MEETING SUMMARY

Joint Habitat and Scallop Committee
Providence, RI
March 27, 2024

The Habitat and Scallop Committees met jointly on March 27, 2024 to discuss: 1) the Northern Edge Habitat-Scallop Framework; 2) Advisory Panel report; and 3) other business including the Great South Channel Habitat Management Area Experimental Fishing Permit and the Gulf of Maine Final Wind Energy Areas.

The meeting began at approximately 9:15 AM

MEETING ATTENDANCE: Eric Reid (Habitat Committee Chair, ran the meeting), Melanie Griffin (Scallop Committee Chair), Mark Alexander, Togue Brawn, Peter Burns, Michelle Duval, Matt Gates, Emily Gilbert, Eric Hansen, Peter Hughes, Jackie Odell, Scott Olszewski, Cheri Patterson, John Pappalardo, Geoff Smith, Melissa Smith, and Renee Zobel; Other Council Members in attendance: Rick Bellavance, Megan Ware; Habitat Advisory Panel (Habitat AP): Chris McGuire (Habitat AP Chair), Gib Brogan, Lane Johnston, Drew Minkiewicz, Ron Smolowitz; Scallop Advisory Panel (Scallop AP): James Gutowski (Scallop AP Chair), Jay Elsner, Brady Lybarger; NEFMC Staff: Michelle Bachman, Connor Buckley, Jenny Couture, Jonathon Peros, Angela Forristall, Robin Frede, Cate O’Keefe, and Janice Plante.

Several members of the public were also in attendance.

KEY OUTCOMES:

- Regarding the Northern Edge Habitat-Scallop Framework, the Joint Committee unanimously recommended that the Council remove Concept Areas 1 (Full Area) and 3 (South of High Complexity Area) from further consideration given concern that these areas are inconsistent with the goal and objectives of the framework.
- Regarding Other Business, the Joint Committee had a couple of recommendations to include during upcoming Gulf of Maine offshore wind comment periods.

AGENDA ITEM #1: NORTHERN EDGE HABITAT-SCALLOP FRAMEWORK

The Council initiated the joint framework at its April meeting and adopted goals and objectives. Both the Scallop and Habitat Plan development teams have been working to assemble data and information to address Council tasking from the September 2023 Council meeting. The Council requested estimates of scallop biomass in four concept areas (Scallop PDT), estimates of percent disturbance from the fishing effects model (Habitat PDT). The tasking also requested that the
PDT’s consider impacts to other fisheries resources, in accordance with the objectives for the action.

The Habitat PDT met on February 21, 2024 and March 6, 2024 to discuss results of the fishing effects model for the four concept areas. The Scallop PDT met on February 28 and March 14, 2024 to discuss estimated biomass in each of the concept areas. To begin the meeting, habitat and scallop staff presented a detailed overview of the scallop and habitat analyses to date.

Note that the ASMFC’s Lobster Technical Committee met on December 8, 2023 and March 12, 2024 to discuss information requested by the Lobster Board. Information from the Lobster Technical Team is expected to be forthcoming prior to the April Council meeting.

Discussion:

Several Committee members asked about the scallop exploitable biomass levels and the fishing effort levels used as inputs to the Fishing Effects model. Staff explained that swept area is used as a proxy for fishing effort and a fishery in southern Closed Area II with a 9,000 lb trip limit (0.5 trip/vessel) was used to approximate fishing effort as a starting point for this Fishing Effects modeling work. Staff can re-run the model with different levels of swept area to understand the sensitivity of this data input to habitat disturbance outputs. Given the high uncertainty around biomass estimates for each concept area, an average across the surveys was not done (which is typically done in scallop specifications). Staff noted that surveys will be conducted this year with higher resolution survey work in the Northern Edge specifically (SMAST surveys) and HabCam and dredge survey work will also be done. Survey information from the 2024 field season will not be ready for consideration until the fall. It will not be possible to use this information to define access area boundaries for analysis without pushing back the timeline for this action.

There was a lengthy discussion on the potential for mitigation and how mitigation is defined. For example, does mitigation require another closed area or gear-restricted area for mobile-tending gear outside of the Northern Edge area? Is there a one-to-one mitigation requirement for any access area in the Northern Edge area? Does there have to be a closed area outside of the Northern Edge that is equivalent in terms of ecosystem value (value for recruitment of scallops, habitat protection for cod and other species, etc.)? Staff reiterated that the intent of this action is to identify potential scallop access areas that minimize habitat impacts (especially to juvenile cod) and limit the amount of scallop effort in the Habitat Management Area. Council and GARFO staff suggested it is likely that any mitigation required would aim to be conservation equivalent, though equivalence is difficult to measure. There needs to be additional discussion on mitigation as framework development progresses given any mitigation alternatives would have to be incorporated into this action, which adds complexity to the action and would likely push back the timeline.

One member asked about the source-sink relationship of scallops in the Northern Edge region potentially seeding other areas. The Scallop PDT has not discussed this at length; there is a gyre that should disperse scallop seed clockwise around Georges Bank that is likely important for distributing scallop spat from high density beds to other regions. Related to this, another Committee member asked about a ‘typical’ fishing rate for a scallop access area and if the Northern Edge area has experienced better or worse recruitment compared to other access areas. Staff noted that the fishing rate by access area is variable and has ramped up or down over time and needed to look at how exploitable biomass has changed over time.
Regarding impacts to Atlantic cod, one Committee member reminded the group that cod biological stocks have increased from two stocks to four, which should be considered in this action when evaluating impacts to cod.

Several Committee members asked questions about the Fishing Effects model:

- *Does the model account for repeat fishing in the same area?* The model assumes all of the bottom would be fished, noting that fishing effort can overlap, though staff noted that the model has not been run with a high enough swept area that would result in 100% of the bottom habitat being impacted in a given month. Staff can re-run the model and compare results under different levels of effort to understand this issue better.

- *What does habitat percent disturbance mean?* The percentage values are the percentage of an individual 5km x 5km grid cell. Some grid cells have higher disturbance levels based on the types of habitat features inferred to the grid cell and the amount of fishing effort applied to a given grid cell. The member recommended including scallop biomass information by grid cell to provide context to the habitat impact results. Overall, as fishing effort continues, fishing efficiency decreases (there will be less scallops to harvest and potentially greater habitat impact as a result). This is not directly accounted for in the Fishing Effects model.

Public:

- **Libby Etrie (Conservation Law Foundation):** asked about mitigation and how that is defined as it relates to ecological function of the area; she inquired how impacts of certain alternatives can be evaluated without having clearly defined thresholds for which habitat impacts cannot exceed. Staff agreed and stated that additional conversations need to occur with NOAA Fisheries to understand if/when mitigation would be required.

- **Drew Minkiewicz (Black Point Maritime Law, Habitat Advisor):** asked how the Fishing Effects model results compare with the Gallager, et al. 2022 study results and why there is greater weight given to the Fishing Effects model results. Staff noted that more work is needed to compare the model results with the study, however, the two do not seem dissimilar to each other. Table 15 of the Concept Areas Evaluation Memo has additional information on recovery information for the model and the Gallager, et al. 2022 study. Mr. Minkiewicz also asked about a fishing rate of 0.4 which would leave 75% of exploitable biomass and whether it is likely that spawning has occurred for several years; yes, that is most likely true. Lastly, Mr. Minkiewicz asked why the Concept Areas Evaluation Memo is definitive about what is considered minimal and temporary impact when the habitat regulations do not clearly define these. Staff will review the memo to soften the language as needed.

- **Gib Brogan (Oceana, Habitat Advisor):** commented that the framework action goal and objectives specify avoiding impacts to juvenile cod and that there is a new Georges Bank cod stock that needs to be taken into account when looking at disturbance to important habitat. He asked about the types of habitats that are important for juvenile cod. Staff answered that cod habitat percent disturbance would likely be higher in the Fishing Effects given the degree of complex habitat inferred in certain grid cells, noting that some areas are not likely to be fished due to lack of scallop resource.
• **Mary Beth Tooley (O’Hara Corporation):** questioned why area swept is being used as a proxy for area impacted given they are not necessarily equivalent. Staff noted that area swept is scaled by susceptibility of habitat type and that staff do not have the necessary data on an individual tow level, which results in not being able to resolve the broader model resolution of 25km² grids and the patchiness of the scallop biomass. Additional work is needed on this topic.

• **Ron Smolowitz (Fisheries Survival Fund, Habitat Advisor):** asked about the model sensitivity and how different levels of fishing effort change Fishing Effects model outputs. Staff answered that swept area is used as a proxy for fishing effort and that there are constraints with model resolutions. Staff could run the Fishing Effects model again with half the amount of swept area to understand how percent habitat disturbance values change.

• **Brady Lybarger (scalllop fisherman, Scallop Advisor):** commented that he fished in the Area II Access Area in 2023, and made 17 tows that were between 5-10 mins each, 13 tows that were comprised of two dredges and four tows with one dredge. Fishing behavior varies by individual fisherman; thus, habitat disturbance also varies.

• **David Frulla (Kelley Drye & Warren LLP):** The Fishing Effects model should address the fact that certain areas of the habitat bottom are higher energy within the Habitat Area of Particular Concern. He asked what is the maximum habitat disturbance value that is theoretically possible from the model results (across all areas; maximum disturbance within a grid is 100%). Staff need to look into this further.

**AGENDA ITEM #2: ADVISORY PANEL REPORTS**

Melanie Griffin (who served as the Scallop AP Chair) provided a brief overview of the Scallop AP meeting outputs including: selecting Concept Area 1 as the preferred option (Motion #1), followed by Concept Area 2 as the next preferred option (Motion #2), and keeping Concept Areas 2 and 3 under consideration (Motion #3), noting that the Southern boundary of Concept Area 2 should be extended closer to the High Complexity Area to encompass the high density patch of scallops. Rationale for these motions is as follows: recommended to keep the area as large as possible for operational flexibility to spread out effort; lower than anticipated exploitable biomass; high uncertainty in scallop biomass; vessel safety considerations; and desire to use research-set-aside funding to assess habitat impact and recovery from fishing to inform future fishing intervals.

Chris McGuire provided a brief overview of the Habitat AP meeting including the failed motion which supported the Scallop AP motions with additional data analysis items (limiting total allowable catch, limiting fishing time in the area, expanding observer coverage to collect habitat data, seasonal closures for lobster and fish bycatch, and trading Northern Edge access trips to open area days-at-sea). Mr. McGuire reviewed the motion that passed with four advisors in favor and two against: to continue analyzing the four concept areas as is given the analyses are still ongoing and there is a desire to wait for additional information on lobster and groundfish fishery impacts in order to make an informed decision at a later stage.

**Discussion:** One Committee member asked whether concept area boundaries can be adjusted at a later date if scallop biomass is discovered in other areas from future scallop surveys. Staff reiterated that the Committee should settle on the general configuration of concept areas during
this meeting. Council staff also noted that the Enforcement Committee is meeting April 2\textsuperscript{nd} and will be evaluating the enforceability of polygon boundaries, which may inform the current concept area configurations. The Council Executive Director emphasized that additional analyses will not be completed before the April Council meeting and if more analysis is desired before access areas are determined, the Council will need to further discuss this, which will likely result in a longer timeframe for completing this action.

1. **MOTION (G. Smith/Odell):**
   Move that the Committee recommend that the Council remove Concept Areas 1 (Full Area) and 3 (South of High Complexity Area) from further consideration in the Northern Edge Habitat-Scallop Framework.

   **Rationale:** Concept Areas 1 and 3 are inconsistent with the goal and objectives of the framework.
   - The goal is to develop a scallop access program that avoids habitats important to juvenile cod and minimize adverse effects on essential fish habitat.
   - Concept Area 1 has the greatest percent habitat disturbance and encompasses the greatest amount of complex habitat (p. 4 of PDT memo).
   - Concept Area 3 has the second highest mean percent habitat disturbance and overlaps substantial areas of complex habitat (p. 4 of PDT memo)
   - The area south of the High Complexity Area has a significant percentage of gravel, cobble, and boulder substrates (see Figure 2 and Table 4 in PDT memo). These habitats with higher structural complexity are known to be important for juvenile cod and other managed species and should be avoided.
   - Removing Concept Areas 1 and 3 allows Council staff, Council members, and the public to focus efforts on options that are more consistent with the goals and objectives of this action.

   **Discussion on the motion:** One Committee member thought that Concept Areas 1 and 3 are inconsistent with the goal and objectives of the action and that the mean disturbance values and overlap with the complex habitat are greatest in these areas. More information is needed to understand what is meant by ‘mitigation.’ Another member expressed interest in being realistic on what can be done as part of this action with the goal of being able to harvest scallops in the Northern Edge. Another member wanted to reduce the number of concept areas being evaluated due to Council staff workload concerns. Implications for scallop recruitment and source/sink dynamics throughout the rest of Georges Bank were also mentioned.

**Public:**

- **Ron Smolowitz (Fisheries Survival Fund, Habitat Advisor):** did not support the motion, noting that the small concept areas are not feasible and that the best approach is to have research conducted in the area, including a low total allowable catch over a larger area, high observer coverage, etc. He noted that Concept Area 1 represents only a portion of the Habitat Management Area and that if a smaller concept area moves forward, then that will be destructive to both the scallop fishery and habitat.
• **Drew Minkiewicz (Black Point Maritime Law, Habitat Advisor):** supported the motion for removing Concept Areas 1 and 3 and reiterated the desire for scallop fishing access to the Northern Edge.

• **Gib Brogan (Oceana, Habitat Advisor):** supported the motion given these concept areas are most problematic in meeting the action’s goal and objectives. He did express concern with the remaining two concept areas especially for adverse impacts to juvenile cod, enforceability concerns, adverse biological effects and bycatch impacts, etc. that are all likely more than minimal and more than temporary.

• **Brady Lybarger (scallop fisherman, Scallop Advisor):** did not support the motion given he is worried about safety and accessibility to the area; should discuss shorter tow times and frequency of fishing before eliminating any concept areas from further consideration. He wanted the largest area possible to reduce safety concerns and to improve access.

• **Libby Etrie (Conservation Law Foundation):** supported the motion, noting that there are concerns with Concept Areas 2 and 4 and that competing interests must be balanced (impacts to juvenile cod essential fish habitat, other managed species, etc.). She wanted clear thresholds for measuring alternatives against in order to understand impacts to habitat and what are considered minimal and temporary impacts.

**MOTION #1 CARRIED BY UNANIMOUS CONSENT**

Additional discussion: The Council Executive Director asked NOAA Fisheries what is meant by mitigation and suggested that a definition would be helpful. Mr. Burns from NOAA stated that additional conversation is needed, noting that there is likely a conservation equivalency that will be required for any mitigation deemed necessary. Ms. Gilbert from NOAA further explained that mitigation will be evaluated once impact analyses are completed.

One Committee member followed up to ask about potentially changing the concept area spatial boundaries to encompass the high scallop concentrations along the northernmost part of the high complexity area. Staff noted that there are enforcement considerations that need to be accounted for. Trade-offs of fishing along the edge of this high complexity area (HCA) should be considered, including the creation of a buffer and reduced area swept. The Joint Committee and the Council may consider modifying the concept areas slightly based on additional information on mitigation and once additional information on lobster, groundfish, and enforcement is provided. Any substantial changes to spatial boundaries could extend the timeline for this action. A couple of Committee members were interested in understanding what will be discussed during the upcoming Enforcement Committee including the amount of distance vessels can travel between five-minute VMS pings, how to enforce shorter tow times, etc. Another Committee member cautioned that additional complexity to the action will delay access to scallop fishing in the Northern Edge.

Public:

• **Brady Lybarger (scallop fisherman, Scallop Advisor):** commented that fishermen will not cross into the High Complexity Area and that a buffer is not necessary. The highest scallop biomass concentration is adjacent to this area.
AGENDA ITEM #3: OTHER BUSINESS

Council staff briefly discussed a draft letter to GARFO regarding the issuance of an Exempted Fishing Permit (EFP) Coonamessett Farm Foundation (CFF) exempting partner vessels from restrictions on clam dredging in the Great South Channel Habitat Management Area. Council staff drafted a letter (due April 12th) and solicited feedback from the Habitat Joint Committee. The Joint Committee did not have any questions or discussion on this topic.

Staff also presented information on the recently published Gulf of Maine Final Wind Energy Areas (WEAs). Chris McGuire (Habitat AP Chair) expressed appreciation for Council staff engagement in offshore wind. One Committee member asked whether it makes sense to recommend a Programmatic EIS (PEIS) for the Gulf of Maine, in addition to the Council’s prior recommendation a year or two ago. Staff wanted to look at the New York Bight PEIS and if that was helpful before making a recommendation on this for the Gulf of Maine (our prior letter recommended a PEIS to inform identification of lease areas, and a PEIS at this stage could be used for developing mitigation measures, similar to the NYB PEIS). The Committee member reiterated the importance of Wilkinson Basin for the groundfish fishery and the need to account for transit through the Final Wind Energy Areas to Georges Bank fishing grounds.

Related to the Northern Edge discussion, one Committee member brought up a comment that adjusting the northernmost portion of the High Complexity Area boundary could have the opposite effect for incentivizing fishing.

No other business was discussed, and the meeting ended at approximately 1pm.