



New England Fishery Management Council

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DRAFT MEETING SUMMARY

Habitat Plan Development Team (PDT)

January 4, 2023

9:00 a.m. - 12:00 p.m.

Agenda

The PDT met to discuss alternatives to authorize possession of farmed Atlantic salmon in offshore aquaculture operations, which are being developed as Framework 1 to the Atlantic Salmon Fishery Management Plan. The Council initiated this action in September 2022 and approved goals and objectives in December 2022. The draft alternatives as revised by the PDT will be discussed by the Habitat Committee on January 12, and the Council will be briefed on January 24. The Council's Enforcement Committee will discuss these alternatives at a later date.

Meeting attendance

PDT members included Michelle Bachman (Chair), Peter Auster, Sharon Benjamin, Jessica Coakley, Jenny Couture, Geret DePiper, Rachel Feeney, Fiona Hogan, Julia Livermore, David Packer, Sabrina Pereira, Doug Potts, Page Valentine. Committee Chair Eric Reid. Other invited participants included Chris Schillaci, Ashleigh McCord, David Bean, Eric Nelson, Rick Kristoff. Drew Minkiewicz also attended.

Atlantic Salmon Aquaculture Framework

Council staff drafted two alternatives to address the goals and objectives approved by the Council. The alternatives were provided to the PDT for review in late December. The PDT chair acknowledged that there may be more details or information in the initial draft than is necessary to address the goals and objectives, but the aim was to cover all bases and explore all ideas and then edit down as appropriate, during this meeting and in the coming month or so. Most of the meeting consisted of the chair reviewing each section of the alternatives, stopping frequently to take questions and comments from the PDT.

Related to the scope of this action, the North Atlantic Salmon Conservation Organization's (NASCO) Williamsburg Resolution references farming (raising contained fish and harvesting fish from the containers, e.g., net pens), ranching (releasing smolts to later harvest upon their return to natal rivers), and enhancement (releasing smolts to bolster wild stocks, not with the intention to harvest). This action relates to salmon farming only.

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The No Action alternative (Alternative 1) would not specifically authorize possession of farmed salmon in the EEZ. The language for the alternative is straightforward, but the group recommended that the rationale for No Action should be thoughtfully crafted. Specifically, the No Action alternative and rationale should convey the likely outcome for aquaculture operators if the Council does not explicitly authorize possession via the framework. Absent a Council authorization, aquaculture operators and related parties such as dealers would be required to individually ensure they can provide evidence sufficient to demonstrate such fish were harvested or transferred from aquaculture enterprises. Also, this rationale goes towards providing a clear and defensible rationale for Council action specifically authorizing salmon aquaculture via Framework 1. This rationale is required as part of the NEPA purpose and need statement, as well as for Executive Order 12866 and Initial Regulatory Flexibility Act (IRFA) analyses. NOAA staff will discuss with General Counsel what happens if the Council does not authorize farmed salmon possession through this framework and report back to Council staff.

The action alternative (Alternative 2) would explicitly authorize possession of farmed Atlantic salmon by authorized aquaculture operations. Multiple elements were written up as part of this single action alternative, under three different headers: enforcement, monitoring, and reporting. The PDT discussed that we can either present the alternative as a single package that includes all elements, leading to a single decision on the part of the Council to adopt or reject the alternative, or it may be appropriate to frame the alternative as a series of sub-alternatives. The structure will depend on whether multiple decision points are desired or if it would simplify the Council's decision-making process to have a single decision point; the structure of the alternatives will be considered after the Committee meeting.

The preamble to Alternative 2 notes that the alternative is not intended to duplicate reporting requirements or permit conditions associated with individual aquaculture projects. It also notes that these measures are designed to apply to any future projects authorized in the EEZ. These statements are consistent with two of the Council's objectives for this action.

The enforcement section of the text includes language about a potential letter of authorization (LOA) requirement, the need to document that the salmon are associated with an aquaculture operation and to facilitate discrimination between farmed and wild fish, and notes that vessels or entities not authorized under the framework cannot possess salmon. The monitoring section described issues related to at-sea tracking and data collection from vessels to aid in enforcement. The reporting section described ideas for an annual report to the Council, as well as vessel and dealer reporting requirements.

The PDT wondered if the authorizations and associated measures would apply to salmon farmed in international waters, transported through the EEZ. This issue is likely beyond the scope of what the Council needs to consider. A U.S. Fish and Wildlife Service Title 50 authorization would be required for any imports.

The PDT also discussed various state permitting and ticketing systems, including container tagging requirements. These will be summarized in the framework if relevant.

Under enforcement, the draft LOA provision suggested that all vessel operators associated with an aquaculture operation and needing to possess farmed salmon in the EEZ would be required to

obtain and carry an LOA. A number of specific elements were identified. The PDT generally agreed that an LOA could aid enforcement, and that some sort of requirement to convey fish in marked/tagged containers would be useful.

Another element of the enforcement section of the document, that also has relevance to the conservation objectives of the FMP, was that fish raised at the site should be distinguishable from wild salmon. There was some discussion about how this is done in Maine; and whether it was necessary to include this provision in the framework, or at least whether it was necessary to list specific methods. It was noted that different methods could be employed to differentiate fish during a vessel inspection versus in the event of an escapement event. For example, container tagging and permitting could suffice for vessel inspections, whereas genetic tracking could be used in the event of an escapement event. It was discussed that information on fish source, stocking and genetics, would be included in a containment management plan and/or Hazard Analysis Critical Control Point (HACCP) plan required by EPA, and reporting and would be included as an element of the National Pollutant Discharge Elimination System (NPDES) permit.

The PDT discussed making sure the alternative language covers the possibility that fishing vessels that hold other permits and are subject to related monitoring and reporting requirements might partner with an aquaculture operator. For enforcement purposes, the language was clarified to note that only species listed in the LOA could be retained while a vessel was servicing the operation. This is likely a topic for discussion with the Law Enforcement Committee.

The enforcement section of Alternative 2 also notes that salmon should be returned to the water if encountered outside an aquaculture setting during fishing operations, as is currently required. It was noted that since salmon is an ESA-listed species, there are existing reporting requirements; these should be referenced in the document.

The language drafted by staff did not identify any monitoring measures that seemed necessary to require via this framework for vessels transporting salmon to or from aquaculture facilities. Specifically, use of a VMS on vessels transporting salmon seemed that it would not provide additional value related to salmon conservation. Also, integration of these vessels into the Standardized Bycatch Reporting Methodology (SBRM) and at sea observer system seems unnecessary given the nature of the operations and expected lack of bycatch. Because integration within the SBRM program is the default for federal fisheries permits, this framework would need to specify an exemption if that is the Council's intent. In addition, the PDT discussed a number of monitoring requirements that are included in EPA and USACE permits, such as water quality and containment monitoring.

Multiple reporting elements were outlined in the draft prepared by staff. Reporting both vessel landings and dealer purchases seems important from a harvest tracking standpoint. Collecting data from vessels transporting fish and also from dealers would allow for an accounting to see if the numbers balance. The existing vessel trip report and dealer reporting systems appear to be sufficient for this purpose, and would represent a consistent, familiar approach relative to reporting in other federal fisheries. Also, these systems should allow for specification of multiple fish dispositions. In addition to fish that are being harvested and landed for human consumption, any dead fish would be removed from the net pens and would also need to be transported to

shore. Catch reporting to EPA under their NPDES permit would likely be less frequent, perhaps monthly, thus a more frequent/higher temporal resolution of data is included as part of this framework to be consistent with other Council-managed species. The PDT also discussed reporting requirements that are included in EPA and USACE permits. These include reporting of escapement events, stocking and harvest activities, any exceedance of water quality or other NPDES permit thresholds, interactions with protected or endangered species, the use of therapeutics to control disease or pests, and any other custom reporting provisions that may results from Federal agency permitting and the associated EFH and ESA consultations.

The PDT also discussed the idea of an annual report provided by the aquaculture company to the Council. Such a report might include information on total harvest and could be used to identify any issues with escapements or water quality. The team discussed how this information might be used by the Council, for example to inform changes to aquaculture authorizations in future Council actions, and whether such reporting would duplicate reports provided to federal agencies, particularly the EPA. Information about stocking and harvest rates, escapement planning and any escapements, and water quality monitoring will all be conveyed to the EPA so that they can assess compliance with NPDES permit conditions. Thus, there was some concern that such annual reporting to the Council would duplicate these existing requirements. In addition, if there are fewer than three entities reporting, harvest elements of these reports could be considered confidential under Magnuson Stevens Act requirements.

The Council might use the findings in these reports to inform adjustments to aquaculture-related measures in the Atlantic salmon FMP, but it was not clear that an annual report was necessary for this purpose. Assuming VTR and dealer reporting are required under this framework, vessel trip report and/or dealer data summaries could be developed from those databases when needed, and information provided to EPA on any escapement or water quality issues could be provided to the Council upon request. In addition, the Council could request periodic project updates from NMFS. A more informal system for keeping the Council updated would also be more flexible, should questions and information needs evolve, vs. writing such annual reporting into federal regulations (e.g., the annual monitoring report in the skate regulations). Any enforcement activity could also be raised during NOAA Office of Law Enforcement's report to the Council. Thus, for now, the PDT recommends against including this sort of annual report in the range of alternatives and suggests keeping the measures limited to trip-based vessel and dealer reporting.

One question is whether vessels would need a federal fisheries permit in order to participate in the vessel trip reporting system. A federal Atlantic salmon permit does not currently exist but could be developed as a part of or in conjunction with this action. The PDT will investigate this issue further.

The PDT also discussed the contents and level of detail required for the Affected Environment section of the framework. Information on Atlantic salmon status, management, and finfish aquaculture permitting as related to salmon conservation is obvious to include, but some follow up between NEPA and Council staff will be required to determine how detailed sections for other ecosystem components may need to be.

Planning for 2023 Habitat Management Actions

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Two new actions will be undertaken during 2023 and will update multiple Council FMPs. These actions will be developed alongside the aquaculture framework, offshore wind comment development and coordination, and other staff work.

1. A framework will be developed to consider adjustments to the habitat management area on the northern edge of Georges Bank. The framework will also consider establishing a sea scallop rotational management area and would include detailed provisions for how that area could be fished, including the rotational time interval, trip limits, seasonal or gear restrictions, or any other measures to manage bycatch, conflicts between fisheries, or other issues important to the Council. Staff intend to submit the current scallop specifications framework and make additional progress on the aquaculture action before beginning work on the framework in earnest. A more detailed work plan will be developed, but it seems appropriate to begin by developing spatial approaches (i.e., habitat conservation vs. scallop harvest areas) and then to consider the details of a rotational harvest program. This work will likely begin with a longer (full day) in person PDT discussion. Staff will need to determine which groups (e.g., habitat, scallop PDTs, Committees) will need to work together on this action, and whether they'll meet jointly or sequentially.
2. The other new action is a review and possible revision of the Council's EFH designations. Considering all 28 species this would be a significant undertaking, so it is likely that the Council will complete this work over multiple years, addressing smaller groups of species together, as discussed during the November PDT call. As noted previously, MAFMC is also conducting an EFH review. It would be useful for the two Councils to work together on developing EFH designation approaches, building from the recently completed Northeast Regional Habitat Assessment. A two-day PDT/FMAT workshop to develop designation methods will likely be a useful early step in the process, sometime this spring. Once this work is completed, potentially for a pilot species, the PDT could review a small group of additional designations as the next step.

Other business

None was discussed.

Follow up items

- Revise alternatives and rationale based on comments; include any outstanding questions as notes for Committee
- Conduct follow up discussions with NOAA Aquaculture, Habitat, General Counsel, and NEPA staff, including communicating those discussions to Council staff
- Summarize relevant elements of the aquaculture permitting process for the affected environment section
- Look at information provided on Maine salmon aquaculture and incorporate into framework document where appropriate
- Schedule another PDT meeting to complete work on alternatives and develop impact analyses