



New England Fishery Management Council

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MEETING SUMMARY

Habitat AP and Committee

March 9, 2021

9:00-12:45 pm

Via Webinar

The Habitat Committee and Advisory Panel (AP) and met jointly on March 9, 2021 via webinar to discuss a potential Northern Edge habitat management action, offshore renewable energy development, and aquaculture coordination with GARFO, and to receive other updates.

MEETING ATTENDANCE: Committee: Eric Reid (Committee Chair), Peter Aarrestad, Terry Alexander, Peter deFur (MAFMC), Libby Etrie, Peter Hughes (MAFMC), Scott Olszewski, John Quinn, Dan Salerno, and Melissa Smith; Advisory Panel: Chris McGuire (AP Chair), Gib Brogan, Beth Casoni, Rip Cunningham, Ben Haskell, Lane Johnston, Jeff Kaelin, Meghan Lapp, Elizabeth Marchetti, Drew Minkiewicz, Ron Smolowitz, and Dave Wallace. NEFMC staff: Michelle Bachman (Plan Development Team Chair), Jenny Couture, and Janice Plante; NOAA GC: Mitch MacDonald; NOAA GARFO Alison Verkade, Moira Kelly, and Chris Schillaci. In addition, approximately 17 members of the public attended, including Council and PDT members.

KEY OUTCOMES:

- Members received updates on various topics including offshore wind, the Northeast Regional Habitat Assessment, Regional Ocean Planning, and 2021 work and anticipated schedule.
- The meeting kicked off a phased approach to considering a potential Northern Edge habitat management action; this will be an iterative process between the PDT, AP, Committee, Council, and NOAA.
- The AP and Committee appreciated the joint Council letters on offshore wind projects as these efforts help position the Councils as a valuable stakeholder.
- The Council should engage early and often on aquaculture projects due to the potential for habitat impacts and space use conflicts.

AGENDA ITEM #1: NORTHERN EDGE HABITAT MANAGEMENT

Presentation

Ms. Bachman provided some context and additional information on the Omnibus Habitat Amendment 2 (OHA2) measures disapproved by NOAA Fisheries in 2018. During the

development of OHA2, the Council recommended changes to habitat and groundfish closures on Georges Bank, including Closed Area I (CAI), Closed Area II (CAII), and the overlapping habitat closures. Council recommendations to remove Closed Area II as a year-round groundfish closure and replace the Closed Area II Habitat Closure with three new habitat management areas were disapproved by NOAA Fisheries. These proposed areas included the Georges Shoal HMA, the Northern Edge Mobile Bottom-Tending Gear Closure HMA, and the Northern Edge Reduced Impact HMA. Other elements of the Council's OHA2 recommendations for Georges Bank were approved, including the designation of CAII as a groundfish spawning closure from February 1 – April 15. (We assume that the spawning closure designation will not be revisited under this potential action.) In addition, groundfish CAI was made seasonal (also February 1 – April 15), the CAI northern and southern habitat closures were eliminated, and the southern part of CAI was made a Dedicated Habitat Research Area. See the April 9, 2018 final rule for more information: [83 FR 15242-15243](#).

One reason NOAA indicated that it disapproved certain measures of OHA2 was that the Council did not recommend a specific frequency or intensity of rotational scallop dredging in the Reduced Impact Habitat Management Area with. Thus, NOAA decided it could not effectively determine how the measures would minimize the adverse impact to habitat. In addition, NOAA raised concerns about the inconsistency between the Council's designation of the area as an HAPC, indicating that the area is important to managed species and vulnerable to fishing impacts, while allowing fishing activity with undefined frequency and intensity.

The presentation summarized the Council's Northern Edge work priority and identified a plan for completion of this task. The priority is to "assess the possibility of and, if possible, develop an action to revise Habitat Management Areas on Northern Edge of Georges Bank." Work on this priority will be done in two phases. Phase 1 will focus on determining whether to initiate an action; first the PDT will develop a white paper (spring/summer 2021), and then the Committee will make a recommendation to the Council on whether to initiate an action (fall 2021). If the Council decides to move forward, Phase 2 would be the development of the action, likely a multi-year activity.

Discussion

An AP member brought up Scott Gallagher's before-after-control-impact (BACI) study, funded through the Sea Scallop Research Set-Aside Program, which he said showed the one area with mussels and epifauna cover had high habitat disturbance from scallop dredging but the biodiversity in most of the other areas rebounded after 10 months. Ms. Bachman noted the PDT would be reviewing the study, including any additional results not yet shared, and to better understand the impacts to specific habitat types. Another member asked about the distribution of more vulnerable/complex habitat on the Northern Edge; again, this is something the PDT will examine. Ms. Bachman commented that Dr. Gallagher's report and other key resources will be provided in one place on the Council's website (Dr. Gallagher's RSA program report was emailed to the Habitat AP and Committee during the meeting). There is some additional discussion of this issue in the March 3 PDT meeting summary.

Another AP member asked how the white paper will evaluate changes and impacts to the Northern Edge given there is no fishing in that area and suggested that an exempted fishery could

be used to inform future management. He also noted the availability of juvenile fish and habitat data in this area (including submersible-based work) that were not used during development of OHA2. Because the area has been closed since the mid 1990's, an exempted fishery could be worth discussing to better understand the cumulative impacts from fishing year after year, for which the SASI/Fishing Effects model only provides a conceptual foundation. Ms. Bachman said she would follow up to understand what data might be available. Another AP member noted that the Northern Edge was heavily fished prior to the implementation of Closed Area II in 1994. The closed area was put in place to increase cod productivity; the number of cod increased 4x after 10-month recovery in the BACI study. The white paper should include a synopsis of the new information and research conducted since completion of OHA2. An AP member suggested that this research could help justify an EFP in the area.

The Committee chair noted that the white paper should answer as many questions as possible and identify any unanswered questions to consider later. Committee members asked about selectivity of NEFSC surveys for different sizes of fish (e.g., to what extent are small juveniles caught) and about survey sample sizes on the Northern Edge. There was general agreement to review additional data, including information not considered during development of OHA2. This could include data from similar habitat types on the Canadian side of the EEZ boundary. A member asked what does the Council need to prove (to NOAA Fisheries) to gain access to the area? Ms. Bachman indicated that NOAA staff would be engaged via the PDT and Committee and that she hoped we would collectively address that question. Another member wondered about the relationship between this effort and the Georges Bank Fishery Ecosystem Plan under development through the EBFM PDT and Committee. Ms. Bachman had not previously thought about this interaction but will add it to a list of considerations for future discussion. The Committee chair suggested that any changes to the closed areas or HAPCs should not be immediately impacted by ecosystem-based fisheries management, since that work is currently theoretical.

An HAPC designation is a subset of EFH that meets certain criteria (identified by the EFH regulations and by the Council) and the designations are not directly linked to gear or other fishery restrictions (this is true in New England; some regions do associate fishing restrictions with HAPCs). However, HAPC designations do indicate a higher level of scrutiny when considering whether an action, such as allowing fishing access, might adversely impact the habitat with an HAPC. A Committee member and NOAA GC discussed whether it is possible to change an HAPC under a framework action. Mr. MacDonald responded that there is wide latitude to consider fishery management changes in frameworks, however these types of actions cannot fundamentally change the nature of the fishery management plan. Ms. Bachman commented that the measures in OHA2 were originally designed to be lasting but not necessarily permanent, and that the Council intends to complete a review of the habitat management program ten years after implementation. Another Committee member appreciated the phased approach to this Northern Edge review/potential action that does not presuppose anything.

AGENDA ITEM #2: UPDATES ON OFFSHORE WIND

Presentation

Ms. Bachman updated the AP and Committee on the FEIS for Vineyard Wind 1, which BOEM released on March 8, 2021. The FEIS indicates that a combination of alternatives is preferred.

These are (1) no surface occupancy in the northernmost project region, (2) east-west and one nm turbine layout, and (3) reduced project size. Ms. Bachman also briefly discussed the joint Council comment letter on the South Fork DEIS and noted other organizations' comment letters that are publicly available. She then discussed the Responsible Offshore Science Alliance's March 5 meeting, noting an overarching concern about the need to do regional, strategic, fishery science planning and prioritization. Lastly, the AP and Committee received a brief update on the Gulf of Maine floating research array, noting a fish work session on March 10.

Discussion

An AP member inquired about the discrepancy between the areas on Cox Ledge that were proposed as fishery closures to protect habitat and are also wind development areas. Ms. Bachman noted that the Cox Ledge Habitat Management Areas, which would have had trawl ground cable length restrictions, were not approved during OHA2 rulemaking due to uncertainty about habitat benefits of ground cable restrictions. More generally, the Magnuson-Stevens Act mandates that Councils minimize the impact of fishing activity to EFH to extent practicable. Offshore wind developers and BOEM participate in the EFH consultation process through which NOAA and the Councils can recommend ways to mitigate habitat impacts identified in the EFH Assessment. Adoption of these EFH conservation recommendations is discretionary, however. The member's concern was that different standards seem to be applied to fishing and non-fishing activities when it comes to resource protection.

Another AP member said they had raised similar issues associated with projects off New Jersey. There seems to be a presumption of no significant harm from cable laying near the coast. The member was appreciative of the joint Council comment letter on the South Fork DEIS and of GARFO's support, saying that we should continue to push for mitigation and compensation on a regional basis. A Committee member asked if there have been discussions about protected resources interactions with wind turbine cables, since it seems like this could be a major issue for floating projects in the Gulf of Maine. Ms. Bachman noted that this is an area of responsibility for NOAA Fisheries, and these issues come up during monthly NOAA wind team calls. She commented that the Council could decide to track wind/protected species interactions more closely, but we have many other work priorities, and it is generally outside our expertise.

AGENDA ITEM #3: AQUACULTURE COORDINATION WITH GARFO

Presentation

First, Ms. Bachman summarized past and potential future Council work related to aquaculture. In October 2020, the Council adopted the following 2021 priority: "Develop a plan for how the Council can engage with NMFS on aquaculture planning and development (including coordination on establishment of Aquaculture Opportunity Areas)." Ms. Bachman anticipates Council and GARFO staff will develop a brief engagement/coordination plan that will be provided for discussion at the April Council meeting. Various opportunities include provision of Committee and Council input on specific projects, more general engagement in regional aquaculture development (siting, data considerations, and development and maintenance of Council expertise on aquaculture issues. She noted that we can refine this plan over time, depending on what the Council decides is the best engagement and collaboration approach.

Next, Chris Schillaci, GARFO Aquaculture Coordinator, provided an update on NOAA's Aquaculture Opportunity Areas (AOA) initiative. He noted that the AOA initiative is focused on site identification and planning, and that it does not replace the existing permitting and environmental review process. He explained some of the steps associated with these permitting/review processes (see slides 11-13), identifying possible areas for Council engagement. Mr. Schillaci also updated the group on a handful of projects underway or planned in the northeast region.

Discussion

An AP member asked Mr. Schillaci whether the comments and concerns NOAA received on AOAs were focused on aquaculture areas preempting other uses (e.g., fishing) or concerns about environmental impacts (water quality/waste, habitat impacts, etc.). Mr. Schillaci noted that the comments encompassed both issues and various other topics, including the lack of a leasing process. Another AP member inquired whether NOAA is tracking the Department of Energy's work related to seaweed production, for energy production and carbon sequestration. Mr. Schillaci said they were, and noted that these projects are still required to undergo NEPA review and permitting.

A Committee member asked about the Northeastern Massachusetts Aquaculture Center (NEMAC)/Salem State University project operating off Cape Ann and the Blue Water Fisheries site currently under consideration. Mr. Schillaci noted that the NEMAC project was originally permitted in 2015 for 3 blue mussel lines at a 33-acre site, and they have applied for an increase to 20 lines. The Committee member expressed concern about being unaware of these projects and worried about impacts to day boats and protected resources. While the NEMAC project was permitted in 2015 and the area for expansion is already established, the Blue Water Fisheries project is just beginning the permitting process. The intent is to coordinate with the Council on the Blue Water Fisheries and other future projects so that the fishing industry is not caught unaware. The member also noted that aquaculture issues have come up at recent Atlantic Large Whale Take Reduction Team meetings, given that lines in the water are of concern from a conservation perspective. Mr. Schillaci noted that they coordinate regularly with staff at GARFO's Protected Resources Division.

Another Committee member commented that the Army Corps of Engineers and the EPA do not have explicit jurisdictional authority over biological resources, they are focused on other issues. Given this, how do Council policies play into NOAA's engagement on aquaculture? Mr. Schillaci responded that these agencies do have some specific siting requirements that protect against impacts, and that they do have to engage in EFH consultations. Ms. Verkade commented that the lead agency completes the EFH consultation, and that other fish and wildlife conservation recommendations are also included in the process by NOAA (Fish and Wildlife Coordination Act). The member was concerned that these agencies might approve permits that NOAA objects to given biological concerns. Mr. Schillaci acknowledged these concerns but emphasized the strength of the relationships between the three agencies.

The Committee chair asked for any input on engagement approaches, keying off slides 25-30 in Ms. Bachman's presentation. Several AP and Committee members commented that the Council should engage early and often on aquaculture projects because of concerns about habitat impacts

and user conflicts in the region. Staff will write up a coordination plan for Council discussion next month.

AGENDA ITEM #4: OTHER UPDATES

Presentation

Ms. Bachman briefly discussed other updates including: 1) the Northeast Regional Habitat Assessment, where the teams are focused on modeling challenges and useful ways to report inshore habitat status and trends; 2) Northeast Regional Ocean Council which has an ongoing Regional Habitat Mapping Pilot Study and a best practice work group; 3) Stellwagen Bank NMS, which is updating their management plan; and 4) ASFMC Habitat Committee that has new forthcoming products including fish habitat of concern designations and acoustics habitat management series.

Discussion

No questions or comments from the AP or Committee.

AGENDA ITEM #5: OTHER BUSINESS

Mr. Hughes apprised the Committee of a forthcoming Exempted Fishing Permit (EFP) application that the Council might wish to comment on, focusing on the Fishing Rip dredge exemption area in the Great South Channel Habitat Management Area. Mr. Smolowitz noted that Coonamessett Farm Foundation is applying to renew their EFP in order continue clam dredge research in the Rose and Crown area of the GSC HMA.

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