



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

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

MEETING SUMMARY

Habitat Committee

August 18, 2022

9:00 am – 2:45 pm

Hybrid: Wakefield, MA and via webinar

The Habitat Committee met on August 18, 2022 to discuss 1) the final report from a research project conducted in the Great South Channel Habitat Management Area under EFP 19066, 2) aquaculture project updates and a framework to authorize Atlantic salmon aquaculture in the EEZ, 3) offshore development, 4) NOAA Fisheries review of two Dedicated Habitat Research Areas, (5) 2023 priorities, and 6) any other business. Approximately half the Committee attended in person and the remaining members participated via webinar. A few audience members attended in person but most participated via webinar.

MEETING ATTENDANCE: Eric Reid (Committee Chair), Peter Aarrestad, Togue Brawn, Lou Chiarella (GARFO), Libby Etrie, Peter Hughes (MAFMC), Scott Olszewski, Cheri Patterson, Geoff Smith, Melissa Smith, and Mike Luisi (MAFMC); NEFMC staff: Michelle Bachman (Plan Development Team Chair), Jenny Couture, and Janice Plante; NOAA General Counsel: Mitch MacDonald; NOAA GARFO: Laura Deighan, Chris Schillaci, David Stevenson, and Alison Verkade. MAFMC staff: Jessica Coakley. In addition, one other Council member, six Advisory Panel members, and about 20 members of the public attended.

KEY OUTCOMES:

- Regarding the Great South Channel HMA Research Project Review (EFP #19066), the Committee discussed the project final report and applications to management. The Committee discussion was distilled into the three recommendations listed on page 2.
- The Committee received updates on Blue Water Fisheries aquaculture project. The Committee recommended the Council initiate an action to consider authorizing Atlantic salmon aquaculture in the EEZ in September.
- The Committee received updates on offshore wind development including Council comments under development and strategies for developing future comments.
- The Committee also received an update on NOAA Fisheries Dedicated Habitat Research Area review. The Committee recommended that the Council to wait until GARFO completes its review and consider their findings before submitting any Council feedback or comments.
- Regarding the 2023 priorities, the Committee recommended adding the following two priorities: revise habitat management areas on the Northern Edge of Georges Bank and

revise review and revise essential fish habitat designations. Other recommended priorities represent slight adjustments to those underway for 2022.

AGENDA ITEM #1: GREAT SOUTH CHANNEL HMA RESEARCH PROJECT REVIEW (EFP #19066)

Presentation

Ms. Bachman reviewed the final report from Coonamessett Farm Foundation's clam dredge mapping study, conducted in a subset of the Rose and Crown area under an Exempted Fishing Permit (EFP). Staff presented the Habitat Plan Development Team's (PDT) findings about what the research does and does not show, how the results might be used to inform future management in the region, and potential next steps for evaluating fishing gear impacts from the Habitat Management Area (HMA).

Discussion

A Committee member asked if the PDT expected the result that clam dredging occurred in more complex habitats with clam catches increasing with increasing percent pebble coverage. Staff answered that some of this was expected, though the project provided new information. After some public comments, another member asked if the final report considered previous recommendations made by the PDT on earlier analyses. Staff noted that yes, there were some changes made to the analysis and report, however the PDT's main issue that impacts utility of the work for management is related to the study design (non-random sampling), and data collection had already concluded at the time of the PDT's review earlier this spring.

Several Committee members agreed with the PDT recommendations and suggested forwarding the PDT memo to the Council. The Committee agreed it would be useful to add a cover memo highlighting the following points discussed by the Committee:

1. The Council should clarify information needed to support management, which includes define complex habitat more clearly.
2. EFP-based studies can provide useful information, but studies should be carefully designed. Additional surveys using fishery-independent techniques would be helpful (HabCam, drop camera, acoustics, etc.).
3. Funding for habitat characterization and fishing impacts research is limited, and compensation fishing may be needed to support such studies. Plans for compensation fishing should be clearly outlined and strategically implemented.

Committee members thought it would be helpful for people applying for an EFP to be clear about their proposed study designs. While compensation fishing might be necessary to provide funds for the research, habitat mapping could and should occur over a broader area. The Committee recognized that there is a tradeoff between fishing impacts associated with compensation fishing and collection of habitat data. Ideally, a project would impact a small area while mapping a larger area using a non-invasive method. The Committee member from GARFO noted that from the agency's perspective, the biggest issue with EFPs is the scope of fishing effort; he supported randomized sampling as much as possible and using funding from fishing to help pay for acoustic surveys in areas not being fished. He acknowledged that funding is a big issue and pointed out that EFP applicants might consider a larger set aside amount per bushel to generate additional funds.

Public Comment:

- **Monte Rome (Intershell International Corp.)** commented that his company has three active clam vessels with Letters of Authorizations to fish within the HMA. He is concerned that the Committee needs data and information on the HMA's habitat bottom and how complex habitat is defined. When dredging, pebbles and cobbles are pulled up from underneath the sand; does complex habitat include cobble unearthed from dredging or is it the habitat on the surface that provides cover for fish species. If complex habitat is created by dredging, does that mean dredging is supportive or harmful to the habitat? Once complex habitat is created, does that affect the entire fishery? Complex habitat does not take long to re-submerge (i.e., sandy surface returns).

Ms. Bachman responded that from a fish standpoint, complex habitat is what is on the surface. It is known that the area is high energy, with organisms affected by both natural seabed movement and from clam dredging. It is unclear the difference between habitats in the HMA in a natural state versus areas where fishing occurs – does the condition of habitat change with fishing? It could be possible that dredging increases complexity, though there was no pre-dredge habitat data collected given the study was not designed to answer this question.

Mr. Rome asked about the prosecution of the fishery throughout its range and whether clams are generally more prevalent in cobble bottom areas as suggested by the report. He asked if the habitat in the study area is actually different in other areas of the HMA, suggesting the Rose and Crown area should be similarly open to fishing as other exemption areas. He expressed concern that the results of this report will be used to manage other areas open to clam fishing. Ms. Bachman clarified that the study was done using video of the seafloor in front of the dredge to understand percent of cobble observed. She noted that the habitat characteristics of the project area are probably not the same as other areas throughout the range of the surfclam fishery and that the results would likely not set a precedent for management of other areas (also, generally other surfclam grounds are not NEFMC Habitat Management Areas).

Mr. Rome spoke about his rejected EFP application for work in the Davis Bank area; he is interested in using acoustic equipment to determine the hardness of habitat, fishing a minimal amount to pay for the research. He mentioned the CFF project dredged 7-12% of the study area, which is a very small percentage of the HMA overall. Mr. Rome requested the Council be specific in what research should be done as part of an EFP; Committee Chair noted that GARFO is in charge of reviewing EFPs, not the Council.

The GARFO Committee member asked if attached epifauna was found in the project area and if so, then perhaps the area is not actually high energy. Ms. Bachman noted that yes, epifauna were observed in the study, and that she expected some benthic animals are relatively resilient to this type of high energy environment.

- **Drew Minkiewicz (Fisheries Survival Fund)** asked what information and data are needed to declare a Habitat Area of Particular Concern (HAPC) versus closing an area or when allowing an exempted fishery. The standard between designating an HAPC and allowing and disallowing fishing seems to be different. It is unclear what the industry can put forward to be able to re-open an area given it seems like minimal information is needed to close an area.

Ms. Bachman explained that the information used to support HAPC designation is often not the same as that used when designating a fishery closure (HMA). The HMA designation was based upon knowledge about the seafloor, combined with data on fishing activity.

- **Ron Smolowitz (Coonamessett Farm Foundation)** stated the EFP project area comprises <1% of the HMA (24 km² out of 2,566 km²), generating \$800,000 ex-vessel revenue and over \$4 million in economic activity. He asked about the extent to which cobbles should be able to be moved to allow for such high revenue.

Ms. Bachman emphasized that the Council's system of HMAs sets more vulnerable areas aside where fishing is not allowed to help minimize adverse impacts to habitats. The Council does not have recovery data post-dredging that would help determine habitat resilience to/recovery from dredge impacts. Mr. Smolowitz expressed frustration that the PDT is not looking at the full picture in making recommendations to the Council on how to use this work.

- **Allen Rencurrel (Nantucket Sound Seafoods)** noted that one of his vessels was participating in the EFP and that they submitted an EFP request for the Davis Bank research area also. He commented that the project is limited to a small number of tows, despite wanting to collect more data, and that, he needs to generate funding from fishing to cover the cost of research, though plans to avoid cobble and rocks. He asked the Committee to weigh in on approving the EFP.

Committee Chair emphasized that the Council does not approve or deny EFPs.

- **Louis Lagace (F/V Mariette)** asked about the selection of the study site, observing that he thought that location had more cobble than other areas of the HMA. Mr. Smolowitz responded that they originally suggested a larger area of the Rose and Crown, but wanted to study an area with a mix of habitat types and where clams were expected to be abundant.

One Committee member asked about the scallop fishery's experience with HabCam and if a similar number and species of fish (black seabass and codfish in particular) are seen with this technology as with the current project's baited video survey. Ms. Bachman noted that fish are observed with HabCam, however, to her knowledge a comparison study has not been done comparing HabCam with dredge-mounted cameras in this management area.

- **Shaun Gehan (attorney representing Intershell International Corp.)** asked about jurisdictional issues between the Mid-Atlantic and New England Councils. He wondered if there was a role for MAFMC in managing the resource within the HMA. Ms. Bachman stated that there might be a way for MAFMC to regulate prosecution of the fishery in the HMA, but ultimately the HMA and exemption areas are primarily what is limiting effort in the area. Mr. Gehan also asked whether clam dredges impact the function of complex habitats, which seems to be the important question. He asked that the Committee work towards a path forward for additional fishing and related research in the HMA.
- **Natalie Jennings (Coonamessett Farm Foundation)** noted that they have submitted a proposal for a Saltonstall Kennedy grant to do a benthic sled survey. She asked whether the Council could offer its support for the work.
- **Monte Rome** emphasized the challenges of funding this work, and noted that he was equipped to collect acoustic data, provided that he can fund the work through compensation fishing.

FINAL

- **Shaun Gehan** asked whether it was actually possible to do studies that address the Council's research questions. Ms. Bachman said yes, she believes the questions are answerable given the right techniques and sufficient funding.
- **Ron Smolowitz** stated that wasn't sure that EFPs are sufficient to inform future management in the region. He wants a way for the clam fishery to survive while collecting information and data (with a comparison made to the wind farm industry). The NEFMC identified five areas to protect and the MAFMC needs to develop a framework to allow an experimental fishery in Rose and Crown and Nantucket Shoals. Data should be collected as part of fishing operations.
- **Alison Lorenc (Conservation Law Foundation)** opposes exemption areas in the Great South Channel and is concerned about conversations around increased access. The areas overlap essential fish habitat for more than eight Council-managed species including juvenile and spawning cod. The impacts around closure should be thought of regionally beyond just the channel.

AGENDA ITEM #2: AQUACULTURE

Presentation

Mr. Chris Schillaci (GARFO) updated the Committee on the Blue Water Fisheries (BWF) Project including an overview of the project, environmental review and permitting process, the project status, example content for what the Environmental Impact Statement could include, and initial project concerns that NOAA has raised with the proponent which are focused on avoiding cod spawning areas.

Ms. Couture discussed the Council's response to BWF and other projects, recommending that work proceed along two related but separate tracks.

First, she recommended that the Council continue to consult and coordinate with lead agencies on aquaculture projects to help address issues such as siting/spatial planning, salmon genetics, emergency response plans, etc. Recommendations would be based on the Council's [Aquaculture Coordination Plan](#) and the [Aquaculture Policy](#) and would be provided to NOAA Fisheries, the Environmental Protection Agency, and the Army Corps of Engineers via informal consultation and through Council participation in the permitting/NEPA review process for the BWF project.

Secondly, the Council can develop a framework to the Atlantic Salmon FMP. She recommended that focus on authorizing possession of salmon from aquaculture farms, and that the framework should be generic such that any measures could apply to the BWF project and future projects.

These efforts will be interrelated; information developed for the BWF Environmental Impact Statement will inform the Council framework, and Council authorization of salmon possession will facilitate culture of Atlantic salmon as part of the BWF project, which also proposes raising steelhead.

Discussion

A Committee member asked about genetics and escapement as two issues to consider in authorizing salmon aquaculture. Mr. Schillaci explained that the EPA manages escapement as a pollutant as part of their permit and that the St. John's strain planned for use in the BWF project is not a restoration stock. There is also a protocol in case escapement occurs. Steelhead are considered naturalized in the area and it is unclear if they would have successful reproduction if

escape occurs. Overall, risk evaluation will occur through the NEPA process, which would include alternatives to mitigate risks (only single sex of fish, triploid fish, etc.). Staff clarified that the Council can consult and coordinate with lead agencies on these issues.

Staff also noted that their understanding was that a framework action to authorize salmon possession would be developed through the Habitat Committee and Plan Development Team.

The Committee discussed reporting and enforcement-related issues as part of a Council framework action. Here, reporting refers to trip level sales reporting. Effluent and escapement reporting were also raised. Mr. Schillaci noted that the state of Maine requires effluent and escapement reporting as part of their discharge permit requirements, and that if an EPA NPDES permit is issued for BWF it would likely have the same type of reporting as required in the state of Maine. Reporting provisions, beyond landing/production reporting, developed through a Council framework may be redundant with what the EPA might require. NOAA General Counsel commented that the Council would benefit from understanding fishery reporting requirements and also how enforcement of aquaculture permit conditions is done on the water. Mr. Schillaci also explained that there are health reporting requirements with health standards that would be implemented through the USDA and/or the US Fish and Wildlife Service and NMFS. In addition to authorizing possession of farm raised salmon in the EEZ, the Council could refer to/require adherence with NASCO standards for an operation to be exempt (see <https://nasco.int/>), which would be consistent with the Council's aquaculture policy and provide an additional way to ensure such projects will not have an adverse effects on Atlantic salmon restoration efforts, beyond Council coordination/consultation on the federal agency permits.

One Committee member mentioned that herring and salmon are similar and that there is the potential for virus transmission from salmon to herring. This concern and other potential impacts would be analyzed in the BWF project EIS. As part of the EPA's Clean Water Act, there is an unreasonable degradation standard, and risk of collapse of a fishery could be evaluated with respect to this standard. The Council can consult and coordinate on these issues as part of the EIS development.

1. MOTION: CHIARELLA/ETRIE

That the Committee recommends to the Council the initiation of an Atlantic salmon aquaculture framework, focused on possession of farm raised salmon, raised according to NASCO standards. Other issues to explore include enforcement and reporting. The Council would continue to consult and coordinate on individual aquaculture projects in addition to developing this framework.

Rationale: Current Salmon FMP does not allow possession of salmon; important for the Council to be involved in offshore aquaculture issues as it relates to Council-managed fisheries.

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

Motion passes by unanimous consent.

AGENDA ITEM #3: OFFSHORE DEVELOPMENT

Presentation

Ms. Bachman and Ms. Couture provided an overview Council comments under development in response to BOEM's draft Mitigation Guidance, the notice of intent to prepare a New York Bight Programmatic Environmental Impact Statement (PEIS), and a second request for input to the

Maine-New Hampshire-Maine Port Access Route Study (PARS). Staff also noted multiple upcoming Draft EIS documents for wind energy projects, the proposed 5-year program for oil and gas leases, and upcoming comment periods on Gulf of Maine research and commercial wind leasing (the Request for Competitive Interest and Request for Interest, respectively, published 8/18/22). Central Atlantic wind lease planning is also underway. Staff solicited Committee feedback and briefly discussed strategies for developing future comment letters.

Discussion

Regarding the Council's draft Mitigation Guidance comment letter, a Committee member asked if the letter was available to read through to inform other comment letters. Staff will share the draft Council letter for that purpose. A Council member inquired whether our letter included a recommendation on where AIS transponders should be placed. He recommended AIS receivers on every vessel and AIS transmissions from each turbine to provide as comprehensive coverage and redundancy. Another Committee member asked if a third party for administering compensation funds was identified in the draft letter; staff decided to only suggest a third party administrator but did not recommend a particular entity.

Regarding the New York Bight Programmatic EIS (PEIS) letter, the AP Chair suggested including a comment that the Councils and other consulting agencies should be involved in the development of the PEIS.

Regarding the Maine-NH-Maine PARS letter, a couple of Committee members noted that it was difficult to provide any comments given they know the routes will change but are not sure where the wind arrays and export cables will be placed. One member suggested the need to include data as it becomes available. Staff agreed that the timing of PARS is off sync from the wind development process and that the study should be considered a live document, with reviews and updates on a regular basis.

AGENDA ITEM #4: DEDICATED HABITAT RESEARCH AREA REVIEW

Presentation

Ms. Bachman gave a brief overview of the two Dedicated Habitat Research Areas (DHRA) designated via Omnibus Habitat Amendment 2, which were implemented in 2018 with a three-year sunset provision. The Regional Administrator has the authority to remove the DHRAs under certain conditions. GARFO is currently soliciting information on research that might be occurring in the two areas to inform the review of the DHRAs (comment period closed August 19).

Discussion

A Committee member asked about the relationship between DHRAs and Habitat Management Areas (HMAs), if they are overlapping or a subset of one another, and if both have gear and fishing restrictions. HMAs are designed to protect vulnerable habitats from fishing and to minimize impacts to EFH, while the research areas are intended to explore specific scientific objectives. The research areas have restrictions in place to help serve as control areas for evaluating gear impacts to habitat, have a variety of habitat types, and have been closed to various types of fishing activity for many years.

For the Stellwagen DHRA, given the other fishery management closures in the area, fishing restrictions would not change if the DHRA designation was removed. For the Georges Bank

DHRA, removing the designation would allow fishing with trawls and dredges to resume in the area. Research, through an EFP or otherwise, would continue to be allowed even if the DHRA was removed.

While the research areas were never intended to be closed long-term (designation included a sunset provision), the group discussed that DHRA removal could send a message that this type of research is not a priority for the Council. A Habitat PDT member spoke to the importance of retaining the DHRA as funders are more apt to provide funding for long-term research if there is an area dedicated to this research.

A couple of Committee members expressed interest in waiting for the agency's recommendations before making a recommendation to the Council given they see pros and cons to keeping the area dedicated to research.

Public Comment:

- **Drew Minkiewicz (Fisheries Survival Fund, AP member)** stated that research projects have not been conducted in the DHRA and that the areas are not serving any purpose. He noted his desire to have both research areas removed, especially because even if people conduct research, the Councils and other stakeholders still find issue with the research.

AGENDA ITEM #5: 2023 PRIORITIES

Presentation

Staff provided a short update regarding the status of 2022 priorities, potential 2023 priorities (based on ongoing work, continuing from 2022 and earlier), and potential new priorities. This included a description of an ongoing contract to examine habitat recovery on the Northern Edge of Georges Bank.

Discussion

The Committee Chair briefly reviewed the process by which 2023 priorities are decided including compiling a full list of all potential priorities during the September Council meeting, followed by a priority ranking exercise in the fall, and a final list of priorities identified during the December Council meeting.

A Committee member asked about the timing of the Northern Edge Before-After-Control-Impact (BACI) study and if the results will be finalized before priority setting. Staff commented that the results of the ongoing study will be discussed during a fall (October/November) Committee meeting, at which time the Committee can recommend inclusion of revising habitat management areas (HMAs) on the Northern Edge of Georges Bank in the final priority list. Another Committee member suggested including this priority and reviewing and revising essential fish habitat designations in the preliminary list for the September Council meeting.

Regarding the potential for additional clam research in the HMA, one member suggested the possibility that the Mid-Atlantic Fishery Management Council (MAFMC) could help fund some of the work, similar to how the NEFMC funded a portion of the Northern Edge BACI study. The MAFMC Committee representative suggested that if this were the desire of the Habitat Committee then a formal request can be sent to the MAFMC to take the suggestion under consideration.

Regarding aquaculture, one member asked if the Council's aquaculture policy would need to be updated based upon the potential for initiating a salmon framework action. Staff noted that the policy is meant to contain best practices at a relatively high level, thus, should be sufficient to support the salmon action and consultation on the BWF project. Revisions to the policy could be considered in future years.

Public Comment:

- **Ron Smolowitz (AP member)** asked about the model outputs of the Northeast Regional Habitat Assessment work and if the data are in 10-minute squares of latitude and longitude, and related to this, whether EFH designations would continue to be based on 10-minute squares. Staff responded that there isn't a specific plan in place for how to go from NRHA model outputs to updated EFH designations. In relation to the possibility of revising management areas that are currently closed, he was interested in knowing how science is translated into management and how management areas change based on new research.

The Chair confirmed that the Committee had not recommended adding an item about revising the Great South Channel HMA dredge exemption program to the 2023 priority list. Staff noted that the clam industry recommended this work as a 2022 priority in December 2021, late in the priority setting process. The Council did not make the work a 2022 priority, and during the February 2022 meeting decided to focus first on the EFP research findings, which led to today's discussion.

OTHER BUSINESS

No other business was discussed.

The Habitat Committee meeting adjourned at approximately 2:45 p.m.