MEETING SUMMARY

Habitat Committee
March 23, 2023
9:00 a.m. – 1:00 p.m.
Wakefield, MA, with some members attending via webinar

The Habitat Committee met in Wakefield, MA and via webinar on March 23, 2023 to discuss: 1) the Atlantic salmon aquaculture framework action considering authorization of salmon aquaculture in the EEZ, 2) the Northern Edge Habitat and Scallop framework, 3) recent coordination with BOEM and NOAA related to offshore wind leasing in the Gulf of Maine, 4) Great South Channel Habitat Management Area Exempted Fishing Permit update, and 5) any other business.

MEETING ATTENDANCE: Eric Reid (Committee Chair), Peter Aarrestad, Togue Brawn, Lou Chiarella (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), Sam Asci, Jamie Cournane, Jenny Couture, Angela Forristall, Robin Frede, Chris Kellogg, Janice Plante; NOAA General Counsel: Mitch MacDonald; NOAA GARFO: Chris Schillaci. In addition, three members from the Habitat Advisory Panel (AP) including the Chair, three other Council members, and about ten members of the public attended.

KEY OUTCOMES:

• Regarding the Atlantic salmon aquaculture framework, the Committee recommended Alternative 3 (Letter of Authorization only) as the preferred alternative including that gear stowage be required for fishing vessels participating in aquaculture operations.

• Regarding the Northern Edge Habitat and Scallop framework, the Committee recommended the Council adopt the goal and objectives developed by the Plan Development Teams, with modifications to the language as discussed during the meeting.
  1. The modified goal is as follows: Develop a scallop rotational harvest program within and around the Closed Area II Habitat Closure Area that avoids impacts important to juvenile cod, minimizes adverse effects to EFH and biological and economic impacts to other managed fisheries, and contributes to optimum yield for the scallop fishery.
  2. Objectives as shown under Agenda item 2.
  3. The Committee supported the Habitat and Scallop PDTs’ interest in continued research, though, like staff and the AP, was uncertain how to appropriately articulate this as part of the action’s objectives.
Regarding the Great South Channel Habitat Management Area Exempted Fishing Permit, the Committee acknowledged the AP’s consensus statement supporting additional fishery independent and dependent research within the two research areas in the HMA. The Committee made no recommendation to the Council on this issue.

**AGENDA ITEM #1: ATLANTIC SALMON AQUACULTURE FRAMEWORK**

**Presentation**

Ms. Couture reviewed the alternatives in the framework which would authorize possession of farmed Atlantic salmon in federal waters, including how the LOA, dealer sales and reporting, and participation of fishing vessels in aquaculture would be handled under the action alternatives. She also reviewed the Enforcement Committee’s feedback from their meeting on March 14th, including staff feedback, and potential direct and indirect impacts that could occur as a result of facilitating salmon aquaculture in the EEZ. The Habitat AP Chair presented the AP consensus motion recommending Alt 3-LOA only and rationale to the Committee. NEFMC is expected to take final action during its April meeting. Staff encouraged the Committee to recommend a preferred alternative to the Council, which will meet on April 18th.

**Discussion**

A member asked about the extent to which commercial fishing vessels will service aquaculture farms. Staff noted that farm operations are likely to use specialized vessels but could use fishing vessels and the alternatives are designed to accommodate that possibility. Fishing vessels might help recapture fish following escapement events and could be issued an LOA specific to this purpose.

Regarding fishery enforcement officers’ ability to inspect aquaculture gear, one member noted that fishery enforcement officers are more likely to be present on the water than Massachusetts Department of Environmental Protection boats and asked who has the authority to intervene with aquaculture farms if a problem with the gear or an escapement is observed. NOAA staff commented that NOAA plans to work with the enforcement office to make them aware of aquaculture gear and the potential need for additional inspections. He noted that authority primarily lies with the federal agencies that issue permits (EPA, USACE). A Committee member commented that Maine receives monthly operation reports which would include any disease outbreak or escapement or mortality events and that any EPA or Army Corps of Engineers reporting requirements would apply.

A few Committee members discussed what is considered fishing gear (that would need to be stowed during aquaculture work) and if this includes brailer gear (i.e., a large dip net used to capture small numbers of fish) or is limited to standard fishing gear. Staff noted that any gear restrictions noted in the framework alternatives are focused on commercial fishing gear and not aquaculture gear.

Regarding seafood traceability, one member asked how farmed salmon would be tracked throughout the supply chain after farmed salmon is first sold to a dealer. NOAA staff had discussed this question with fisheries staff at NH and MA, and noted all reporting occurs at the original dealer and that beyond the point of first sale, there are only record keeping requirements. The Committee Chair followed up that the FDA’s Hazard Analysis Critical Control Point (HACCP) plan would have reporting and traceability requirements to trace farmed salmon from
the buyer to seller. Federal dealers have rigid reporting and traceability requirements, which at least some states, including NH, replicate.

1. **MOTION: CHIARELLA/G. SMITH**  
The Habitat Committee recommends to the Council Alternative 3, LOA only, as preferred, including that gear stowage would be required, according to the definition of stowed and not available for immediate use.

*Rationale:* The LOA is sufficient for authorizing possession of Atlantic salmon and additional requirements are not needed. A simpler action with fewer requirements is better.

**Discussion on the Motion:** There was a brief discussion on the current requirements for gear stowage when vessels are declared out of fishery and whether to require removal of fishing gear when in possession of farmed salmon/operating under this LOA. The Committee thought that gear stowage and not available for immediate use would be adequate from an enforcement perspective.

Motion 1 carried by unanimous consent.

**AGENDA ITEM #2: NORTHERN EDGE HABITAT AND SCALLOP FRAMEWORK**

*Presentation*

Ms. Bachman reviewed the current spatial footprint of what is commonly referred to as the “Northern Edge” area, noting that the area will be refined by the PDTs to inform alternatives development based on guidance from the APs, Committees, and the Council. She also provided information on the management areas in this region and reviewed the preliminary goals and objectives drafted by the Habitat and Scallop PDTs. The Habitat AP Chair presented the AP motion recommending adoption of the combined PDT’s goals and a brief summary of the AP discussion and rationale to the Committee. He also provided a consensus statement of the AP expressing an interest in continued habitat research. Staff encouraged the Committee to provide any edits or input. The Scallop AP and Committee will also review the preliminary goal and objectives during the week of March 27th, after which Council staff will provide the combined input from the Habitat and Scallop Committees to the Council for consideration in April.

**Discussion**

A member asked why the draft goal specifies areas outside of the current habitat closure and if there is any benefit for doing so. Staff explained that the outer portion of the closed area (currently open bottom) includes scallop biomass that would be helpful to consider when designing future rotational areas. There may be different impacts on habitat and scallops between fishing in rotational and open areas.

Another member commented that the goal and objectives reference minimizing adverse impacts to habitat generally and asked for the AP’s rationale. The AP discussion was broad, but some advisors thought it was worth specifying juvenile Atlantic cod EFH given that was the original goal of the HAPC and HMA designations.

The GARFO Committee member expressed concern that the goal language is contradictory. More specifically, it is not clear how impacts to EFH can be minimized and scallop yield can be
optimized. He asked whether one supersedes the other. Several Committee members stated that there is a balancing act that will need to be considered when developing this action. One Habitat Committee member, who also is part of the Scallop Committee, remarked that optimization in the scallop fishery is seasonal given different seasons have different scallop yields and that industry is interested in maximizing yield per animal. Optimum yield is defined in MSA as follows (emphasis added):

The term "optimum", with respect to the yield from a fishery, means the amount of fish which—

A. will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

B. is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

C. in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

There was a brief discussion on whether scallop yield should be optimized for the Northern Edge area or for the scallop resource as a whole given scallops in the Northern Edge area likely seeds and repopulates other areas.

The Committee also discussed why NOAA disapproved certain measures from the Omnibus Habitat Amendment 2 (OHA2) and if these are being appropriately addressed through the draft goal and objectives. NOAA GC explained that generally yes, there is new information being considered. Also, the goal and objectives address details of the rotational management program that were not specified in OHA2.

The Committee discussed that the new cod stock structure should be considered when developing this action. Staff noted that we will account for overlap of management measures with distinct cod stocks as alternatives and analyses are developed.

Public:

- **Drew Minkiewicz (Fisheries Survival Fund)** – agrees that there is inherent tension in fisheries management, especially with the term ‘optimum yield.’

- **Erica Fuller (Conservation Law Foundation)** – asked what is meant by vulnerable essential fish habitat and whether this intended for vulnerable habitat or species. She was also wondering if scallop rotational access is permitted within the closed area whether another area would be set aside for conservation, as stated in the final rule for reason for disapproval.

Staff explained that ‘vulnerable’ applies to both species and habitat and that it is unclear how much additional habitat protection might be needed if a scallop rotational access area is permitted within the HMA.

2. **MOTION: G. SMITH/ETRIE**

   To propose to the Council the following goal: Develop a scallop rotational harvest program within and/or around the Closed Area II Habitat Closure Area (i.e., “habitat management area” or “HMA”) that avoids habitats important to juvenile cod, minimizes adverse effects to vulnerable essential fish habitats, minimizes adverse biological and
economic impacts to other managed fisheries, and contributes to optimum yield for the scallop fishery.

**Rationale:** The Council should reference juvenile cod to be consistent with other Council actions. The goal should reference impacts to other fisheries, given the Council manages many other fisheries beyond scallops and groundfish. There is a desire to convey to the public that the Council is equally concerned about various fisheries.

**Discussion on the Motion:** The Committee further discussed how scallops within the Northern Edge region contribute to scallop yield for the resource as a whole. Regarding the ‘avoid habitats important to juvenile cod’ addition, a member continued to reiterate his concern that any future scallop access area might be too small if a buffer is created around areas with complex habitat. He noted that there is currently one area that is not fished because of the rocky habitat. He was interested in specifying avoiding complex habitats ‘to the extent practicable.’ Several members discussed Dr. Scott Gallager’s Before-After-Control-Impact study results with regard to presence of scallops in lower complexity habitats and their discomfort in specifying avoiding complex habitat areas where possible. Regarding recovery rates, the action should evaluate how much of an impact is acceptable and recognize that there would be shorter-term but repeated impact with a rotational management area and the area is important to juvenile cod.

A couple of members wondered how any future access areas would be enforced. This should be further discussed during the April Council meeting when the Coast Guard and other experts will be present. Vessel monitoring systems (VMS) polling rates may need to be changed. Staff indicated that during the clam dredge framework action, access areas could not be smaller than ~1 mile with a minimum amount of spacing between areas (this dimension assumed 5-minute polling rates and the relatively slow speed at which clam dredge vessels operate).

There was a brief discussion on how the HMA has been closed for several decades, yet Atlantic cod has not rebounded so it is not clear whether the HMA designation is having the desired effect on the cod resource. One member noted that there was a lengthy discussion during priorities and there is a balancing act to create a scallop access area and habitat protection.

The Committee discussed the next steps in the process. Staff will provide goals and objectives, as modified today, to the Scallop AP and Committee for review. Provided there is general agreement, we are looking for Council approval and initiation of the action in April. If the Habitat and Scallop Committees are not able to agree to common goal and objectives, then both versions will be brought to the Council for further consideration and discussion.

**Public:**

- **Drew Minkiewicz (Fisheries Survival Fund)** – strongly urged using terms where the definitions are commonly understood to avoid confusion. He repeatedly stated that ‘avoid’ is not defined in MSA while ‘minimize’ and ‘optimum yield’ are clearly defined terms.
- **Gib Brogan (Oceana)** – stated that this is a complicated management action involving habitat, scallop, and groundfish committees and that ‘avoid’ is an appropriate term that is defined and used by NOAA; ‘complex habitat’ is not defined, however. He was
interested in having optimum yield concept related to the entire scallop fishery and not just the Northern Edge region.

- **Erica Fuller (Conservation Law Foundation)** – noted that there is no Council process in place for opening a closed area to fishing.

**2A. MOTION TO AMEND: HANSEN/HUGHES**

To propose to the Council the following goal: Develop a scallop rotational harvest program within and/or around the Closed Area II Habitat Closure Area (i.e., “habitat management area” or “HMA”) that minimizes adverse effects to vulnerable essential fish habitats, minimizes adverse biological and economic impacts to other managed fisheries, and contributes to optimum yield for the scallop fishery.

*Rationale:* Avoiding is a strong term for a small area, especially when buffers are accounted for. There is concern that the framework will identify habitat essential to juvenile cod throughout the area which would not allow for scallop access.

**Discussion on the Motion:** The goal and objectives don’t need to adhere to specific language within the MSA, though should be consistent. The EFH regulations use the terms ‘avoid’ and ‘mitigate.’

**Public:**

- **Drew Minkiewicz (Fisheries Survival Fund)** – strongly urged using common language to avoid confusion. He repeatedly stated that ‘avoid’ is not defined in MSA while ‘minimize’ and ‘optimum yield’ are clearly defined terms.

Motion to amend fails 2/9/0.

**2B. MAIN MOTION: G. SMITH/ETRIE**

To propose to the Council the following goal: Develop a scallop rotational harvest program within and/or around the Closed Area II Habitat Closure Area (i.e., “habitat management area” or “HMA”) that avoids habitats important to juvenile cod, minimizes adverse effects to essential fish habitats, minimizes adverse biological and economic impacts to other managed fisheries, and contributes to optimum yield for the scallop fishery.

*Rationale:* Removed the term ‘vulnerable’ as it relates to EFH given that term is not clearly defined. There was interest in specifying habitats to juvenile cod given that is one of the reasons for establishing the HMA.

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

Motion 2B carried by unanimous consent.

**3. MOTION: ETRIE/G. SMITH**

To propose to the Council the objectives for the Northern Edge Habitat-Scallop Framework developed by the Plan Development Teams.
After this motion was made, the Committee discussed edits to individual objectives. Underlines indicate substantive edits.

3A. **MOTION AS MODIFIED: ETRIE/G. SMITH**

To propose to the Council the objectives developed by the Plan Development Teams for the Northern Edge Habitat-Scallop Framework, as amended today.

1. Establish a scallop access area or areas. These area(s) may be located within and/or outside the existing Closed Area II Habitat Closure Area, including in areas that are currently open to the scallop fishery. Consider both the distribution of scallops and maintaining protection of habitats that are highly vulnerable to dredge fishing impacts and provide functional value for managed fishery resources, taking into account the ecological value of the Northern Edge to juvenile cod and other managed species.

2. Review current boundaries for the Closed Area II Habitat Closure Area (HMA) and consider whether modifications might be considered in a future action.

3. Develop a scallop rotational harvest program, including the geographic extent, duration, and frequency of scallop dredge activity relative to habitat and recovery time on the Northern Edge.

4. Manage harvest from the Northern Edge scallop resource in the short- and long-term by considering the size distribution of scallops, seasonality of fishing with regard to meat yield, spawning and recruitment potential (in this area and other areas of the scallop resource across Georges Bank), and fishing behavior.

5. Develop management area boundaries that are enforceable. This may include developing additional monitoring requirements specific to this area.

6. Accurately monitor and minimize bycatch of non-target species.

7. To the extent possible, consider gear interactions including between scallop dredges and lobster traps.

**Rationale and discussion on the Motion:** Reasons for changes to each objective are detailed below:

Objective #1: interest in taking into account the ecological value of the Northern Edge region to juvenile cod and other Council managed species, in keeping with modified goal statement.

Objective #2: discussed whether the current HMA boundary would be revised, which some members thought would not be consistent with the action’s goal. Should the current HMA boundary be revised, this could be done during a future action under a different priority. Changes to the boundaries would impact access for other fisheries.

**Public:**
• **Erica Fuller (Conservation Law Foundation)** – does this include all HMA boundaries? Also, she asked if only Council-managed species being considered in this action, for which staff answered yes.

• **Drew Minkiewicz (Fisheries Survival Fund)** – asked whether the HMA boundary has to be the same as the scallop access boundary. Staff responded that the two can be different.

Objective #3: no further discussion.

Objective #4: there was interest in adding a reference to recruitment impacts for the scallop resource as a whole.

Objective #5: no further discussion.

Objective #6: one member asked about the enforceability of access areas and the level of monitoring that would be needed (at-sea monitoring, gear or seasonal restrictions, etc.). Another member noted that if substantial interactions are expected for yellowtail or other species with sub-ACLs and accountability measures, then a future action could consider changes to sub-ACLs and AMs. Such changes were presumed to be beyond the scope of this action.

**Public:**

• **Gib Brogan (Oceana)** – there should be explicit reference to new accountability measures that may be needed.

• **Erica Fuller (Conservation Law Foundation)** – asked if only impacts to council managed species will be minimized or all species, specifically sea turtles.

Objective #7: discussed whether this was repetitive with the goal language. Objectives are designed to be more specific and redundancy with the overarching goal is okay and even desirable.

**Public:**

• **Erica Fuller (Conservation Law Foundation)** – to the extent practicable has legal meaning. Asked if this objective is intended to focus on EFH.

Staff explained that the objective is intended to acknowledge that there could be interactions between the lobster and scallop fisheries but that the Council does not explicitly manage gear conflict and any interactions. Agreed that possible was a better term here than practicable.

**Motion 3A carried by unanimous consent.**

**AGENDA ITEM #3: RECENT COORDINATION WITH BOEM AND NOAA RE-OFFSHORE WIND LEASING IN THE GULF OF MAIN**

Staff provided an overview of the commercial leasing process in the Gulf of Maine, noting that BOEM is currently working on revising the draft Call Area. Council staff spoke with BOEM on areas to avoid developing including Platts Bank and areas within 140 m of Georges Bank from the draft Call Area and are in the process of providing data to BOEM and National Centers for Coastal Ocean Science (NCCOS) to inform Call Area development. Ms. Bachman provided updates on Maine’s research lease application and other wind-related updates.

**Discussion**
There was no discussion on this topic.

**AGENDA ITEM #4: EXEMPTED FISHING PERMIT-BASED RESEARCH IN THE GREAT SOUTH CHANNEL HABITAT MANAGEMENT AREA**

Ms. Bachman provided background information on an Exempted Fishing Permit (EFP) based research in the Great South Channel (GSC) HMA. At the Council’s request, the Habitat PDT and Committee provided recommendations on the utility of results from a prior EFP-based study of the Rose and Crown section of the GSC HMA. The recommendations were based on a final report prepared by study authors at Coonamessett Farm Foundation (CFF) and informed by discussions between the authors and the PDT. Around this same time, CFF requested another EFP to complete additional work (this is provided in the meeting materials), along with correspondence where the GARFO administrator denied this request in December, and CFF provided a rebuttal in January. Council staff are sharing this information with the Committee because of the Council’s prior engagement on the earlier phase of this work.

**Discussion**

A member asked whether this type of EFP review is a Council priority and if the Council will be involved in reviewing proposals should CFF submit another EFP. The Committee Chair and staff clarified that the Council generally provides comments and feedback on EFPs when there is a notice in the Federal Register and that the engagement with CFF on their proposals is not typical. A couple of Committee members recommended engaging only when appropriate given the Council is not involved in the EFP process.

The Committee Chair brought forward the following AP consensus statements, for which the Committee did not have any further discussion. These consensus statements will be conveyed to the Council during the Habitat Committee’s report.

1. The AP shares the Habitat and Scallop PDTs’ interest in continued research. The AP was uncertain how to articulate this as a specific objective as part of the Northern Edge action.
2. The AP recommends continued and additional research within the two research areas identified in the Great South Channel HMA (i.e., Rose and Crown and Davis Bank), including fishery dependent and independent studies.

**Public:**

- **Shaun Gehan (representing the clam industry)** - commented on how confusing it is to understand the type of information required to prove a negative (e.g., not adversely impacting complex habitat). He also noted that if research is going to occur that compensation fishing should be done in conjunction. He wanted continued dialogue with the Habitat Committee, PDT, etc. to provide clarity on the type of research that would be most helpful for industry to conduct.

**AGENDA ITEM #5: OTHER BUSINESS**

No other business was discussed, and the meeting adjourned at approximately 1:00 p.m.