



New England Fishery Management Council

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MEETING SUMMARY

Habitat Advisory Panel

May 24, 2022

1:00 am -3:20 pm

Via Webinar

The Habitat Advisory Panel (AP) met on May 24, 2022 via webinar to discuss Essential Fish Habitat (EFH) consultations, an action to consider Habitat Area(s) of Particular Concern (HAPC) in Southern New England, updates on regional aquaculture issues including the Blue Water Fisheries project, and any other business.

MEETING ATTENDANCE: Chris McGuire (AP Chair), Gib Brogan, Rip Cunningham, Ben Haskell, Lane Johnston, Jeff Kaelin, Meghan Lapp, Elizabeth Marchetti, Drew Minkiewicz, Ron Smolowitz, and Dave Wallace. NEFMC staff: Michelle Bachman (Plan Development Team Chair) and Jenny Couture; NOAA GARFO: Chris Schillaci. In addition, five other Council members and one member of the public attended.

KEY OUTCOMES:

- Members received a brief overview of the EFH consultation process including recent consultations the Council has been involved with, reviewed the action considering HAPC(s) in Southern New England, and received updates on aquaculture in the region (with a focus on the Blue Water Fisheries project).
- Regarding the HAPC in Southern New England, the AP recommended to the Committee Alternative 2 (Cox's Ledge) for a cod spawning HAPC. The AP recommended No Action with respect to designating a complex habitat multispecies HAPC (Alternative 4).
- Members recommended the Committee continue monitoring salmon aquaculture development in the EEZ, especially related to project siting concerns.

AGENDA ITEM #1: ESSENTIAL FISH HABITAT CONSULTATIONS

Presentation

Ms. Bachman provided an overview of the Essential Fish Habitat (EFH) consultation process, explaining that all federal agencies must go through this process with NOAA Fisheries when a publicly funded action is likely to adversely affect EFH. Recent EFH consultations with Council involvement include the Amitie fiber optic submarine cable installation project which is undergoing an expanded EFH consultation process. Council staff are also having early conversations about the Running Tide aquaculture project and the Blue Water Fisheries aquaculture project (further discussed later in the meeting). The EFH consultation process

includes early conversations to understand the scope of projects and potential effects, with an eye towards avoiding negative impacts, as well as the formal process where NOAA Fisheries provides conservation recommendations once a project has been proposed and an EFH Assessment has been provided. While conservation recommendations are adopted at the discretion of the action agency overseeing the project in question, the action agency must nevertheless respond in writing to indicate whether they intend to adopt the conservation recommendations, and if not, why not.

Discussion

An adviser asked whether the Council is involved with offshore wind EFH consultations. Staff indicated that yes, the Council has been informally involved, noting that the EFH consultation process has only been completed for two New England projects thus far, Vineyard Wind I and South Fork Wind. Other projects are in the early engagement phase. Staff are working with NMFS on habitat monitoring recommendations. Data gathered in line with these recommendations will improve EFH consultations and the estimation of habitat impacts over the long term. The Adviser commented that she heard a presentation on detonating unexploded ordinances in areas where offshore wind is planned and encouraged staff to consider this impact and the effects on EFH going forward. Staff will follow up.

AGENDA ITEM #2: HABITAT AREA OF PARTICULAR CONCERN IN SOUTHERN NEW ENGLAND

Presentation

Council staff gave the AP a synopsis of the draft Southern New England (SNE) Habitat Area of Particular Concern (HAPC) document, including a description of what is and is not an HAPC and how it differs with a Habitat Management Area. Three alternatives are under consideration: a narrowly focused cod spawning HAPC in and around Cox Ledge; a broader cod spawning HAPC encompassing Cox Ledge, Nantucket Shoals, and any spawning sites identified in the future based on new data; and a broad HAPC in SNE for multiple NEFMC species that use complex habitats. No preferred alternative was recommended during the April Council meeting and final action is expected at the June Council meeting. Staff discussed the supporting information including acoustic research results and a comparison of the impacts on fishery resources for each of the alternatives.

Discussion

An adviser expressed disagreement over the statement that HAPCs do not restrict fishing, noting that in his experience fisheries research is not permitted within HAPCs, at least in the Northern Edge of Georges Bank. Another adviser agreed that HAPCs might affect fishing activity given that proposed fishing activities within HAPCs would be subject to additional conservation scrutiny. The AP Chair was not sure if this was accurate for all HAPCs; for example, he was aware of a fisheries research project within the inshore Juvenile Cod HAPC. Ms. Bachman reiterated that there is both an HAPC and a habitat management area on the Northern Edge, so it is difficult to determine if either or both designations are responsible for limiting research in the area. In the New England region, habitat management areas are designed to restrict fishing activities, while HAPCs are not. Council staff can discuss this issue further with NOAA.

One member suggested including the spatial domain of the acoustic research studies on any maps to better show if the acoustic sensors are just within the wind energy areas or throughout the Southern New England (SNE) region. This would help provide insight on how to interpret the

data especially with regard to presence and absence of spawning cod. The AP Chair suggested also including more information on how the HAPC in Alternative 3 would be expanded upon or changed if additional cod spawning data are collected and what buffer to apply. Another adviser wanted clarification on the data supporting Alternative 3, especially the Fishermen's Ecological Knowledge (FEK) sites. One adviser asked if the Habitat Plan Development Team (PDT) endorsed the information collected during fishermen interviews for fishery management changes. The FEK is included as supporting information for designating an HAPC because these data were part of a peer reviewed publication.

There was a brief discussion on what is limiting the recovery of cod and if it is the dearth of cod spawning grounds and/or low survival rates of young of the year cod. The AP member suggested that this has implications whether the existing Juvenile Cod HAPC is sufficient or not and if additional HAPCs are really warranted.

Several AP members were unclear whether the HAPC would affect wind turbine placement and if planned turbine locations would be removed from consideration this late in the process in and around Cox Ledge. Ms. Bachman stated that it is hard to say but that there is potential for micrositing turbines, additional or more rigorous conservation recommendations (e.g., time of year restrictions), and so on. Additional data would help provide information on whether there are specific features or areas with high site fidelity that would be important to protect from development.

- 1. MOTION (Cunningham/Haskell):** Recommend to the Committee Alternative 3 (Cox Ledge, Nantucket Shoals, potential sites) as the preferred HAPC alternative.

Rationale: It is important to protect juvenile cod to help rebuild a depleted stock. Alternative 4 is too broad. Alternative 2 is good but does not address all known cod spawning areas.

Discussion of the Motion: A couple of members thought it was important to protect habitat that is valuable for cod spawning. Another member did not support the motion because there are already wind energy areas and construction and operation plans underway, and the HAPC would have little practical impact on offshore development, and he did not want to have extra scrutiny placed upon any new proposed fishing activity in fear of losing additional fishing grounds.

- 1A. MOTION TO SUBSTITUTE (Minkiewicz/Smolowitz):** Recommend to the Committee Alternative 1 (No Action) as the preferred HAPC alternative.

Rationale: The HAPC will not help in siting wind energy areas nor with micrositing turbines; the HAPC could lead to greater losses of fishing grounds, exacerbating impacts from offshore wind development.

Discussion of the Motion: One adviser noted that codfish have not been observed within Nantucket Shoals and that historical fishing information may not be representative. Another adviser thought the HAPC should focus on the designation's original intent of protecting spawning cod on Cox Ledge from offshore wind development. Another member saw the value of a more narrow HAPC designation but expressed concern over identification of future HAPCs based on new data.

Motion 1A to substitute failed 3/4/1.

1B. MOTION TO SUBSTITUTE (Kaelin/Lapp): Recommend to the Committee Alternative 2 (Cox Ledge) as the preferred HAPC alternative.

Rationale: This alternative is more targeted and would help protect spawning cod from offshore wind development impacts.

Further Discussion of the Motion: One adviser was in support of this motion because it is more targeted and narrower in scope. The AP Chair asked if there was a temporal aspect to any of the proposed HAPC designations or if they are year-round. Staff had previous conversations with NMFS on this topic and decided that a year-round designation would make more sense. The supporting information and rationale within the HAPC framework document does describe the seasonality component of cod spawning and notes that conservation recommendations could include time of year restrictions for when construction activities should occur to minimize impact. A member who preferred No Action agreed that he could support this narrower approach, but not Alternative 3.

Motion 1B to substitute carried 6/2/0.

1C. MAIN MOTION AS SUBSTITUTED: Recommend to the Committee Alternative 2 (Cox Ledge) as the preferred HAPC alternative.

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

Main motion 1C as substituted carried 7/1/0.

2. MOTION (Minkiewicz/Kaelin): Recommend taking no action related to the complex habitat multispecies HAPC (Alternative 4).

Rationale: Given the broad scope of this alternative, it does not have a clear focus on offshore wind development.

Discussion on the Motion: Staff clarified that the intent was that the Committee/Council could select Alternative 4 in combination with either Alternative 2 or Alternative 3, but that Alternatives 2 and 3 were mutually exclusive. An adviser asked how the species were identified as part of this HAPC designation and thought the list was incorrect.

Motion #2 carried 7/1/0.

AGENDA ITEM #3: ATLANTIC SALMON AQUACULTURE

Mr. Schillaci presented on the status the Blue Water Fisheries project (which will include an EIS) and that the project size and expected annual fish production remains the same, just now includes Atlantic salmon in addition to steelhead and lumpfish (which is used to remove parasites from farmed fish). Given the recent addition of Atlantic salmon as part of the project, NMFS is deliberating on the range of possible actions the Council and NMFS need to take to allow for salmon aquaculture projects in the EEZ, including a possible Council framework to authorize salmon aquaculture in the EEZ. Mr. Schillaci discussed the timing of the EIS process for the project, and some ideas for the scope of a Council action. For example, would the Council action cover just the Blue Water Fisheries project, or be more general to authorize/limit any salmon aquaculture project? Would the focus be on possession and sale of aquaculture products? Might a Council action recommend best management practices for development, or consider siting constraints? Council staff commented that as Council involvement in aquaculture is

relatively recent, it will be important to discuss the scope of the action early, to ensure that the full range of issues are considered and the Council has the information needed to make decisions.

Discussion

An adviser asked if the BWF project is within designated aquaculture opportunity areas; Mr. Schillaci responded that AOAs have not been developed in New England at this time. There was a siting analysis conducted by NOAA NCCOS that he could share that examined different data sources and ocean uses at and around the alternative sites.

The chair asked when in the process the Council would need to act. Mr. Schillaci commented that it would depend on the scope of the action. If the Council wanted to consider siting very explicitly, and suggested prohibiting aquaculture in particular locations, it would be important to do this sooner. If the action focused on tracing/possession issues, it could be done later in the EIS process for BWF. He acknowledged that it is not clear in the regulations that the Council could prohibit salmon aquaculture. Absent the Council authorizing possession (which is prohibited under the salmon FMP), NOAA Fisheries could perhaps issue an exempted fishing permit, but he followed that he would seek guidance from others at GARFO on this issue and get back to the AP.

An advisor commented that he felt that issues of siting should be paramount, and that a Council action should consider siting for any potential project.

Another advisor asked if the Council had submitted comments related to the section 305 provisions of the Magnuson Stevens Act (i.e., the EFH provisions). Staff noted that we have submitted comments on this project but that EFH consultation has not yet been initiated.

CONSENSUS STATEMENT #1: That the Committee should continue to track issues of Atlantic salmon aquaculture including specific projects and siting of those projects.

Rationale: The location of a project is a major determinant of its impacts on fish, habitat, and fisheries.

Discussion of the Consensus Statement: A member noted that Maine has a lot of data related to aquaculture development that the Council could review. Another member expressed frustration that this aquaculture framework was on the list of 2022 priorities but that fishing access on the Northern Edge of Georges Bank was not on the list.

AGENDA ITEM #4: OTHER BUSINESS

No other business was discussed. The Habitat AP meeting adjourned at approximately 3:20 p.m.