



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
Erie Reid, *Chair* | Thomas A. Nies, *Executive Director*

**MEMORANDUM**

**DATE:** January 26, 2022  
**TO:** Council Members  
**FROM:** Tom Nies, Executive Director  
**SUBJECT:** **Emergency Action Request - Surfclam Fishery in Great South Channel Habitat Management Area**

Emergency Action Request

Monte Rome of Intershell International Corp. has contacted the Council to seek support for a request for emergency action pertaining to the hydraulic dredge surfclam fishery that operates on Nantucket Shoals (see [habitat correspondence](#), page 18). Representatives of several other surfclam businesses attended the January 18 Habitat Committee meeting to express their support for such a request. Their comments are included in the [meeting summary](#). The Habitat Committee did not make a recommendation for or against emergency action during their meeting. The issue was also discussed at a January 14 meeting between NEFMC/MAFMC leadership (see [here](#)) and during the January 21 Executive Committee meeting. The Council will discuss the request on February 1.

The Nantucket Shoals surfclam fishery occurs largely within the Council’s Great South Channel Habitat Management Area, and since 2020 has operated within the three exemption areas identified by the Council in December 2018. Background information about the habitat management area is provided [here](#).

Emergency Criteria

The NMFS’ Policy Guidelines for the Use of Emergency Rule (1997) outline the criteria and justifications for an emergency action (<https://www.govinfo.gov/content/pkg/FR-1997-08-21/pdf/97-22094.pdf>).

An emergency action may be justified as a situation that 1) results from recent, unforeseen even events or recently discovered circumstances; and 2) presents serious conservation or management problems in the fishery; and 3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Emergency Justification: If the time it would take to complete notice-and-comment rulemaking or complete a fishery management plan or amendment would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse impacts to the public health, emergency action might be justified under one or more of the following situations:

1. Ecological- (A) to prevent overfishing as defined in a Fishery Management Plan (FMP), or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or
2. Economic- to prevent significant direct economic loss or preserve a significant economic opportunity that otherwise might be foregone; or
3. Social- to prevent significant community impacts or conflict between user groups; or
4. Public Health- to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.