitat, and that this habitat type was shown to recover more quickly than more complex habitat. A couple of advisors commented that the scallop industry needs access to the Northern Edge given the decline in scallop biomass elsewhere; another advisor disagreed with this sentiment suggesting instead to focus on other priorities like offshore wind. Another advisor observed that the Northern Edge work appears to be an outlier in terms of what it is possible to accomplish given staff resources, and that recover times of up to six years doesn't make a compelling case that this is an urgent need, or that a lack of access will preclude the fishery from achieving optimum yield.

A Committee member asked if the PDT has the data to evaluate how productivity of impacted areas changes for individual species that are known to have benefited from the closed area. Ms. Bachman stated that the PDT would have to make inferences whether the unfished condition is producing a certain percentage more of fish. Also, surveys were not conducted at more intermediate points prior to the last survey (between 22 months and 5 years 8 months) so the shape of the recovery curve over time is precisely not known.

Regarding the EFH priority, an advisor asked about the modeling approach to define EFH versus what was done during OHA2. Ms. Bachman said that the idea is to use the outputs of the Northeast Regional Habitat Assessment models to inform both EFH maps and text descriptions, building on earlier/simpler approaches where a percentage of the species' distribution was defined as EFH. She noted that a 10-minute square-based approach is likely still applicable. The advisor was concerned that the model outputs are not yet ready and that additional science needs to be done before fishery managers review and use the data; he questioned why EFH updates aren't just relying on new survey data and as such, would not take a lot of time to do. Ms. Bachman noted that the NHRA models are the culmination of a 3-year assessment effort.

Regarding the Great South Channel HMA, an advisor noted that the issue with this area is the inability to conduct research due to lack of approval of Exempted Fishing Permits.

Regarding other priorities, a few AP members asked about priorities that are requirements including conducting NEPA analyses for proposed fishery management actions that could impact habitat. Staff reiterated that while this is a required task for staff, this is usually a minor amount of work. Arguably this might be left off the priority listing, but the purpose of including it is to emphasize work required by the staff.

Public Comment:

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- **Jay Elsner (scallop advisor)** requested the Northern Edge be open given the BACI research shows the gravel area can be fished without long term damage to habitat. He noted that the scallops are dying in the area and the scallop industry needs another area to fish given reduction in scallop biomass elsewhere.
- **David Frulla (Fisheries Survival Fund)** suggested prioritizing the Northern Edge as the highest priority because the BACI research has shown that an access area can be created, having the area is important for climate adaptation because the habitat area could change, and that the work can be done collaboratively with the Scallop PDT.
- **Brent Fulcher (scallop advisor)** agreed with Mr. Elsner and Mr. Frulla and also recommended prioritizing the Northern Edge work. He mentioned he has a diverse fishing portfolio and geographic range including fishing in the Mid-Atlantic, where areas recover more quickly. He observed that periodic fishing of areas prevents stagnation and mortality of scallops. Long term closures result in die-offs with no benefits to seafood consumers.

In response to the various comments requesting prioritization of the Northern Edge task, the Committee Chair stated that this tasking ranked very low for the Council as a whole. One advisor followed up that the scallop industry is unanimous in wanting to make this a priority.

3. AP MOTION: MINKIEWICZ/KAELIN

Recommend to the Committee that they recommend the Council adopt these habitat-related priorities for 2023, in this order:

1. Northern Edge HMA revisions
2. EFH review
3. Atlantic Salmon Framework
4. NEPA analysis of FMP action
5. RODA/ROSA collaboration
6. And then the other three priorities.

Rationale: The Northern Edge is critical for the scallop fishery moving forward and we have new data; promised by Council following OHA2, fishery has funded (RSA) work in this area. Salmon is a pressing issue, NEPA analyses are required. RODA/ROSA collaboration is important.

Discussion on the Motion: When asked whether advisors recommended updating EFH by certain groupings or all at once, one advisor agreed with piloting an approach using one or two species as a proof of concept to understand how much time is required and what information is learned by the process. Another advisor commended staff in working and collaborating with staff from the MAFMC.

Roll call:

Yes – Kaelin, Johnston, Lapp, Minkiewicz, Smolowitz, Wallace

No – Brogan

Abstain - Haskell

Motion 3 carried 6/1/1.

4. COMMITTEE MOTION: HANSEN/HUGHES

Recommend to that the Council adopt all eight habitat-related priorities for 2023, in no particular order:

- Northern Edge HMA revisions
- EFH review
- Atlantic Salmon Framework
- NEPA analysis of FMP action
- RODA/ROSA collaboration
- Habitat/Fishery comments on non-fishing activities
- ASMFC Habitat Committee
- Information needs for GSC HMA management

Discussion on the Motion: Regarding the Northern Edge, several Committee members did not agree with the AP's prioritization of tasks. There was concern that another cohort of scallops would die in the Northern Edge without having the opportunity to harvest scallops. Several members discussed that any Northern Edge tasking would have to involve both the habitat and scallop PDTs, APs, and Committees.

One Committee member agreed with the ranking and commented that offshore wind work will likely take less time once initial work is underway. In response to this comment, another Committee member emphasized that staff involvement in offshore wind work is very important, takes a lot of time to do to write the comment letters but also be involved and participate in non-project specific offshore wind work (compensation/mitigation funds). Later in the discussion, a Committee member asked whether the Council comment letters are duplicative with other letters submitted by other agencies and suggested that, if that is true, then perhaps the Council can scale back those letters accordingly.

Regarding EFH updates, a Committee member stated that this is a lot of work to be conducted over several years. Staff will need to review existing designations first and then identify and incorporate any new scientific information. They suggested that both the NEFMC and MAFMC need to adopt the same scientific methods first before moving forward with any EFH updates. Another member asked whether EFH reviews need to be on the Council priorities list, since they are required. The chair responded that many required actions are included on the list to understand resource allocation. When asked whether to recommend updating EFH by certain groupings or all at once, one member suggested evaluating staff time constraints before making a decision.

In response to a question, Ms. Bachman noted that if all eight priorities were adopted that we would scale back activities accordingly, assuming no new allocation of resources to habitat. For example, participating in fewer offshore wind activities, writing fewer or less in-depth comment letters, piloting EFH updates rather than updating a number of species next year. It is somewhat easier to take Council actions more or less one-by-one, i.e., completing work on the Atlantic Salmon action, then working on the Northern Edge. Offshore wind work will necessarily be ongoing/continuous.

One Committee member responded that they felt offshore wind engagement was very important for the Council, while another questioned the effectiveness of providing input on these matters. An advisor noted that it isn't just comment letters on projects, there are a number of overarching

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issues such as survey mitigation, or compensation, that are also important to keep track of and provide input on.

Motion 4 carried by unanimous consent.

AGENDA ITEM #4: OTHER BUSINESS

No other business was discussed.

The Habitat Committee meeting adjourned at approximately 12:45 p.m.