

Habitat Committee Report

Southern New England HAPC

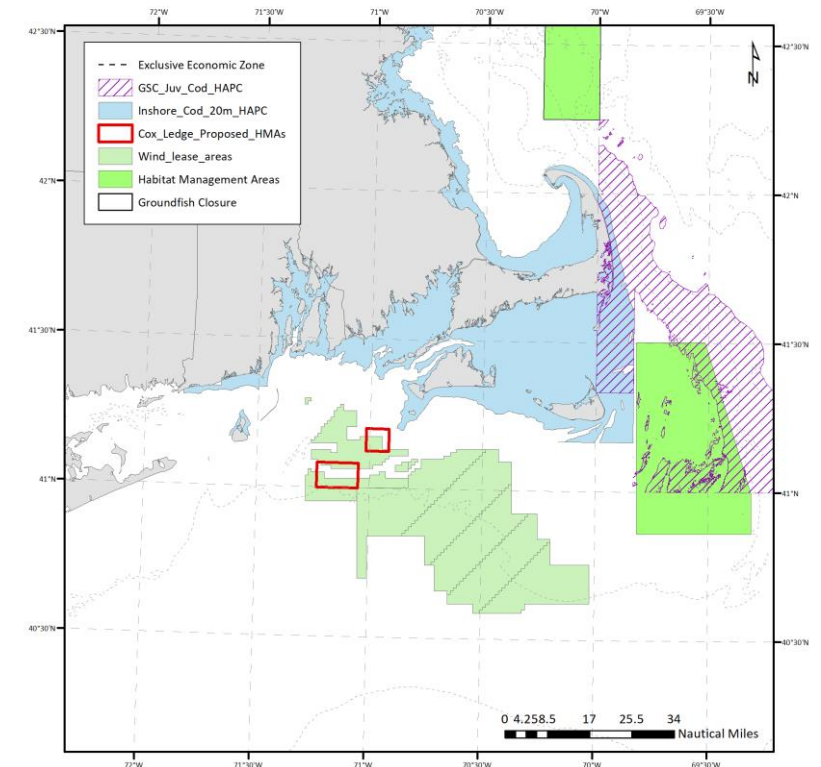
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NEFMC Meeting
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Portland, ME



Action to designate HAPC in SNE

- Generally, HAPCs support EFH consultations by underscoring the Council's conservation priorities
- Why focus on SNE?
 - Longstanding interest in area: NEFMC recommended Cox Ledge HMA in OHA2; however not approved by NOAA
 - Now we have new information about cod spawning activity and distribution of complex habitat
 - Impacts on cod spawning and complex habitats are of ongoing concern due to overlap with wind energy lease areas



Purpose, Overview of SNE HAPC

- Habitat Areas of Particular Concern are a subset of essential fish habitat (EFH)
- HAPCs guide and support NOAA's essential fish habitat consultations
 - Here, concerns about impacts of wind energy and other development on EFH
- Two types of alternatives/areas of conservation focus:
 - Cod spawning HAPC
 - Multispecies complex habitat HAPC
- Or, can combine these concepts into a single alternative

EFH Consultations

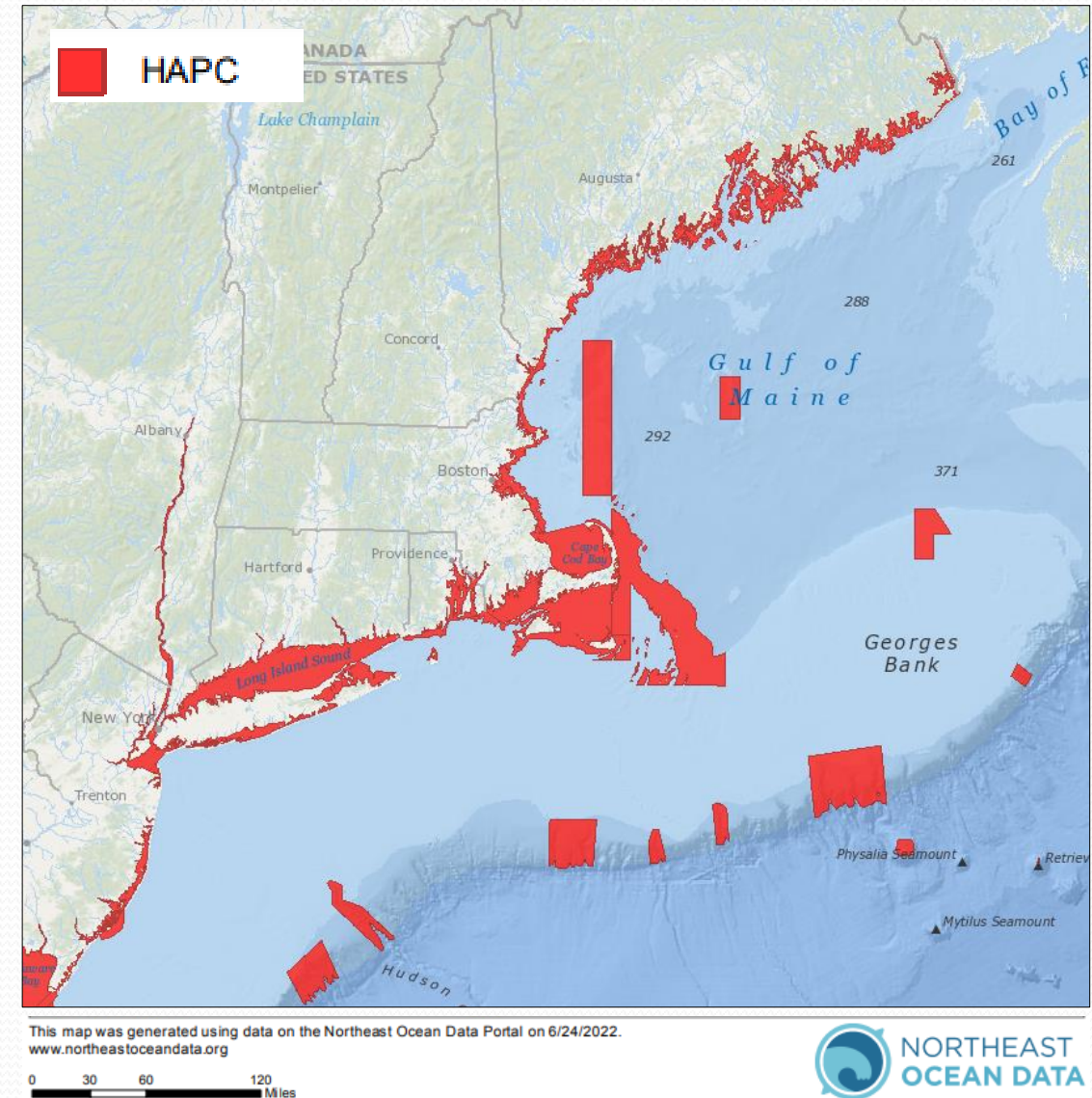
- All federal agencies must complete EFH consultation with NOAA Fisheries when a federal action is determined to adversely affect EFH
 - Identifies measures to avoid, reduce, or compensate for direct and indirect adverse impacts to fish habitat (physically, chemically, or biologically)
 - Fishing and non-fishing activities
 - Non-binding conservation recommendations
 - NOAA considers EFH as well as HAPC designations

1. Action agency notifies NOAA of project; pre-consultation discussions occur
2. Agency submits an EFH assessment
3. NOAA reviews EFH assessment for completeness
4. If incomplete, NOAA requests additional information
5. Once deemed complete, NOAA provides the conservation recommendations to the action agency within 30 days (regular) or 60 days (expanded)
6. Action agency responds to NOAA within 30 days for how agency will proceed

Regional HAPCs

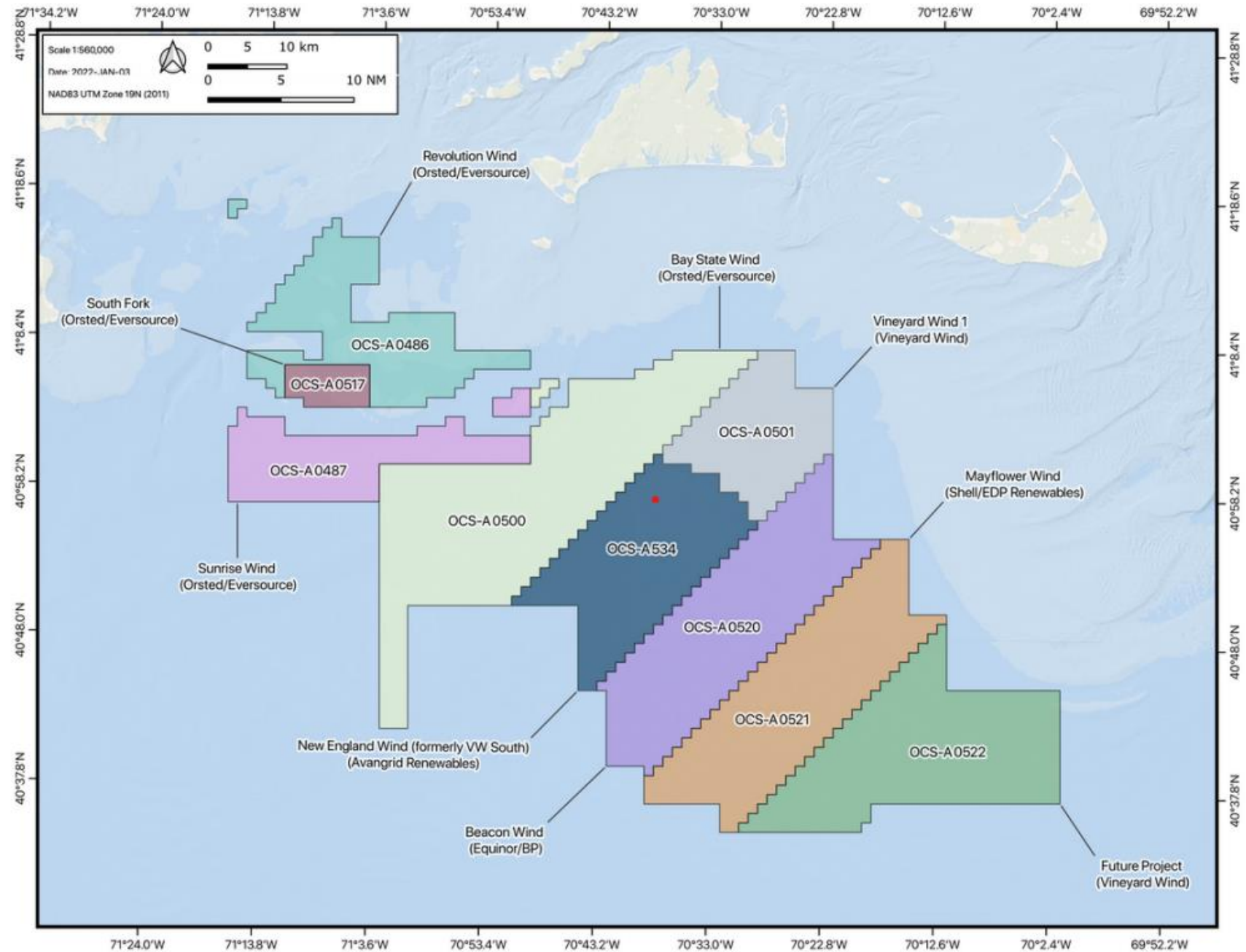
Example application of HAPC designations to Vineyard Wind I Offshore Export Cable Corridor (OECC):

- **Inshore juvenile Atlantic cod HAPC:** designated for areas in the Gulf of Maine and Southern New England between 0 to 66 feet (0 to 20 meters) deep that also fit the text definition for juvenile Atlantic cod EFH (NEFMC 2017). All hard-bottom habitat within the proposed Project OECC would be considered HAPC for juvenile Atlantic cod.
- **Summer flounder HAPC:** HAPC for summer flounder could occur throughout much of the OECC in the summer (May through October). However, persistent seagrass habitat within the proposed Project area was only found in one location near Covell's Beach.



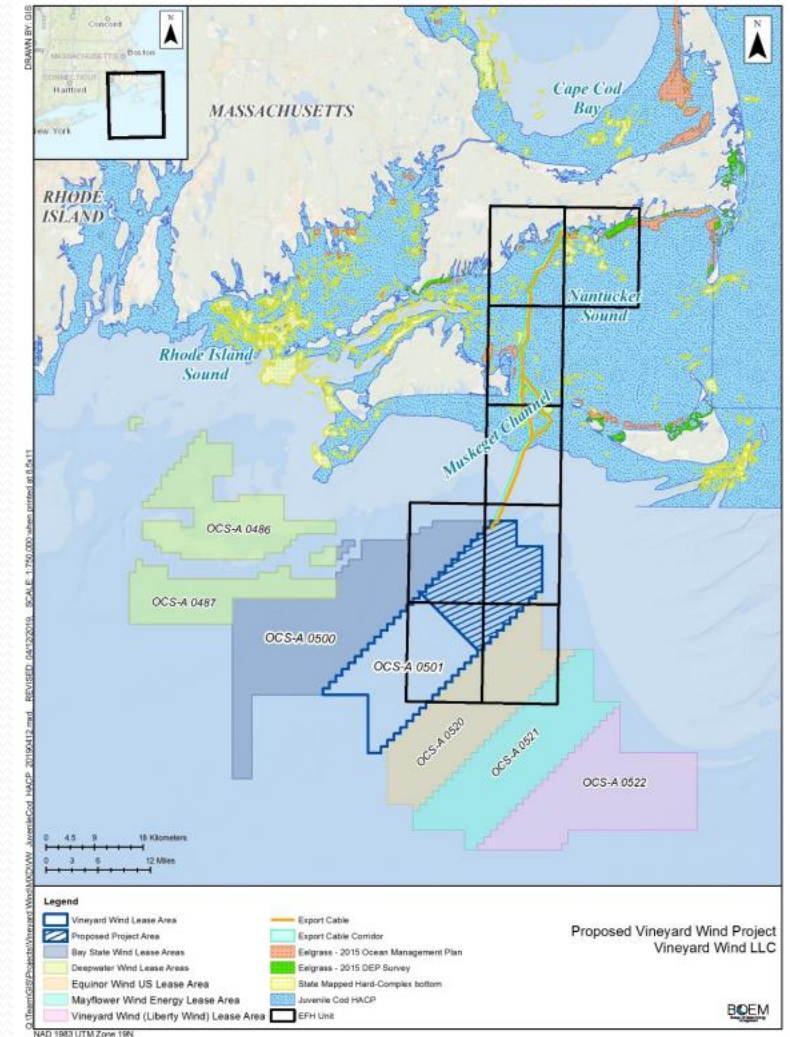
SNE Lease Areas

*Assume no additional lease areas in SNE in foreseeable future (at least through 2024/2025)



Vineyard Wind 1 – Use of Juvenile Cod HAPC

- [EFH Assessment](#), [Record of Decision](#), [Terms and Conditions](#) reference inshore juvenile cod HAPC and summer flounder HAPC
- Impact of HAPC:
 - Creation of **Benthic Monitoring Plan** including evaluation and monitoring of **cable protection** in hard bottom (natural and engineered stone) to mitigate negative impacts on cod HAPC
 - Use benthic habitat data collected to avoid eelgrass, hard bottom, and structurally complex habitat including juvenile cod HAPC to extent practicable

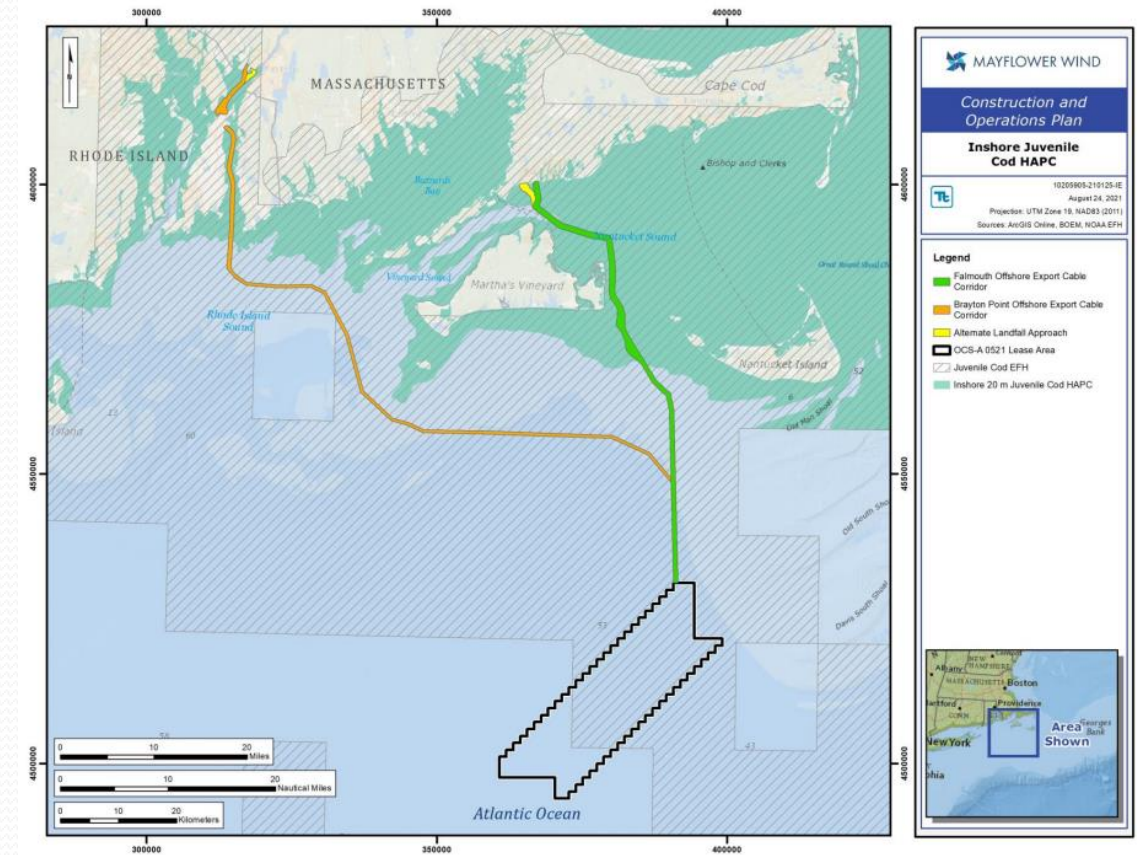


South Fork Wind – Role of HAPC

- [EFH Assessment](#) recognized that the habitat features of the inshore juvenile cod HAPC and summer flounder HAPC overlap with a portion of a route alternative but the route itself is outside of HAPC spatial extent
 - Cod HAPC: Route alternative could affect habitat features (complex benthic habitats) important to juvenile cod (identified as part of HAPC)
 - Summer flounder HAPC: Route alternative could affect macroalgae / aquatic vegetation

Mayflower Wind – Role of HAPC

- [Site Assessment Plan](#), [Construction and Operations Plan Vol. 2](#), [EFH and Protected Fish Species Assessment](#) reference inshore juvenile cod and juvenile and adult summer flounder HAPCs in the offshore project area
 - HAPCs overlap with N part of Falmouth export cable corridor, proposed landfall locations which is complex habitat (Sakonnet River)
 - EFH Assessment recognizes that location of summer flounder HAPC may vary over time as SAV / macroalgae distribution changes



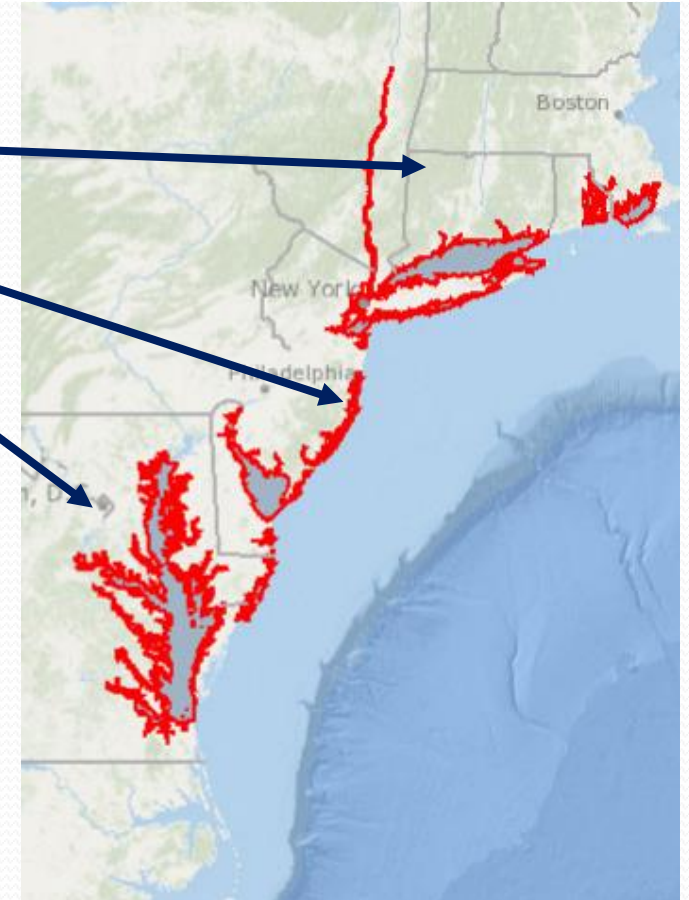
Mayflower Wind – Consistency across Agencies re: importance of HAPCs

- **NMFS:** project area overlaps with complex habitat incl. eelgrass designated as HAPCs for summer flounder and juvenile cod – habitats physically & biologically vulnerable to disturbance, alteration → critical to develop alternative to minimize effects on HAPCs esp. on cod spawning aggregations
- **RI Coastal Resources Management Council (CRMC):** export cables go through CRMC HAPC (glacial moraine), inshore juvenile cod HAPC, and EFH for juvenile cod → need to consolidate the 2 export cable corridors to minimize impact on HAPCs, EFH including the SNE cod sub-population
- **EPA:** analyze cable route alternatives to avoid, minimize impacts to complex habitats and eelgrass (no explicit mention of HAPCs, cod)

Application of Summer Flounder HAPC

Example of how Alt. 4 would be applied

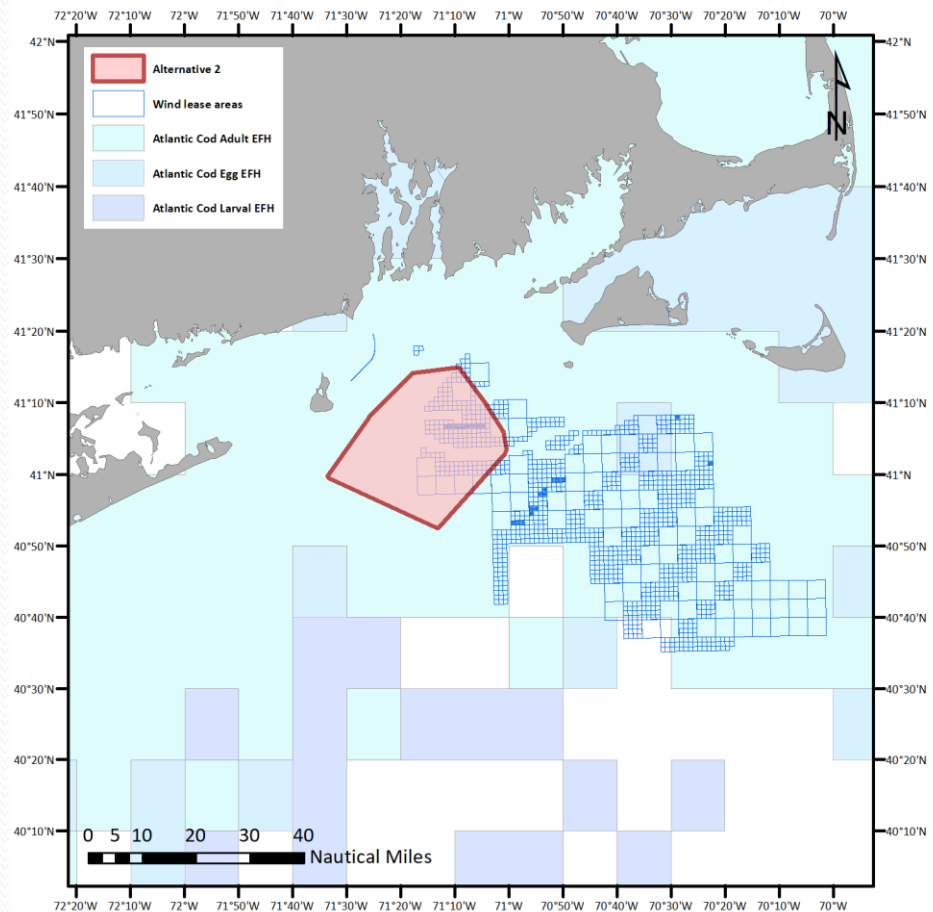
- Juvenile, adult summer flounder HAPC is geographically broad
- HAPC applied if certain conditions are met:
 - Coastal inlets, estuarine systems
 - Mid-Atlantic Council-designated artificial reef special management zones, hermatypic coral habitat/reefs, hard bottoms, *Sargassum* habitat, native species of macroalgae / seagrass / freshwater, tidal macrophyte, & submerged aquatic vegetation (SAV)
- HAPC Designation of SAV gives more weight to protecting SAV during EFH Consultation
- Any mgmt. measures to protect SAV not implemented via HAPC; may be considered via framework provisions



Alternatives under consideration

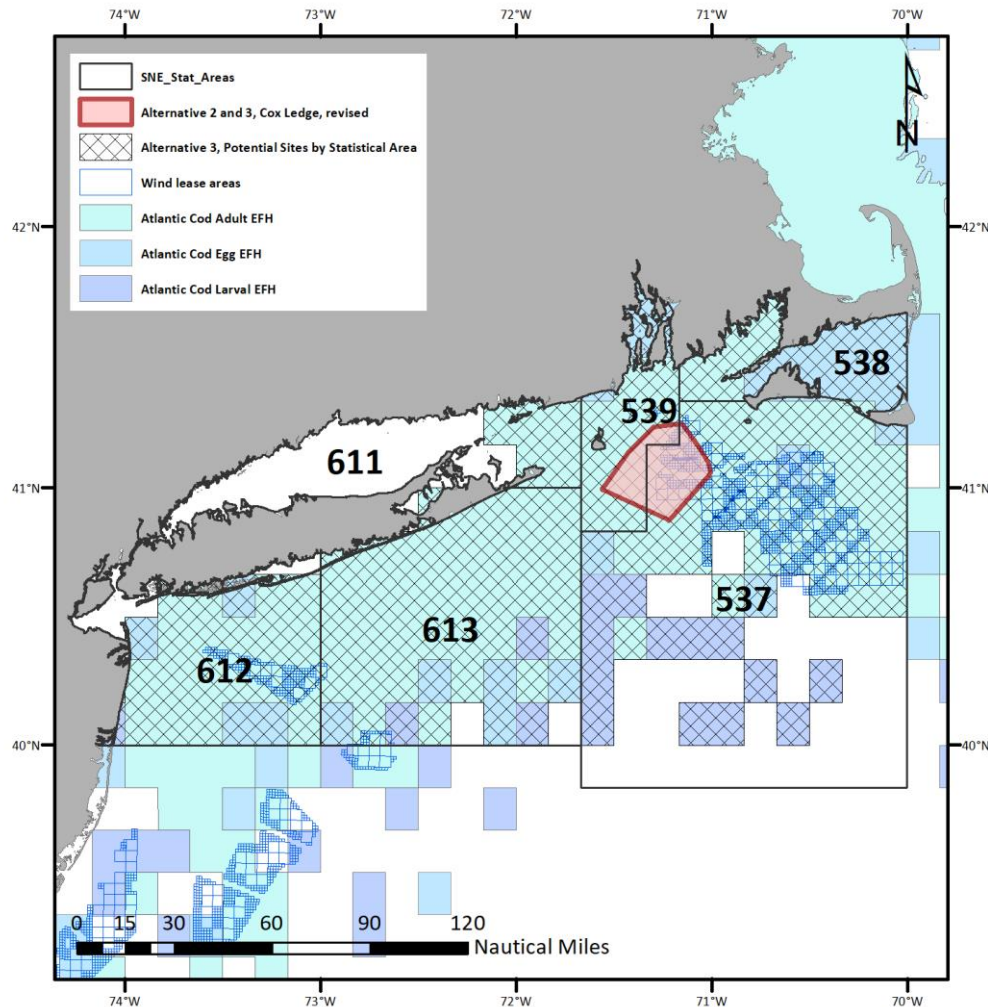
- Alternative 1 – No Action – no new HAPC designations
- Alternative 2 – HAPC focused on spawning cod, located on/around Cox Ledge
- Alternative 3 – HAPC focused on spawning cod, located on/around Cox Ledge, designation can also be applied elsewhere in Southern New England when spawning activity indicated by new data
- Alternative 4 – HAPC focused on complex habitat and associated NEFMC-managed species, designation can be applied where these habitats occur throughout Southern New England
- Alternatives can be adopted in combination to address multiple conservation objectives/mitigate a range of development impacts

Alternative 2 – Cox Ledge Spawning Ground



- This alternative would designate an area representing the intersection of egg, larval, and adult Atlantic cod EFH and cod spawning grounds on and surrounding Cox Ledge as a Habitat Area of Particular Concern (red area at left).
- Within HAPC, discrete locations of high cod spawning activity are identified --> higher priority during EFH consultation

Alternative 3 – Cox Ledge, new spawning sites ID'd in future

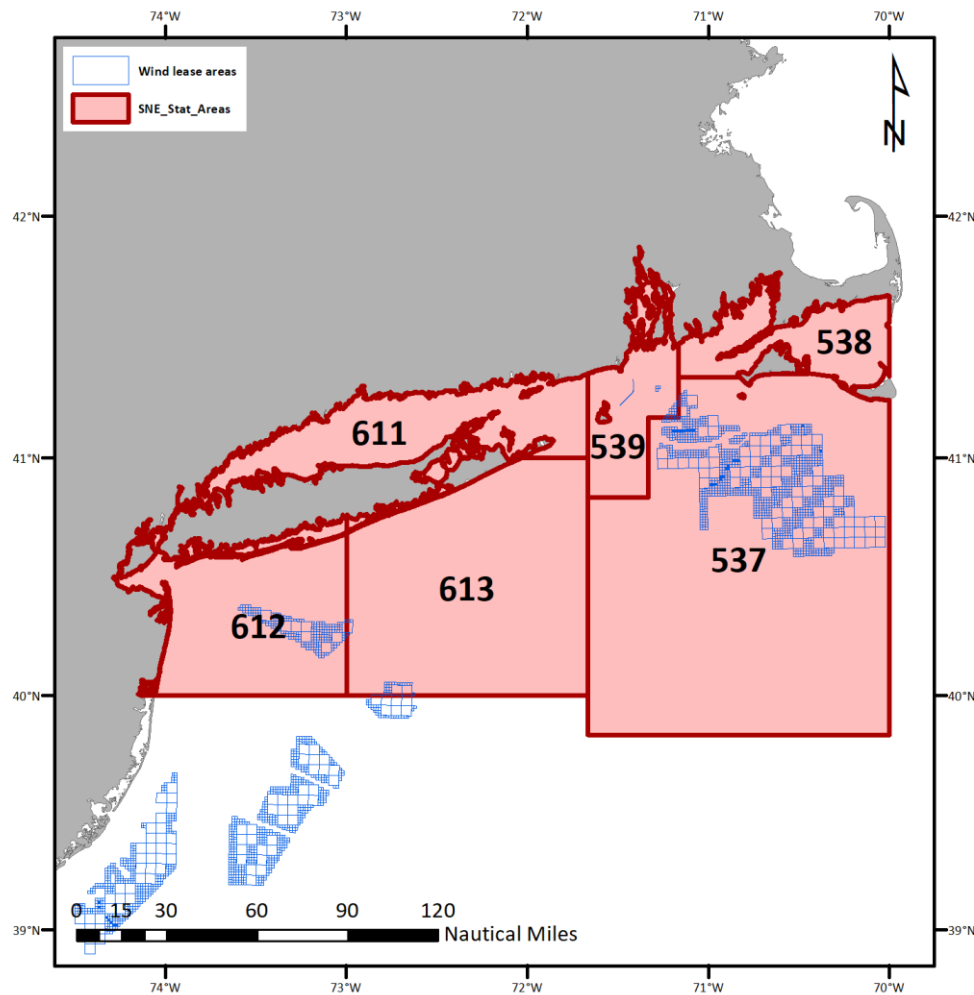


This alternative would designate an area representing the intersection of egg, larval, and adult cod EFH with (1) areas on and around Cox Ledge where cod are currently spawning (red) and (2) any future cod spawning areas identified in Southern New England (hatched) as Habitat Areas of Particular Concern.

For the purpose of applying the HAPC designation in the hatched area, evidence of cod spawning activity at a site could come from detection of cod grunts, detections of tagged spawners, catches of cod in spawning condition, or detection of early life history stages (eggs, larvae).

Note: Broader area determined by statistical areas of SNE cod sub-population

Alternative 4 – Complex habitat



Alternative 4 would designate all areas in Southern New England with complex habitats (see definition on next slide) as HAPC for the following species and lifestages:

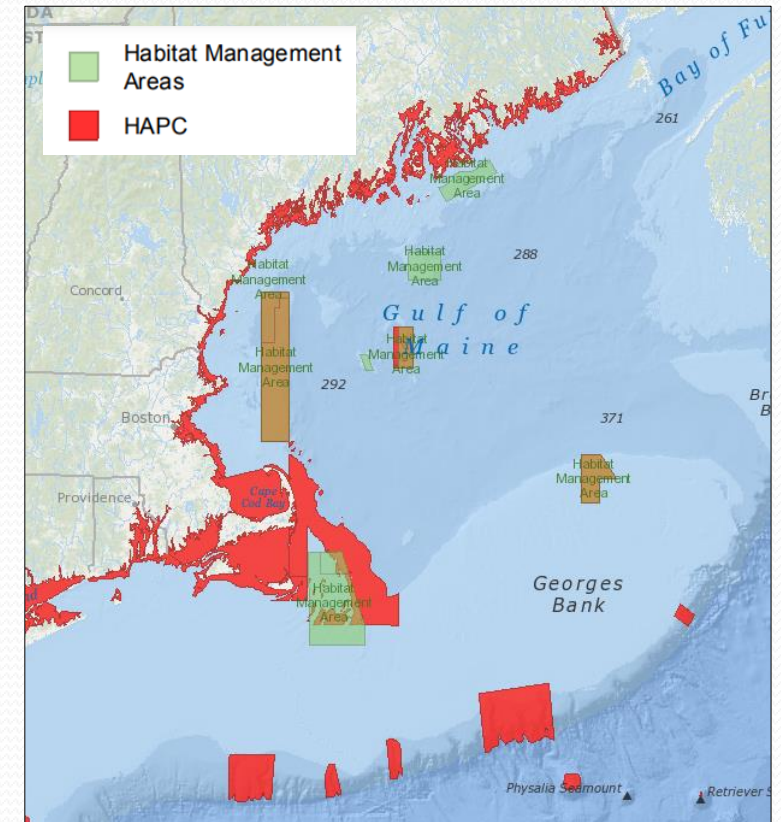
- Atlantic cod juveniles, adults
- Atlantic herring eggs
- Sea scallop eggs, juveniles, adults
- Little skate juveniles, adults
- Monkfish juveniles, adults
- Ocean pout eggs, juveniles, adults
- Red hake juveniles, adults
- Winter flounder eggs, juveniles, adults
- Winter skate juveniles, adults

Complex habitat definition

- Hard bottom substrates, defined by the Coastal and Marine Ecological Classification Standard (CMECS) as Substrate Class Rock Substrate and by the four Substrate Groups: Gravels, Gravel Mixes, Gravelly, and Shell. This CMECS modifier was developed by NOAA Fisheries for their habitat mapping recommendations, including both large-grained and small-grained hard habitats.
- Hard bottom substrates with epifauna or macroalgae cover.
- Vegetated habitats (e.g., submerged aquatic vegetation and tidal wetlands).

HAPCs vs. Habitat Management Areas

- HAPCs are non-regulatory; no restrictions on fishing directly associated with the designation
- Habitat Management Areas have gear-based restrictions on fishing to minimize the adverse effects of fishing on EFH
- In some cases, HMAs and HAPCs overlap spatially
- Future Council action would be required to restrict fishing in any HAPCs, including this one



General Impacts on Fisheries Actions

HAPC Designation:

- *Positive*: messaging opportunity for Council to emphasize importance of minimizing habitat impacts from offshore development (esp. complex & spawning cod habitat)
 - Not a vehicle to be used for fishery closures given HAPCs focus on habitat issues (not fisheries) – have multiple cod spawning closures w/ minimal overlap of juv. cod HAPC
 - Risk averse approach, allow for data/science to be conducted to influence wind develop.
 - Could influence conservation recommendations via EFH consultation process
- *Negative*: will not impact permitted projects
 - Additional scrutiny on fishing industry, though beneficial long term if wind impacts on fisheries are minimized

No HAPC Designation:

- *Positive*: no administrative burdens evaluating impacts of actions in HAPC
- *Negative*: Undermines [NEFMC Offshore Wind Policy](#) & [comments to federal agencies](#)
 - Does not signal to developers the importance of protecting/minimizing habitat impacts (complex and cod spawning habitats)

Committee Motion #1 (June 10th)

1. **Main Motion:** Recommend Alt. 4 as preferred, using SNE cod stock stat. areas as basis for mapped area (Etrie/M. Smith)

Failed 1/7/1

1A. **Motion to Amend:** Recommend Alts. 3 and 4 as preferred, using SNE cod stock stat. areas (Burns/)

Failed for lack of a second

1B. **Motion to Substitute:** Recommend Alt. 3 as preferred, using SNE cod stock stat. areas (Burns/)

Failed for lack of a second

Committee Motion #2

2. Main Motion: Recommend No Action as preferred (Etrie/Patterson)

2A. Motion to Substitute: Recommend Alt. 2 as preferred (G. Smith/Aarrestad)

Failed 4/5/0

2B. Main motion as Perfected: Recommend adopt none of these actions as preferred; Recommends the Council clarify its focus for alternatives and consider whether the Committee continue work on this framework (Etrie/Patterson)

Passed 7/2/0

Decisions for today

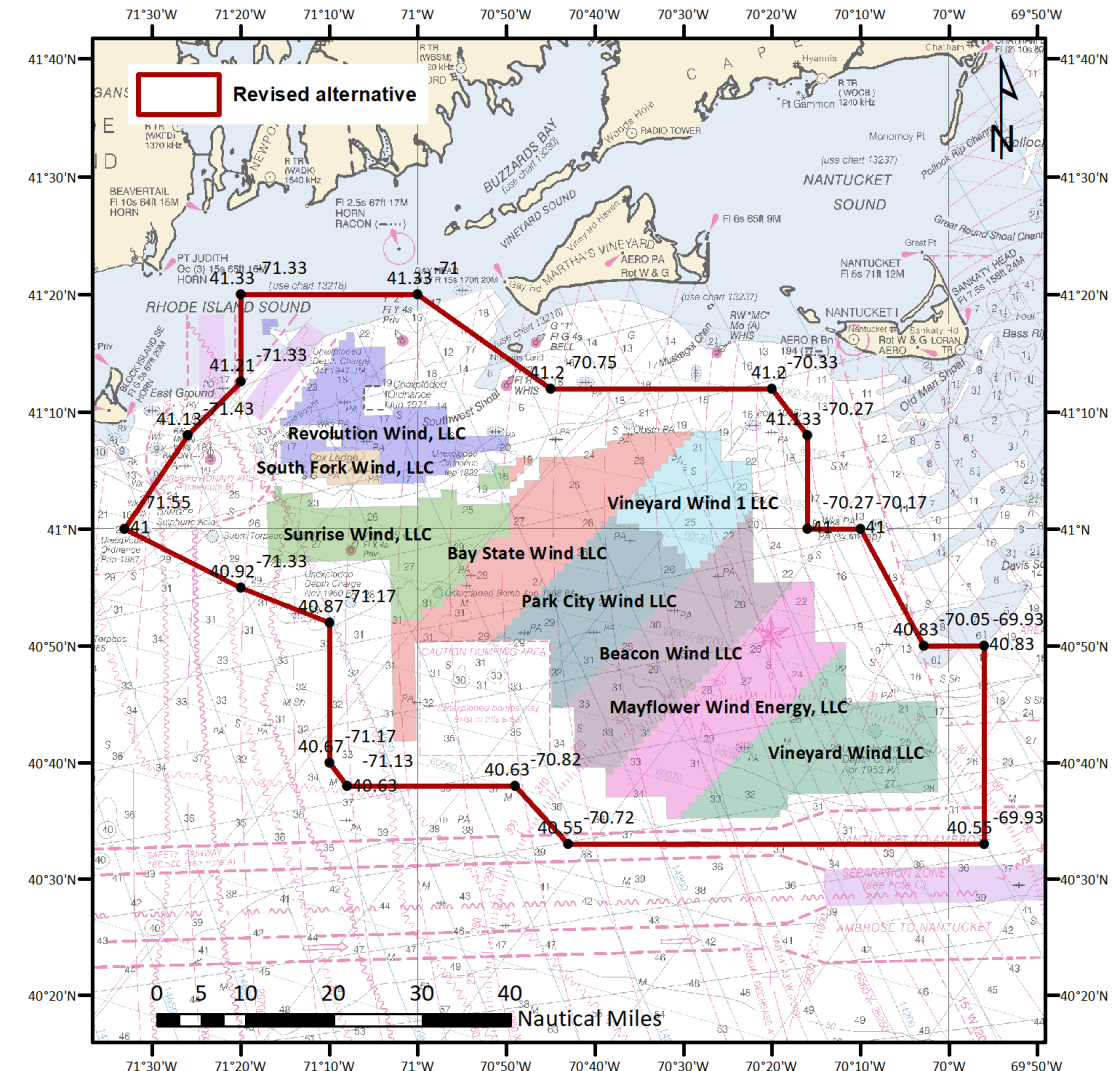
- Cod spawning HAPC
 - Recommend either Alternative 2 or 3, or No Action
- Multispecies complex habitat HAPC
 - Recommend either Alternative 4 or No Action
- Consider additional options: something intermediate to alternatives described in document, and/or combine 2 or 3 with 4
- Remand to Committee for further development
- Select No Action for both topics (cod spawning and complex habitat) and do not finish framework

Draft Middle Ground Alternative

- Designate the area overlapping wind lease sites in Southern New England as HAPC
- Spatial extent based on:
 - Footprint of lease areas,
 - Buffer of ~10km on all sides, and
 - Footprint of Cox Ledge spawning ground developed for Alt 2 (recent evidence of cod spawning activity)
- Evidence of complex & cod spawning habitats explained

Rationale: protect complex habitats & cod spawning habitats from negative impacts associated with offshore development

- *Regarding buffer:* Some development activities (e.g., pile driving) can generate impacts many kilometers construction site



Next steps

- If Council takes final action today, staff/PDT will complete document and submit in July
 - Expect to qualify for a Categorical Exclusion under NEPA
- NOAA Fisheries will review and implement
 - Once any required edits are complete, will publish a notice of the FMP changes and seek public comment
 - No rulemaking for HAPCs, so will go into effect upon final approval by NOAA Fisheries (could take several months)

Note: NOAA can acknowledge HAPC during EFH consultation process even if HAPC not yet in effect (though likely carries less weight)