



New England Fishery Management Council

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

MEETING SUMMARY

Habitat Committee

January 12, 2023

2:00 p.m. – 4:00 p.m.

Webinar

The Habitat Committee met on January 12, 2023 to discuss: 1) the Atlantic salmon aquaculture framework action considering authorization of salmon aquaculture in the EEZ, 2) 2023 habitat work, and 3) any other business.

MEETING ATTENDANCE: Eric Reid (Committee Chair), Peter Aarrestad, Togue Brawn, Peter Burns (GARFO), Michelle Duval (MAFMC), Libby Etrie (Vice-Chair), Eric Hansen, Peter Hughes (MAFMC), Scott Olszewski, Geoff Smith, Cheri Patterson, and Melissa Smith; NEFMC staff: Michelle Bachman (Plan Development Team Chair), Jenny Couture, Janice Plante; NOAA General Counsel: Mitch MacDonald; NOAA GARFO: Chris Boelke, Jay Hermesen, Sabrina Pereira, Doug Potts, and Chris Schillaci, Kaitlyn Shaw; MAFMC staff: Jose Montanez. In addition, one other Council member and about 2 members of the public attended.

KEY OUTCOMES:

- Regarding the Atlantic salmon aquaculture framework, the Committee concurred with the direction of the alternatives, and did not have suggestions for additions or removals. Committee member questions will be helpful as the PDT revises the framework document, in particular for putting the Council's action into the broader context of aquaculture permitting.
- Regarding 2023 work, some members recommended that the Habitat Committee take the lead on developing goals and objectives for the Northern Edge. It seemed premature to have a more formal discussion of the approach for developing this action (joint vs. individual committee meetings, etc.) but staff will take this input under advisement when planning.

AGENDA ITEM #1: ATLANTIC SALMON AQUACULTURE FRAMEWORK

Presentation

Ms. Bachman reviewed the goals and objectives approved by the Council in December, and outlined the alternatives developed by the Plan Development Team (PDT). Mr. Schillaci described some monitoring and reporting elements associated with the National Pollutant Discharge Elimination System (NPDES) permit, issued by the EPA to finfish aquaculture projects. Understanding these permitting elements will allow the Council to focus its framework

action on additional measures necessary for enforcement of the prohibition on possession. The Council will address other issues of concern that are beyond the scope of the framework via consultation with permitting agencies, for example concerns about project siting, impacts to habitat, or effects on other Council-managed fisheries.

Discussion

A member asked whether effects of shoreside operations were considered during permitting, e.g., do the operations and maintenance plans submitted include shoreside concerns, including where fish processing or hatchery operation will occur. Mr. Schillaci confirmed that the NEPA process will evaluate the whole scope of the project, including shoreside infrastructure, roads, and docks. Within the NPDES permit, operators are not allowed to discharge any waste overboard, and they are required to have a waste management plan. The project proponent for Blue Water Fisheries, for example, plans to use existing processing facilities as of now, but if that changes before or after permits are issued, further permitting work would be required. There would be a NPDES permit restriction on processing at sea, and a plan for how waste/discards would be handled, with both coastal and at-sea discharge permitted separately if needed. Overall, federal agencies have a nexus and an obligation under NEPA for evaluating shoreside issues.

To address a follow up question, Mr. Schillaci noted that there will be requirements about fish stocking prior to permitting to address US Fish and Wildlife Service (USFWS) concerns about the wild salmon resource. This occurs under NMFS' ESA consultation authority, and ensures North Atlantic Salmon Conservation Organization (NASCO) standards are met, for example, by using appropriate genetic stocks, and planning for disease management, etc. These measures are implemented as permit restrictions and conditions. He confirmed that nothing would need to be added via this Council framework to address these sorts of issues.

A member asked about the existence of contingency plans to address emergency escapement events. Mr. Schillaci confirmed that a component of both NMFS and EPA consultation is having appropriate response measures in place; the containment management plan addresses escapement planning directly. There is the potential for triploid or sterile fish to be stocked; stocking details will be determined prior to project permitting. Escaped fish are considered a biological pollutant under the NPDES permit.

There would be a requirement for companies to provide genetic information so that any escaped fish can be compared against the strain of fish used for the project and to wild stocks; he expects genetic marking will be part of the permit requirements to understand escapement events. There is a similar process in place for the salmon farm in Maine.

The Committee member followed up to ask how escaped fish might be captured, since vessels that service aquaculture facilities are not necessarily commercial fishing vessels and may not have the ability to harvest wild fish. Would any vessels that recapture escaped fish have the authority to bring those escaped fish to shore for genetic testing? (Note – this specific question was not discussed by the PDT but will be considered as alternatives are further developed. As currently written under Alternative 2, a LOA and a vessel permit would be required to retain any salmon.)

Another member agreed that they couldn't imagine an effective way to recapture escaped salmon, though perhaps the escaped fish could be intercepted if the fish enter a river. The Committee member wondered if, in addition to genetic tags, whether physical tags or fin clips

would allow for faster identification of wild vs. hatchery fish. Members also asked about the size of stocked fish and assumed that fish in the 7–9-inch range (post-smoltification) would be stocked in the pens from a land-based facility.

Mr. Schillaci confirmed that yes, fish stocked offshore have undergone smoltification. Notching has been discussed as a physical tagging method but he is not aware of the use of this technique offshore. He will follow up on this question. He noted that there is some evidence that escaped fish remain in the vicinity of the net pens because that is where they are used to being fed. This may allow for their recapture. The member responded that he hadn't considered this last issue previously. He followed up to note that differentiation with fin notching might be difficult, since fins can regrow/repair. Complete fin removal, perhaps of the adipose fin, might be more definitive and reliable in differentiating between wild and farmed salmon.

A member asked about reporting – would operators need to report the fish removed from the pens for sale? If they report this already, for example to EPA, wouldn't this be duplicative of electronic vessel trip report (eVTR) requirements under the Council framework? Mr. Schillaci noted that the reporting intervals under EPA's permit would be much less frequent, i.e., quarterly, or semi-annually. The PDT thought that trip-level reporting would better support enforcement efforts. The idea here would be to require a VTR every time fish are moved from the farm to shore for harvest. The PDT envisions that these reports would be entered into the same database as all other Northeast region trip reports, for consistency with other federally permitted harvest of fish.

The Committee had no issues with the goals and objectives approved by the Council in December and moved on to discussing the alternatives. A member clarified the purpose of dealer permitting and reporting. The PDT report noted that an objective of both vessel and dealer reporting is to have the ability to cross-check the two databases to be sure that the numbers balance. The Committee member wondered if fish could be harvested and sold outside this system. Ms. Bachman noted that currently, there are no sales of salmon cultured in federal waters to federally-permitted dealers, because no aquaculture projects have been permitted yet. The idea of this framework is to create the permit and reporting systems to allow such fish to be landed and sold. Under the Council framework, federally permitted harvester vessels would be required to sell the cultured salmon to federally permitted dealers. It would be possible for an aquaculture operation to hold both vessel and dealer permits. Mr. Schillaci followed up to note that processors must source fish from authorized seafood dealers already, whether state or federally permitted.

A member asked whether it will be difficult to create a new federal permit for salmon. GARFO staff noted that it seems like it will be straightforward to create a permit for this purpose. There are likely to be some administrative complications on the permitting side, but we do have mechanisms/systems in place for this. The VTR system might have to be modified to create an aquaculture trip type to differentiate those trips from other fish trips. A Committee member noted that there are presently similar data elements to address aquaculture landings in fisheries database systems.

The Chair asked what happens if the Council doesn't take action under this framework (i.e., if the No Action alternative is adopted). Ms. Bachman responded that aquaculture operators would have to demonstrate that they are possessing cultured and not wild fish, under the existing possession prohibition regulations. This would occur on an ad hoc, project by project basis, with

potentially less data provided as compared to Alternative 2, where trip reports and dealer reports would be required. NOAA General Counsel agreed, emphasizing that the regulations presume that all fish are wild caught, and each individual vessel possessing salmon (cultured or otherwise) would have to rebut that presumption. Specifically, if there were an enforcement action, they would have to provide evidence that that fish was legal to possess (i.e., farmed). Alternative 2 allows the Council to establish a program to ensure the goals and objectives of the Atlantic salmon FMP would be met. The Council action would provide order, structure, Council involvement, and the ability to manage a potentially burgeoning aquaculture industry. The Chair agreed that the rationale for taking Council action should be thoughtfully crafted.

Next steps for the framework include reviewing the alternatives with the Enforcement Committee. The PDT will continue to develop other sections of the document.

AGENDA ITEM #2: 2023 COUNCIL WORK

Presentation

Ms. Bachman reviewed the list of 2023 work priorities and briefly explained how work is expected to proceed on two new Council actions: 1) Habitat Management Area revisions and scallop fishery access on the Northern Edge of Georges Bank, and 2) essential fish habitat (EFH) review.

Discussion

Regarding the Northern Edge priority, a couple of Committee members asked whether the Habitat Committee or the Scallop Committee would develop the goals and objectives or whether this would be done jointly with both committees. Staff noted that this has not yet been decided. A couple of members expressed support for having the Habitat Committee take the lead in developing goals and objectives to ensure that the habitat measures from the Omnibus Habitat Amendment 2 are upheld.

Regarding offshore wind engagement, one member asked whether Council staff was engaged with the Regional Wildlife Science Collaborative for Offshore Wind given this organization's involvement with habitat, ecosystem, and protected fish species. Ms. Bachman commented that yes, she is engaged to some extent with this group.

AGENDA ITEM #3: OTHER BUSINESS

Staff noted upcoming Gulf of Maine draft Call Area meetings organized by BOEM. Staff plan to attend, provide comments, and ask questions on these draft Call Areas. These meetings are meant to be informal learning sessions and expected to include a discussion on the National Centers for Coastal Ocean Science (NCCOS) spatial analysis work including data inputs and methods. One Committee member asked if the Council plans to communicate with BOEM about certain areas to remove from consideration for offshore wind development (e.g., cod spawning, habitat closures, etc.) or whether the Council plans to share its opinion via comment letters. He was mainly interested in what the Council's role is in this stage of the process. The Committee Chair stated that the Executive Committee has not spoken about this yet and did emphasize that the Council is not allowed to lobby. The Council's approach thus far has been to comment early and often. Staff indicated that BOEM is open to feedback from the Council.

No other business was discussed, and the meeting adjourned at approximately 4:00 p.m.