



New England Fishery Management Council

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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

MEETING SUMMARY

Habitat Committee Meeting

Holiday Inn, Mansfield, MA

Tuesday, February 24, 2015

MEETING ATTENDANCE: Dave Preble (Chairman), Doug Grout (Vice Chairman), Terry Alexander, Vincent Balzano, Libby Etrie, Mark Gibson, Matthew McKenzie, Mary Beth Tooley, Lou Chiarella, Warren Elliot, and Jeff Kaelin (all Committee members present); Terry Stockwell (Council Chairman); Michelle Bachman, Maria Jacob, and Tom Nies (NEFMC staff); Moira Kelly and David Stevenson (NMFS GARFO staff); Mitch MacDonald (NOAA General Counsel); and David Wallace (Habitat Advisory Panel Chairman). In addition, over twenty members of the public attended, including some additional advisory panel members.

The Habitat Committee met on February 24, 2015 in Mansfield, MA to discuss comments received on the Omnibus Essential Fish Habitat Amendment 2 (OHA2). Mr. Preble made introductions and Ms. Bachman provided a summary of the public comments received at the hearing and submitted comments.

KEY OUTCOMES:

Outcome #1: Plan Development Team tasking

1. Evaluate whether spawning alternatives in OHA2 in combination with FW 53 cod protection measures meet the goals and objectives of OHA2
2. Evaluate whether cited literature and scientific information brought forward by the comments has already been used, and identify whether new information is important for the Committee/Council to consider in decision making
3. Evaluate realized adverse effects in some fashion that does not use the SASI model
4. Improve practicability analysis
5. Evaluate whether adverse effects to EFH are accruing within HAPCs, and whether they should be minimized
6. Evaluate whether additional analyses are necessary regarding lobster/scallop gear conflict potential and impacts to the lobster resource
7. Identify candidate clam exemption areas within habitat closures that are both high energy sand and areas currently fished with clam dredges

8. Clarify how the amendment complies with the prey information requirement in the EFH regulations, and how adverse effects to prey as a component of EFH are evaluated
9. Reevaluate the winter flounder egg EFH designation
10. Revise rationale for spawning areas in the EIS

Outcome #2: Advisory Panel tasking

1. Identify a reasonable minimum size for clam exemption areas
2. Make recommendations for preferred alternatives

Outcome #3: Committee motions

- (Alexander/Kaelin): In the Western Gulf of Maine, add an alternative that maintains the existing habitat closure, and modifies the WGOM groundfish closure area so that its boundary matches the boundary of the existing WGOM habitat closure. **Motion as amended carried on a show of hands, 8/2/1.**
- (Gibson/Alexander): Add a habitat protection alternative that decouples the Cox Ledge areas from the Nantucket Shoals/Great South channel areas. **Motion carried on a show of hands, 8/1/2.**
- (Etrie/Alexander): Motion to add a standalone alternative under the habitat management areas to include Stellwagen Small and Jeffreys Ledge areas as identified, but not the Small Bigelow Bight. **Motion carried on a show of hands, 8/2/1.**

Outcome #: Committee consensus statement

- The committee agrees that the no closure options do not meet the goals of the amendment and should not be considered further.

Summary of Public Hearings: More than 532 persons attended the twelve public hearings that were held between November 24, 2014 and January 7, 2015. During the hearings, 174 individuals provided in-person comments. During the written public comment period (October 10, 2014 – January 8, 2015), 195 different letters were submitted by individuals, groups, and organizations. Some of these letters were submitted multiple times by many individuals (149,920 comments), and some letters were signed by many people or were submitted by organizations representing a number of fishing vessels (5,390 signatures/vessels represented).

Mr. Preble explained the guidelines that the Committee should use to weight comments based on National Environmental Policy Act (NEPA) requirements. Comments with either new information not in the Draft Environmental Impact Statement (DEIS), or reasonable suggestions for new alternatives, will be highlighted. If a comment raises a new alternative that is not reasonable, it would likely not warrant further evaluation in the final EIS, but the rationale would need to be stated as a response to the comment. Technical, economic, and environmental factors would determine whether a comment is reasonable. Mr. Preble further explained that new alternatives are probably not going to work at this time (without major delays to final action), but the current alternatives could be reconfigured and reanalyzed if necessary. However, if there is a

fundamental flaw identified by the comments, then we are obligated to address it. Mr. MacDonald agreed that these guidelines are appropriate.

In response to comments that ask for action within this amendment to protect deep-sea corals, Mr. Preble stated that we would need to have in the record the fact that the coral issue was previously considered as part of this habitat amendment, but that coral alternatives are now going to be addressed in a follow-up action.

Mr. Alexander raised concerns regarding the spawning alternatives, which overlap with measures developed in Northeast Multispecies Framework 53. Mr. Alexander does not believe that OHA2 should address spawning. Ms. Bachman clarified that Framework 53 proposes to add some areas and times to the status quo for cod protection, and proposes to eliminate some of the current measures. It would change the no action measures for OHA2, although the timing for approval of Framework 53 is not certain. The Committee should determine if there are additional measures (i.e. specific spawning areas or times) that should be added to OHA2 in order to meet the goals and objectives. She noted that throughout the public hearings, while the overlap with Framework 53 was acknowledged, the public was encouraged to comment on the existing OHA2 alternatives.

Dr. McKenzie responded to Mr. Alexander's comment, stating that some of the harshest criticisms in the public comments were that the draft alternatives provide limited spawning protections for both groundfish and non-groundfish stocks. While the overlap with Framework 53 is an operational issue worth addressing, the amendment should meet its spawning protection objectives. Mr. Preble reminded the group that the objective within the habitat amendment is to improve groundfish spawning protection.

Mr. Alexander stated that spawning protection objective would be met by adding Blocks 124 and 125, as proposed in Framework 53. Mr. MacDonald affirmed that if the Council believes that the analysis in the document supports the conclusion that Framework 53 has sufficiently addressed the OHA2 goals for spawning, then it should be supported and documented in the EIS, and that documentation is required from a legal perspective. Mr. MacDonald explained a Notice of Intent would be required to remove goals and objectives from the habitat amendment, it would require to be published, which would delay this process. Regarding whether Framework 53 addresses the spawning objectives, it would need to be supported in the EIS. Dr. McKenzie stated that the cod protection areas in Framework 53 do not necessarily meet OHA2 spawning protection objectives, and that the framework measures did not address Georges Bank.

In response to a question, Ms. Bachman clarified what the no action GOM spawning alternative means. The intent was to assemble and analyze any measures that provide spawning protection, regardless of the original rationale for the designations. Ms. Tooley stated that the language in the DEIS gives a false impression that Cashes ledge was enacted to be a spawning closure, and recommended that this language be clarified in the final environmental impact statement (PDT will address this issue – see PDT task 10). Ms. Bachman also noted that the biological impacts analysis in Framework 53 indicates that the cod protection areas are likely to provide mixed positive and negative benefits for cod relative to no action.

Task #1 to the Plan Development Team: Plan Development Team to evaluate whether spawning alternatives in OHA2 in combination with Framework 53 cod protection measures would meet the goals and objectives of OHA2.

Dr. McKenzie expressed concern that Committee and Council may not be the appropriate groups to evaluate the scientific arguments raised by the comments, and the chairman agreed. Ms. Bachman stated that much of the referenced literature is familiar to the Plan Development Team. The PDT can identify what was referenced or not referenced in the DEIS, and make recommendations about whether or not the information not already included should be considered by the Committee and Council.

Task #2 to the Plan Development Team: Evaluate whether cited literature and scientific information brought forward by the comments was used or not, and identify which information is important for the Committee /Council to consider in decision making, considering spatial scale and studies in specific areas

Mr. Grout recommended updating the realized Z (adverse effects) estimates from the Swept Area Seabed Impact model to include information through 2013, as stated in the comment letter from the Greater Atlantic Regional Fisheries Office. Mr. Grout also asked whether output controls (i.e. fewer trips, fewer tows) were likely to impact realized Z estimates. Ms. Bachman stated that SASI estimates of adverse effects to essential fish habitat are related in part to area swept, which is related in part to catch per unit effort. Thus, changes in management that affect the overall amount or efficiency of fishing could affect adverse effects estimates. Unfortunately, it looks like it will not be possible to update the realized Z estimates for use in the near term (next few months). However, it may be possible to use other metrics to evaluate recent changes in realized adverse effects. There is already information in the DEIS on the spatial distribution of fishing effort, but it generally pooled over a few recent years. Annual estimates of fishing effort would better show trends. One reason to look at these data is to estimate the extent to which a particular habitat management area is likely to minimize adverse effects to habitat (i.e. if there is little to no fishing in a particular location, then you are not minimizing adverse impacts through closures/gear restrictions). A Committee member asked how habitat recovery would be considered in this analysis.

Task #3 to the Plan Development Team: Evaluate realized adverse effects in some fashion that does not use the SASI model, but looking at effort data, and recovery information/potential for recovery

The Committee also discussed the need to evaluate the potential for habitat impacts within Habitat Areas of Particular Concern.

Task #4 to the Plan Development Team: Evaluate whether adverse effects to essential fish habitat (EFH) are accruing within HAPCs (Habitat Area of Particular Concern), and whether they should be minimized.

Dr. McKenzie acknowledged comments in the letter from Guillermo Herrera letter regarding ways to improve practicability analysis. Ms. Bachman agreed that more could be done with the

this analysis. She noted that various public comments including Dr. Herrera's letter describe the importance of selecting appropriate discount rates. In general, lower discount rates will reduce the likelihood of over-valuing current impacts and ignoring future effects. Some already-written discussion on this topic did not make it into the draft EIS and the FEIS will be updated to include this information. Additional discussion of discount rates and short-term vs. long-term effects should improve the practicability analysis and help the Council make decisions. The practicability analysis should also better identify uncertainties associated with the impacts analysis.

Task #5 to the Plan Development Team: Improve practicability analysis (avoid final determinations, i.e. this alternative is practicable, better characterize impacts, better characterize uncertainty)

Next the Committee discussed the issues raised regarding gear conflict that might occur on the northern edge of Georges Bank if Closed Area II is reopened. Related to this, Mr. Grout reminded the group that the Atlantic States Marine Fisheries Commission raised concerns about possible impacts to the large number of egg bearing female lobsters in Closed Area II. Ms. Bachman stated that it would be difficult to determine with any certainty the magnitude of the impacts associated with gear conflicts, but that the PDT will explore the issue further. Mr. Balzano stated that decisions about habitat management areas are to be driven by science, and that gear conflicts should not be the primary concern in terms of selecting habitat management areas.

Task #6 to the Plan Development Team: Evaluate whether there is more to analyze about the magnitude of lobster/scallop gear conflict potential and economic impacts, as well as on possible impacts to the lobster resource.

Next, the Committee discussed the issue of exempting clam dredges from habitat management area restrictions. While the gear restriction option as currently written would provide for a blanket exemption, comments from the Mid-Atlantic Fishery Management Council suggested the possibility of access or exemption areas within larger habitat areas. This could be done as a trailing action, vs. within the habitat amendment. Such a trailing action would likely need to be an omnibus action, as the habitat management areas are being designated via an omnibus management action. There was some discussion of how clam exemption areas might compare with scallop access areas; the latter are managed via the scallop FMP in terms of harvest rates and schedules.

Mr. Chiarella stated that if clam dredges are allowed to fish in high energy sand exemption areas, then scallop dredges and trawls should also be allowed in the areas as well. Arguably, habitat management areas should not be closed if they do not meet the goals of the amendment, and high energy sand areas could fall into this category. However, Mr. Alexander noted that bottom trawls cover much more area than a clam dredge. Mr. Kaelin stated that it is important to identify where the clam fishery exists now and provide an exemption.

Mr. Grout stated that for enforceability reasons, habitat closures are drawn as regular, box-shaped areas, within which there are irregularly shaped patches of complex habitat needing

protection. Therefore, some of the closed area may include high energy sand. Clam dredges could be allowed in these areas for specified number of years (i.e. 3 years) until a management access plan for the fishery exists.

Motion 1 (Etrie/Alexander):

- A. Task the PDT to delineate areas of high energy sand (substrates that are less vulnerable to mobile gear impacts) focusing on Georges Bank shoals alternatives and Great South Channel alternative areas.**
- B. The habitat committee recommends that for the purpose of considering clam dredge exemptions as sub areas of any selected alternatives on GB or the GSC that the exemption areas be constrained to XX % of the total area of the HMA.**
- C. With the PDT information in hand, and the constraint of XX%, task the Clam Dredge industry with selecting which areas of the PDT delineated areas up to the XX%.**

Dr. McKenzie did not support this motion, arguing that the committee first needs to determine the impacts of clamming on benthic habitat. Mr. Kaelin stated that the access should be granted for all high energy sand areas fished with clam dredges, rather than capping clam areas at a specific percentage of the total area. Ms. Etrie stated that high energy sand habitats are not areas that were identified by the SASI model for protection, and this motion would simply acknowledge that the areas are important to the clam industry and allow them to fish there. Mr. Chiarella clarified that the various seabed types within habitat management areas may each provide important protections.

Motion 1 was withdrawn, with part A forwarded to the Plan Development Team for additional analysis.

Task #7 to the Plan Development Team: delineate areas of high energy sand (substrates that are less vulnerable to mobile gear impacts) focusing on Georges Bank shoals alternatives and Great South Channel alternative areas.

Ms. Bachman stated that there are different ways to use substrate data to define sub-areas, and areas based on different levels of precaution could be developed. She asked whether there is some minimum access area size that is reasonable for clam fishing operations and for enforcement.

Task #1 to the Advisory Panel: Identify a reasonable minimum size for clam exemption areas

Dr. McKenzie reiterated a concern from the general public that this action would create a net reduction to habitat protections, at a time when there should be enhanced protection.

Mr. Chiarella stated that the Plan Development Team should further analyze the relationship between prey species and habitat, to clarify how prey is handled as a component of essential fish habitat.

Task #8 to the Plan Development Team: Clarify how the amendment complies with the prey information requirement in the EFH regulations, and how adverse effects to prey as a component of EFH are evaluated.

Mr. Alexander stated that the Committee should eliminate the option to have no closures in the Gulf of Maine.

Motion 2 (Alexander/no second): Move to eliminate the ‘no closure’ option from the entire document.

Motion 2 was modified by the maker:

Motion 2a (Alexander/McKenzie): Recommend that the Council not select the ‘no closure’ option as their preferred alternative

Ms. Tooley expressed concerns about making a recommendation in the negative today, given that the Committee is going to be making positive recommendations at the next meeting. Dr. McKenzie agreed.

Motion 2a was withdrawn by the maker.

Consensus statement: The committee agrees that the no closure options do not meet the goals of the amendment and should not be considered further.

Motion 3 (Alexander/ Balzano): In the Western Gulf of Maine, add an alternative to have the current Western Gulf of Maine Habitat Closure Area included as a habitat area closed to all gears capable of catching groundfish.

Dr. McKenzie stated that this is a dramatic reduction of the status quo closure, and asked for the scientific basis of the motion, reiterating that the Committee needs to explain why the motion meets the goals and objectives of OHA2. Mr. Alexander replied that the fishing effort is controlled through annual catch limits. The eastern edge is important for monkfish, flounders, whiting, and pollock, with 60-70% of the pollock harvested in the Gulf of Maine coming from the area east of the current closure. The SASI model shows that the vulnerable areas are west of 70° W. Dr. McKenzie replied that the SASI model should guide but not dictate the Committee’s decisions. Mr. Grout stated that restricting all gears capable of catching goes beyond existing restrictions in the WGOM closure (e.g. no action allows recreational access to the mortality closure as well as exempted fisheries).

Public Comment: Ms. Raymond stated that the gear restrictions should match the those proposed for habitat closures (i.e. focus on mobile bottom-tending gears). Mr. Giacalone (Northeast Seafood Coalition) supported the intent of the motion, using the Council’s preferred (i.e. status quo) gear restrictions. Mr. Giacalone also supported the shrimp exemption for the northwest portion of the closure. Mr. Smolowitz stated that the objective of the closure must be clarified. If one purpose is to protect spawning cod, then shrimping on the bottom with small mesh would not be an issue. Fishing gillnets with large mesh would be an issue; small mesh gillnets would

not be an issue. Mr. Cunningham (Conservation Law Foundation) stated that there is little certainty about the distribution of habitat types in the area being proposed for elimination. There is not enough data to support a lack of vulnerability. There is scientific information (edge effect) that shows that the Western Gulf of Maine closure is successful (producing fish).

Motion 3 was amended:

Motion 3a (Alexander/Kaelin): In the Western Gulf of Maine, add an alternative that maintains the existing habitat closure, and modifies the WGOM groundfish closure area so that its boundary matches the boundary of the existing WGOM habitat closure.

Public Comment: Mr. Giacalone stated that the Council has already selected its preference for the entire WGOM closure to remain as is. If the motion does not maintain at least the size of the closure area, it should maintain the existing gear restrictions. In response to a question raised by Mr. Cunningham, Ms. Bachman clarified that an analysis of potential fishing opportunities in the reopened area will attempt to capture any uncertainties. In terms of new or modified alternatives, decisions regarding whether changes are substantial enough to require a supplemental analysis and additional public comment are made on a case-by-case basis. Mr. MacDonald stated that if the Council has an idea that is different from or better than the existing range of alternatives, it would be better to understand the impacts earlier, before the final meeting. Ms. Raymond commented that if there is no information in the area, then there is also no justification for closing that area. As long as the changes are less restrictive, then it should not present any issues (Mr. MacDonald nods).

The motion to amend carried on a show of hands, 8/2/1.

Motion 3a as amended carried on a show of hands, 8/2/1.

In response to Ms. Tooley's question, Ms. Bachman clarified that the Council has not chosen a preferred alternative for the Georges Bank area. Mr. Gibson states that decoupling decisions on the Cox Ledge areas is supported the local fishing industry operating in and around those areas, and asked whether the Council has discretion to decouple the area. Ms. Bachman agreed that this type of change falls under the mix/match approach. Regarding the workload for the PDT, Ms. Bachman further explained that if a motion is passed today to decouple the areas, the PDT would do some analysis of the Cox Ledge areas as a stand-alone measure before final Council action. If the alternatives are kept as is, the Council could still mix and match during final action and then the FEIS would be adjusted to reflect the Council's final decision.

Motion 4 (Gibson/Alexander): Add a habitat protection alternative that decouples the Cox Ledge areas from the Nantucket Shoals/Great South channel areas.

Motion 4 carried on a show of hands, 8/1/2.

Motion 5 (Alexander/Tooley): Move the Machias area to considered but rejected within the EIS.

Mr. Grout acknowledged the grey zone issue that would limit the benefits of habitat management in the Machias region. However, he felt that maintaining the alternative in the amendment would better document the rationale as to why it was initially identified but not chosen as a habitat closure.

Motion 5 failed on a show of hands, 4/5/1.

Mr. Kaelin stated that there appears to be consensus among Committee members not to select this alternative, and that the motion was voted down because removing the alternative is not the appropriate method to address the issue.

Motion 6 (Etrie/Alexander): Motion to add a standalone alternative under the habitat management area to include Stellwagen Small and Jeffreys Ledge areas as identified, but not the Small Bigelow Bight.

Motion 6 carried on a show of hands, 8/2/1.

Task #2 to the Advisory Panel: to recommend preferred alternatives within OHA2

Mr. Kaelin requested that the PDT analyze the EFH designation for winter flounder eggs in Cape May, NJ. Surveys have showed that there are no winter flounder in the area, and the siltation rate means that winter flounder eggs would suffocate even if they were in the area. The area just south of Cape May (Delaware Bay) is not considered winter flounder egg essential fish habitat. Mr. Preble stated that Rutgers University has a solid base of data to show that the essential fish habitat should be re-considered. The PDT should also help to determine how far north to re-consider this essential fish habitat designation.

Ms. Bachman replied that the Plan Development Team can look at the state survey data to determine the relative abundance of winter flounder and recommend possible updates to the EFH designation. The essential fish habitat text description has already been improved to include the siltation rate information.

Task #9 to the Plan Development Team: Reevaluate the winter flounder egg EFH designation

Motion 7 (Chiarella/McKenzie): Modify Great South Channel Alternative 3 by shifting the boundaries to focus on the less dynamic and more vulnerable cobble/boulder areas.

The Committee took a brief recess to see if this motion could be made more specific.

Motion 7 was withdrawn by the maker.

The meeting adjourned at approximately 3:30pm. The next Committee meeting will be held on March 23 and 24 in South Portland, ME.