

CORRESPONDENCE



January 21, 2022

Pete Decola
Superintendent
Stellwagen Bank National Marine Sanctuary
175 Edward Foster Road
Scituate, MA 02066

Re: Sanctuary Management Plan Revision (Docket number NOAA-NOS-2020-0003)

Dear Mr. Decola,

The Northeast Seafood Coalition (NSC) is a non-profit membership organization that represents commercial fishing businesses that participate in the federal northeast multispecies (“groundfish”) fishery. On behalf of our members, NSC engages in the policy, legislative and scientific arenas.

Many years ago, the commercial fishing industry collaborated closely with other interest groups and elected officials to designate the area that now encompasses the Stellwagen Bank National Marine Sanctuary (SBNMS). The Sanctuary serves as the backbone for many small commercial fishing businesses that harvest fish located seasonally within the Sanctuary boundaries.

The economic importance of the sanctuary area to small family-owned fishing businesses, and coastal communities that surround its borders is well documented. These members of the blue economy rely upon the continuation of a thoughtful and effective Sanctuary Management Plan.

NSC is generally supportive of the Draft Management Plan as set forth. However, we are aware that some interest groups are using this comment period as an opportunity to influence this SBNMS management plan process to inappropriately get into the business of fish species management. For the record, NSC strenuously opposes this notion and we hope the SBNMS appreciates and ultimately agrees with our reasoning as described briefly here.

Fishery management under the requirements of the Magnuson Steven’s Act (MSA) is a highly complex and data intensive exercise. It requires a significant and continuous scientific and management resource infrastructure. In full recognition of this reality, the SBNMS designation defers the management of fisheries that are coincident within the sanctuary boundaries, to the MSA / Fishery Management Council process. As a result, there have been immeasurable advances in the management and monitoring of fisheries that occur within the sanctuary since designation in 1995. Advances that are the direct result of an immense NOAA federal fishery management infrastructure designed to manage each individual fish stock comprehensively and throughout the full range of each stock.

Therefore, NSC supports the continuation of reliance upon the New England Fisheries Management Council (Council) and NOAA Fisheries for fisheries management, habitat and

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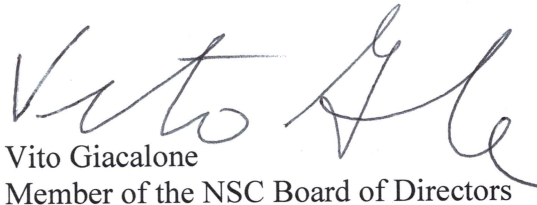
marine mammal protection. The Council works diligently to protect and manage all resources under their purview based upon the best available science and a transparent public process. We would hope the Sanctuary would not allow this updated Sanctuary Management Plan to be an opportunity by some to push for regulatory changes that run counter to the spirit, collaboration and wisdom embodied in its current designation document.

On behalf of NSC and our community fisheries partners, we want to convey our sincere value and appreciation of the SBNMS and for this opportunity to offer comments.

Sincerely,



Jackie Odell
Executive Director



Vito Giacalone
Member of the NSC Board of Directors



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*

January 21, 2022

Captain Pete DeCola
NOAA Stellwagen Bank National Marine Sanctuary
Attn: Management Plan Revision
175 Edward Foster Road
Scituate, MA 02066

Dear Pete:

We would like to compliment you and your staff on the Stellwagen Bank National Marine Sanctuary Draft Management Plan and Environmental Assessment (Plan) that was recently made available for public comment. The document is clear, concise, and does an excellent job of using the information in the 2020 Condition Report as the basis for strategies designed to maintain or improve the condition of Sanctuary resources. We appreciate the opportunity to contribute to the development of these strategies as a member of the Sanctuary Advisory Council. Please consider our comments as you finalize this document.

We appreciate the Plan's recognition of the full range of ecological services that the Sanctuary provides. This includes the benefits provided by the commercial and recreational fishing industries, activities that have occurred in this area for hundreds of years. Several of the strategies on the Plan are of keen interest to all fishermen. For example, Strategy WQ-7 aligns with the concerns of fishermen about the effects of contaminants on the waters in and surrounding the Sanctuary. Improved understanding of the links between habitat and resources that should result from strategies HB-1, HB-2, and HB-3 may provide information that will help the Council's management of resources that are found in the Sanctuary.

Many Council actions can impact the Sanctuary. For example, for over twenty years regulations have been in place that require any new fishery for a forage species such as sand lance to receive approval from the Council and the National Marine Fisheries Service (none has been proposed to date). The Council's establishment of a Dedicated Habitat Research Area provides an opportunity for long-term habitat research. We understand that the Sanctuary renewed monitoring efforts last summer, emulating prior studies, with the objective of assessing the status and dynamics of seafloor habitats and communities in the research area. Strategy HB – 1 should further encourage that research. Further, recent management actions, including the adoption of the sector management system and this year's implementation of a mid-water trawl exclusion area, have reduced mobile gear effort in the Sanctuary. We may gradually see the benefits of

these actions on habitat – The 2020 condition report noted that fishing effort had declined, and habitat quality was rated as fair/steady. While there is continued room for improvement, the current condition represents a slight improvement from the 2007 report, where impacts from fishing gear were rated as worsening. We are continuing our efforts to rebuild cod stocks, which have not made adequate progress. This year we will update the rebuilding plan and consider additional measures to promote rebuilding. Over the next few years, we expect to incorporate our new understanding of stock structure into cod management.

Because of our overlapping interest in this area, we look forward to continuing our partnership. The new management plan is an important step in achieving our joint goals. Please contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies".

Thomas A. Nies
Executive Director



The Commonwealth of Massachusetts

Division of Marine Fisheries

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January 21, 2022

Captain Peter DeCola
Superintendent
Stellwagen Bank National Marine Sanctuary
175 Edward Foster Rd.
Scituate, MA 02066
ATTN: Management Plan Revision

Dear Superintendent DeCola,

The Massachusetts Division of Marine Fisheries (MA DMF) appreciates the opportunity to comment on the *Stellwagen Bank National Marine Sanctuary Draft Management Plan and Environmental Assessment* [November 2021]. MA DMF has participated on the Stellwagen Bank National Marine Sanctuary (SBNMS) Advisory Council (SAC) since 2001 and helped to guide the development of the first and second management plans. Most recently, MA DMF provided comments on the *2020 Condition Report: Findings of Status and Trends for 2007-2018*, which assessed the condition and trends of resources and activities in SBNMS and supported development of this draft management plan.

The draft management plan consists of 15 action plans describing 76 strategies aiming to accomplish four overall goals of 1) ensuring a thriving sanctuary, 2) increasing support for the sanctuary, 3) deepening our understanding of SBNMS, and 4) ensuring coordinated support for sanctuary infrastructure, staff, and field operations. New environmental concerns included in the revised plan include shifting habitat use in response to climate change, offshore wind energy, soundscape, seabird research and monitoring, and improved understanding of the sanctuary in regional ecosystem services. Revisions to some existing action plans were also made. MA DMF supports the process of updating the Management Plan and will continue to provide feedback regarding research priorities and management approaches as the plan moves forward. MA DMF offers the following comments for your consideration.

In general, as noted in MA DMF's response to the 2020 Condition Report, sanctuary engagement with fishing communities as partners is an area that can use improvement and would contribute to furthering the sanctuary's goals. A review of the relative successes in achieving prior action plans could help inform evaluation of the activities under the new management plan. MA DMF supports the SBNMS's revised mission statement (developed through SAC collaboration, approved Feb 10, 2021): 'to conserve, protect, and enhance the biological diversity, ecological integrity, and cultural legacy of the sanctuary while facilitating compatible use,' and encourages SBNMS to ensure the management plan is consistent with this objective. Also, a table of contents would be helpful to orient readers. Comments pertaining to specific action plans are listed below:

Action Plans for 'Goal 1 – Ensuring a thriving sanctuary':

Marine Mammal Protection (MP)

- MA DMF supports SBNMS explicitly partnering with the fishing industry for *'Strategy MP-2: Support research into entanglement prevention.'* Entanglement prevention is of high priority to MA DMF and consultation with industry has been integral in developing the effective strategies that MA DMF has implemented. Also, care should be taken to ensure that efforts under Activity MP 2.3 (e.g., development, testing, and showcasing of buoyless fishing gear) include consideration of Activity MP 2.5 (e.g., development of equipment/techniques that reduce derelict gear), in that successful gear adaptation should both reduce entanglement risk as well as lessen the likelihood that those gears become derelict.
- Activity MP 2.5 should include MA DMF and NMFS as regulatory authorities, as well as the Center for Coastal Studies (CCS) who actively works on derelict gear removal in this region. MA DMF has data to inform this activity.
- Activity MP 2.6 may also benefit from collaborations with regional entities who have been involved in gear removal operations. Derelict gear connected to the surface is present in the portions of SBNMS that overlap with the Massachusetts Bay Restricted Area. These pose an entanglement threat to right whales during the winter/spring season. Gear that is present in the water column (i.e., connected to the surface by a buoy) during the right whale season when the area is closed needs to be removed. The sanctuary should partner with NMFS and OLE on removal of that gear.
- *Strategy MP-5: Expand boater outreach for whale watching program to reach more private boaters* – SBNMS should consider partnering with local dive clubs, boating organizations, and other recreational boating clubs to further this goal.
- For Activity MP 5.1 and 5.2, the 'BOWW program' should be described in the background of this action plan. This program involves public outreach and education, however publicly accessible information on the program's focus and activities is limited.
- MP Potential Partners – The Atlantic Offshore Lobstermen's Association should be included.

Seabird Research (SR)

- This new action plan is engaging and effectively highlights the importance of expanding work on a somewhat understudied, yet highly connected, marine resource. This specialty research area is well suited to sanctuary's expertise and capabilities. With diverse seabird use of the sanctuary, it seems wise to apply knowledge and techniques learned (through the sanctuary's shearwater research program) to more comprehensive understanding of seabird ecology throughout the sanctuary and region. Like large whales, seabirds are highly visible to the attending public, thus educational outreach on this activity would be of great benefit to SBNMS.

Vessel Traffic (VT)

- MA DMF strongly supports the sanctuary's continued efforts on reducing the potential for ship strikes of whales. MA DMF values SBNMS's work on monitoring factors that contribute to ship and whale collisions and its effective outreach activities and partnerships with the shipping industry to prevent and minimize impacts of ship/whale interactions.

Maritime Heritage and Cultural Landscapes (MH)

- *Strategy MH-2: Continue implementing and expanding the Shipwreck Avoidance Program to facilitate protection of historic resources and reduce damage to shipwrecks resulting from contact with fishing gear* - MA DMF supports cooperation between SBNMS and NEFMC and

NOAA Fisheries to disclose shipwreck locations to encourage fishing vessel avoidance. Background and outreach on this action plan/strategy appears to focus on bottom-tending mobile gear. Expansion of the Shipwreck Avoidance Program to include fixed gear fishing fleets could help advance this action plan's goal and protect maritime heritage resources in the sanctuary.

- Activity MH 8.3 – This activity involving recreational diving could be expanded and integrated with water quality monitoring, in that dive mooring systems could include affixed sensors. Dive groups could be engaged to perhaps 'sponsor' or 'adopt' a sensor financially and/or through its maintenance.
- MH Potential Partners – The Massachusetts Board of Underwater Archaeological Resources (BUAR) should be included. The BUAR is the sole trustee of the Commonwealth's underwater cultural heritage and is charged with encouraging the discovery, reporting, interpretation, and protection of these resources.

Compatible Uses (CU)

- MA DMF supports SBNMS's inclusion of offshore wind (OSW) as an emerging issue that warrants evaluation and recognizes the importance of assessing potential impacts of this activity on sanctuary resources and management objectives. Evolution of the floating OSW industry in the Gulf of Maine may impact where fisheries are occurring and introduce impacts to marine mammals, birds, fish, and invertebrates that could affect sanctuary resources even if sited outside of sanctuary boundaries. Other concerns of OSW include impacts to long-standing resource surveys that have tracked abundance and biodiversity within and around the sanctuary, which will make it difficult to identify and measure changes related to OSW, climate change, or other factors.
- Overall, the CU action plan lacks a definition of "compatibility" and how determination of an activity's compatibility with sanctuary resources is/would be made. MA DMF agrees that this concept is not static, however a description of how example metrics/thresholds could inform when an activity is deemed no longer 'compatible' would provide clarity and assist evaluation of this plan and its ability to be carried out. Part of the purpose of the action plan is to develop tools to provide rationale for compatibility management decisions, and the plan's goal is explicitly to 'enhance transparency regarding how current and emerging activities are assessed for compatibility...', however, any such tool or system of measurement is absent. Perhaps a traffic light approach characterizing parameters of interest (e.g., physical disturbance, chemical/physical pollutant input, biological removals, noise threshold, etc.) over time could be utilized as the simplest discernable tool for this type of assessment. Whatever the method, the MA DMF encourages the sanctuary to follow through on its goal of transparency and involve outside partners and the public in development of protocols/tools/baselines for determining compatibility to elucidate the many facets of existing and emerging threats that should be considered.
- CU Potential Partners – MA DMF should be included. The Responsible Offshore Science Alliance (ROSA), Responsible Offshore Development Alliance (RODA), Regional Wildlife Science Entity (RWSE), and BOEM's Gulf of Maine Intergovernmental Task Force should be included on strategies/activities related to offshore energy development.

Climate Change (CC)

- SBNMS monitors the condition of the sanctuary and uses condition change as an indicator of health of the sanctuary and management effectiveness. This is a constructive approach but how

climate change will be incorporated into this monitoring regime and influence management decisions should be considered. As species shift in response to climate change, their increased or decreased abundance in the sanctuary may not be a reflection of sanctuary management. Management success metrics may instead need to be more focused on documenting change, adapting to change (e.g., identifying different focal or indicator species, adjusting to changing temporal and spatial use patterns), and understanding resilience. Language around this action plan seems to indicate simple linear responses of currently monitored resources (e.g., sand lance down and *Calanus* up). However, determining how climate change is affecting NOAA trust resources warrants furthering our understanding of resilience, availability, influence of shifting stocks, and food web dynamics with the Gulf of Maine's changing environment. An important example of such deeper understanding of complex interactions includes Dr. Wiley's research on changes in water chemistry and its relation to sand lance populations and higher trophic levels. We certainly look forward to seeing the results of this work and future projects that support approaches to understanding mechanisms behind changes observed in our valued marine resources.

- *Strategy CC-1: Establishing the sanctuary as a sentinel site for understanding the impacts of climate change on the sanctuary ecosystem* - To successfully establish the sanctuary as a sentinel site, an inclusive and comprehensive dataset on species that contribute to the sanctuary's ecosystem will need to be compiled and managed. The bulk of the activities under this plan seem to focus on species that SBNMS has led or taken part in studying (i.e., mega and macrofauna) rather than the ecosystem as a whole. While SBNMS has no doubt compiled a vast depth of work that would contribute toward the goal, species in lower trophic levels that influence/drive changes in the higher trophic levels would also need to be considered, such as benthic species and marine invertebrates. This strategy would benefit from clarification as to whether SBNMS intends to establish the sanctuary as a sentinel site particularly for those species it has contributed to studying over the long-term or if collaboration with other entities on relevant datasets is the focus (or perhaps a combination).

MA DMF recommends changing the language of this strategy (*Strategy CC-1*) to the following: '*Maintaining the sanctuary as a sentinel site as part of the NERACOOS/ GOMRI Integrated Sentinel Monitoring Network (ISMN) for understanding the impacts of climate change on birds/whales/fish in the sanctuary system (and beyond).*' There are at least two buoys within the SBNMS that are already generating data for the ISMN, however this relationship is not spelled out very clearly in the CC action plan, despite listing NERACOOS as a partner.

- Activity CC 2.1 - Consider work being done through the Northeast Region Coordinating Council (NRCC)'s East Coast Climate Change Scenario Planning Initiative to avoid redundancy of effort and potential participant fatigue for workshops (limited number of experts in this field).
- *Strategy CC-3: Share data and communicate results of monitoring studies and how they inform our understanding of climate change* - The sanctuary should assess potential partnerships with other groups who are interested in creating large-scale publicly accessible databases for housing oceanographic data.
- Related strategies from other action plans could include RM 2.3 & RM 2.8 (data portals, NERACOOS).
- CC Potential Partners – Partnering agencies involved in the NRCC's East Coast Climate Change Scenario Planning Initiative (core team includes MAFMC, ASMFC, NEFMC, SAFMC, and NMFS: GARFO, NEFSC, and HQ) could be considered, as this initiative directly relates to the action plan's goal and is actively exploring jurisdictional and governance issues related to climate change and shifting fish stocks.

Action Plans for 'Goal 2 – Increase support for SBNMS':

Education and Outreach (EO)

- Generally, with outreach and education, MA DMF recommends that SBNMS continue to broaden its information distribution on best practices for recreational fishing (gear and handling) to support this action plan's goal of responsible use and stewardship of sanctuary's resources. As part of these activities, MA DMF encourages SBNMS to share DMF products such as the Haddock Recreational Fishing Guide (<https://www.mass.gov/doc/haddock-recreational-fishing-guide/download>) which helps recreational anglers avoid catching cod while recreational fishing in the sanctuary and Gulf of Maine and also identifies ways to reduce post-release mortality of discarded fish.

Interagency/Intergovernmental Coordination (IC)

- Greater coordination among marine resource agencies to promote improved management is a goal that MA DMF values and actively engages on.
- Under 'Related strategies from other plans' - MH-3 does not seem to relate to this action plan. MH-3 is inaccurately described here as 'document ecology of shipwrecks' but this strategy does not exist under the Maritime Heritage action plan; a similar strategy exists under HB-3 however, neither MH-3 nor HB-3 would improve interagency coordination.

Sanctuary Advisory Council (SAC)

- MA DMF supports its engagement on the SBNMS SAC and acknowledges the SAC's diverse representation, member expertise, and effective SBNMS staff support.

Action Plans for 'Goal 3 – Deepen our understanding of sanctuary resources':

Research and Monitoring (RM)

- MA DMF supports the collaborations and activities identified under this action plan.

Soundscape (SS)

- Both cod and haddock are "noisy" spawners and anthropogenic sounds could have adverse effects. MA DMF recommends that SBNMS continue to sponsor research looking at cod and haddock spawning behavior in the sanctuary and to address sound pollution. This directly relates to Activity RM 3.7, 'increase understanding of spawning groundfish in and around the sanctuary,' and thus could be noted in the Soundscape's related strategies section.

Water Quality Monitoring (WQ)

- Activity WQ 2 – SBNMS could explore deployment of continuous data loggers, using pop-up technology, to establish higher resolution datasets of bottom water conditions (temp, DO, possibly pH) (also, see comment on MH 8.3 re: dive moorings & group participation/ sponsorship).
- Related Strategies section is missing linkages (for example, WQ 5.1 and MP 2.5 & 2.6 re: derelict gear, are not cross-referenced).
- WQ Potential Partners - should likely include Center for Coastal Studies, as CCS is noted in Activity WQ 5.1.

Habitat (HB)

- *Strategy HB-1: Develop DHRA research plan in coordination with NEFMC and GARFO* – There are no associated activities to carry out this strategy. DMF suggests clarifying whether this is a new or ongoing effort and identifying its supporting activities.
- Activities HB 2.1 and HB 2.3 – MA DMF supports continued characterization and assessment of biological resources including the fish and invertebrate productivity supported by SBNMS habitats. However, no details on how this comprehensive assessment would be carried out are provided. We suggest interagency collaboration with partners that have long running experience in assessing marine habitats and species that utilize them, including the MA DMF, MA Coastal Zone Management (CZM), NMFS, ASMFC, and NEFMC, among other natural resource and fisheries agencies.
- Activity HB 3.2 is a repeat of MH 3.4; it makes more sense under Habitat and should be referred to as a related strategy under Maritime Heritage.
- HB Potential Partners - could include the MA DMF and CZM. MA CZM led development of the recently released ‘2021 Massachusetts Ocean Management Plan’ which includes a habitat focus that could inform this action plan. MA DMF’s Habitat and Resource Assessment Programs also have detailed knowledge and datasets that could contribute to the plan’s understanding of biological and physical resources within the sanctuary and region. Additionally, MA DMF’s Fisheries Statistics Program manages data submitted by commercial fishermen and dealers about landings, effort, and economic information about Massachusetts fisheries, supporting sanctuary program efforts to assess community composition (HB 2.3) and characterize productivity (HB 2.1).

Ecosystem Services (ES)

- In general, this action plan groups the many aspects of ecosystem services together in a vague and diluted manner despite the quantifiability of some ecosystem services. Background for this action plan and goal (to understand and thus promote the sanctuary’s value to the nation) should include specification of these known services, understanding that more are likely to be identified with additional work. The Condition Report contains a detailed review and some of those aspects could be included here. With this action plan, sanctuary management should embrace the human accessibility of this park in a more holistic manner and appreciate the benefits of human activities while continuing to put the adverse effects in context.
- The terms “fishing” and “fisheries” are markedly absent in the ecosystem services section (although ‘food supply’ is parenthetically mentioned and Figure 3.16 shows and describes fishing in SBNMS). The 2020 SBNMS Condition Report noted that “commercial fishing also provides food, an essential ecosystem service, which supports much needed employment and income in coastal communities.” In light of this action plan’s goal to “better understand and quantify the economic and intrinsic values of SBNMS to natural and human systems” and the management plan’s goal to “deepen understanding of sanctuary resources,” fishing should be acknowledged. The economic and intrinsic value of seafood, cultural and historical importance of commercial and recreational fishing, and the ability of fishing to provide a sense of place to the sanctuary community cannot be understated, yet all seem to be missing from this section and throughout the draft plan.
- Particular ecosystem services could be identified more explicitly or categorically (for example: money-generating removals from system (commercial & for-hire fishing), money-generating observations of system (tourism), historical aspects of system (wrecks, archeological sites), cultural aspects (sense of place, preserving the wild), educational aspects, etc.) to clarify interpretation and use of this type of information (especially in conjunction with identifying or

defining compatibility). There should be some mention of identifying (or learning more about) the species targeted by commercial fishers, timing and effort levels of fishing, and how important the sanctuary area is to specific fleets (in other words, quantify the 'food services' aspect mentioned in the background). How will shifting species distributions result in changes to the level of effort and potentially the relative importance of the sanctuary to certain fleets (how can you tell when there is too much fishing to be compatible with other sanctuary goals and how does this trade off with the dependency of a fleet on being able to fish there)? This is presumably a component of specific activities (e.g., ES 1.1) but could be more explicit.

- The status of living marine resources, in particular commercial and recreational capture fisheries, are critical to a comprehensive view of ecosystem health. While managed by regional fisheries partners, the management plan should identify how the SBNMS will interpret increases and decreases in these resources or fishing activities. Current or increased levels of fishing are presumably indicators of a healthy ecosystem and could be indicators of successful management.

Action Plans for 'Goal 4 – Ensure coordinate support for sanctuary infrastructure, staff, and field operations':

Administration and Infrastructure Capacity (AD)

- AD Potential Partners - NOAA's Office of Response and Restoration (Disaster Preparedness Program) could be mentioned to support Strategy AD-9, as other NOAA branches are noted.

Environmental Assessment

- P 84 - uncrewed aerial systems (UAS) needs clarification/specification. Are these manually controlled drones, or uncontrolled instruments like weather balloons (that will fall back to earth somewhere out of researchers' control)?
- P 83 & 85 – additional details on the types of buoys/vertical lines used, given the ongoing concerns related to whale (and turtle) entanglements. Exploration of pop-up technology for this type of equipment deployment might also be warranted.
- P 95 – given both the commercial importance of crustaceans and the role that some species of crustaceans play in the food web (copepods for example), crustaceans should be mentioned in the Invertebrates paragraph.
- P 117 – removing marine debris could have an impact (likely beneficial) on living resources (reduced ingestion of materials, reduced ghost fishing, reduced entanglement risk, etc.), thus it is unclear why this activity was designated as 'No Effect'. It could also have an impact (beneficial likely) on 'Marine Uses & Socioeconomics' by reducing the likelihood of fishing vessels encountering derelict gear in their operations and perhaps would provide a safety benefit for sanctuary divers (reduced entanglement risk around derelict fishing gear).

Other/overarching management plan comments

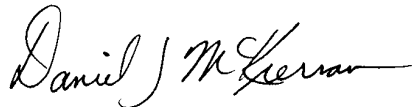
- Historical and present-day importance of the sanctuary to fishermen is deemphasized throughout this management plan. SBNMS should continue working with fishing communities that are economically dependent on valuable, historic Stellwagen fishing grounds. MA DMF urges improvements in communicating existing SBNMS research and outreach involving fishery resources and emphasize the importance of collaboration and coordination with the fishing industry and fisheries agencies in evaluating and conserving sanctuary resources. Such efforts

bolster a united goal of recognition of and appreciation for the natural resources and human systems that the SBNMS sustains.

- Attention should be paid to reviewing the 'related strategies from other action plans' section for all action plans. There appears to be several missing or inaccurate connections, definitions, and cross-references. The related strategies sections are valuable in demonstrating the comprehensive nature of many of the plan's strategies and provides an easy reference to locate activities that seem to be missing from certain action plans. We appreciate this approach over redundancy and encourage SBNMS to conduct a more thorough review to improve this section's utility.

The MA DMF commends the Stellwagen Bank National Marine Sanctuary on its efforts to develop an ambitious and comprehensive management plan to address ever-changing sanctuary challenges and opportunities. If you have any questions, please contact Kelly Whitmore in our Gloucester office at (978) 282-0308.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. McKiernan". The signature is written in a cursive, flowing style.

Daniel J. McKiernan
Director

Cc: Commissioner Amidon, MA DFG
Massachusetts Marine Fisheries Advisory Commission
Director Lisa Berry Engler, MA CZM
Executive Director Tom Nies, NEFMC
Regional Administrator Michael Pentony, GARFO
Director John Hare, NEFSC



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
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November 19, 2021

Natalie Jennings
Research Biologist
Coonamessett Farm Foundation, Inc.
277 Hatchville Road
East Falmouth, MA 02536

Dear Ms. Jennings:

We received your request, on behalf of the Coonamessett Farm Foundation (CFF), for an Exempted Fishing Permit (EFP) for a second iteration of the Great South Channel Habitat Management Area (HMA) Surf Clam Dredge Survey.

While similar in research methodology to EFP Project 19066, the new request involves sampling in a new portion of the Rose and Crown area and in the Fishing Rip Dredge Exemption Area. The proposed research sub-area of the Rose and Crown is approximately 100 km² and entirely outside of the 23-km² area that was approved for EFP #19066. As you know, the research area for 19066 was approved under a determination that the potential habitat impacts would be limited in scope and duration due to the research being conducted in a small area by four commercial vessels. The new request involves a more than four-fold increase in area and an increase to 10 vessels. In your October 13, 2021, letter to us, you stated that both CFF and participating industry members consider this request to be a new, separate EFP.

We determined that, with regard to the proposed sampling in Rose and Crown, the proposal is substantially similar in approach and methodology, and would represent a considerable expansion of the area subject to hydraulic dredging that we authorized under the 19066 EFP. We cannot make a proper evaluation of the utility of the dredge-mounted camera to characterize habitat, fishery interactions, and potential habitat impacts without the completion and evaluation of the Phase I report from the 19066 EFP. Therefore, as we noted in our May 12, 2021, and August 4, 2021, letters to CFF, we will not consider any expansion in the Rose and Crown or other closed areas until CFF submits a complete Phase I report and we are able to review and solicit input from the Council and its Habitat Plan Development Team. Additionally, and as you are probably aware, any expansion in the Rose and Crown area would require a new National Environmental Policy Act analysis that would likely not be covered under the Categorical Exclusion that supported the 19066 EFP.

Your request also proposes conducting habitat research in the Fishing Rip Dredge Exemption Area. Because this area is currently open to surfclam vessels, we would consider an EFP application in order to allow for the temporary possession of fish and exemptions from the possession limit and minimum size requirements in 50 CFR 648 subsections B and D through 0 and for select samples to be returned to land for additional sampling, following your research plan. CFF does not need any other exemptions to conduct the dredge-mounted camera surveys,



or the other optical survey methods listed in your proposal, within the Fishing Rip Dredge Exemption Area.

If you would like to pursue an EFP in the Fishing Rip Dredge Exemption Area as described above, please submit a revised proposal. Additionally, we look forward to receiving the Phase I report and analysis from project 19066. If you have any additional questions, please contact Laura Hansen at 978-281-9225. We wish you continued success with your research.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pentony". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael Pentony
Regional Administrator

From: nbsc@comcast.net [<mailto:nbsc@comcast.net>]
Sent: Thursday, January 20, 2022 9:45 PM
To: Tom Nies <tnies@nefmc.org>
Subject: Public Comment; Mitigation & Compensation

Jan. 20, 2022

Tom Nies Exec. Director, NEFMC
Eric Reid; Chairman NEFMC

Hello Tom;

I realize that I recently sent you a similar letter that I distributed to more than a few interested parties & politicians requesting that a similar as to what I am describing be considered as a method for providing a fair & equitable process for all parties involved. I think that this letter might provide a little more insight into my thoughts, & provide some rationale for considering & possibly adopting a similar resolution.

You know that I served several terms on the NEFMC some years ago, & that I am still involved with the NE commercial fisheries & their interests. In fact, I am, or was the first former fisherman hired by one of the Offshore Wind (OSW) developers (Vineyard Wind), as an Independent Fishermen's Representative. Since that time, I understand that BOEM has suggested (& possibly required) that the other OSW developers do the same.

As such, one of my major interests & concerns have to do with how fishermen, (both commercial & recreational) as well as other mariners, might at some point require seeking some mitigation &/or compensation for matters or issues arising from interactions or prohibitions incurred with ongoing OSW developments. As an example of how complicated these issues are likely to become, imagine that you are a fisherman (scallop) from (say) Massachusetts & you have some issue arise while fishing down in the Mid-Atlantic (offshore NY or NJ) that requires you to seek some form of relief. Who or where would you go to, to equitably arbitrate the matter?

Previously, matters requiring fishermen to seek some form of financial compensation or reimbursement most often required them to seek relief via their State Fisheries Departments or some similar agency. To honestly think or feel that those same or similar entities, either State or Federal bodies, are capable of or even willing to provide the attention & required devotion that those OSW issues will require, in my mind's eye is incomprehensible! The States are too territorial & local, while a Federal entity is too large & unwieldy.

I have been advocating for a different approach to manage these interactions which would require, what I describe as, "Regional Boards", or some similar concept that would be responsible for the decision making of matters & issues within their areas of concern. I

guess an apt description could be, 'in a similar manner or fashion as that of the Fishery Management Councils, & their responsibilities'.

I've had several discussions with other fishermen, (I still see myself as one), & we spoke of how, if adopted, these 'Regional Boards' could have, or might require at some point, a higher court of appeal as final oversight if required. I have also mentioned this idea to several members of the OSW developers & have received agreement that this is a concept that might provide a fair & equitable result for both sides of these issues.

Thanks for your attention to my request, & I hope that it will be considered as a public comment to the New England Fishery Management Council.

Thank You. & Have a Good One;
Jim Kendall

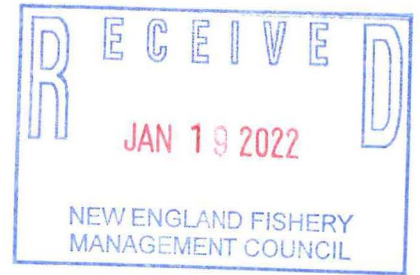
New Bedford Seafood Consulting
nbsc@comcast.net
(508) 997-0013 Office
(508) 287-2010 cell

Intershell International Corp

9 Blackburn Drive

Gloucester, MA 01930

01/13/2022



Memo To: Eric Reed

Memo From: Monte Rome

Re: Emergency Action Request

Please review the enclosed request for Emergency Action forwarded to the Secretary of Commerce today.

Thanks for your attention to this very pressing issue.

Monte Rome

Handwritten signature of Monte Rome in cursive script.

Intershell International Corp.

9 Blackburn Drive

Gloucester, MA 01930

01/13/2022

Gina M. Raimondo - Secretary of Commerce

1401 Constitution Avenue NW

Washington, D.C. 20230

RE: Nantucket Shoals Essential Fish Habitat Surf Clam Closure

Emergency Action Requested Per Magnuson 305 (C)

Dear Ms. Raimondo,

My name is Monte Rome and I write you as a N. E. Surf Clam Harvesting Fleet Owner, a Surf Clam Processor and on behalf of the other participants in the American Surf Clam Industry of New England who are all integral parts of the American Surf Clam Industry.

With this letter, I am writing to express to you the dire situation in the Community of Surf Clam Harvesters and Processors who harvest and process the American Surf Clam in the New England area with surf clams from the Nantucket Shoals fishing grounds. Together this Industry has supported hundreds of jobs, many of which have disappeared and more that will continue to disappear because of the lack of raw materials due to the closure of the Nantucket Shoals harvest area for this specie.

The clams from this area have been an important and regenerative (sustainable) food supply for our Country for the past 40 plus years and add greatly to the food security we must maintain with our growing population. It is also the only commercially productive grounds that exist for this area of the Country but represents a negligible part of the ocean covered by the Omnibus Habitat Amendment and OHA2 work. These clams are part of the Essential Fish Habitat (EFH) and occupy this area as Essential Surf Clam Habitat which has been coded by many studies and publications over decades of concern for the impacts of surf clam dredging and habitat effect from the process of harvesting surf clams. As stated, EFH (Essential Fish Habitat) relates to all species and this area is the EFH which supports the spawning, reproduction, and growth to maturity of the American Surf Clam.

The NEFMC and GARFO closed almost all this productive EFH Surf Clam Habitat under OHA2 without an applicable science basis in April of 2019. To date and for many reasons, there has been no scientific evidence of sensitive fish habitat to protect – only speculation upon which the closure is based. The enclosed Habitat PDT Meeting agenda of March 7, 2019 will reveal this lack of information which predicated the closure. While the 'RULE' purporting to allow our businesses to continue with equitable openings of the area, instead the RULE has created an exceptional expense for vessels and a declining supply of this raw material which has affected all

However, one processor with 3 vessels who was extended an Exempted Fisheries Permit (EFP) for research of less than 1% of the area containing clams, has excelled in food production, maintaining his business, and harvesting with great efficiency. This demonstrates the inequity and difference between the designated areas which 'others' were permitted to fish and the EFP holder. The EFP holder is catching more than 4 times the average rate than those who have been relegated to areas dictated by the Regional Administrator at the NEFMC meeting of December 4, 2018. All other vessels, processors, workers, haulers and distributors conducting business as the New England Surf Clam Industry are struggling to maintain their businesses while one participant has excelled. We 'others' are failing in our businesses and failing the American people because of deleterious rule making.

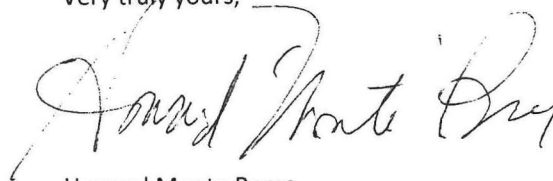
Many of us in the Surf Clam Community spent lengthy days traveling to and attending the several NEFMC PDT (Planning and Development Team) meetings to discuss the issues in 2018 and 2019. However, at the December 2018 NEFMC meeting and without notice the Regional Administrator dictated that we must accept the non-vetted, non-preferred alternative rather than the PDT and Industry vetted and recommended alternative for open areas for fishing.

While our Community has tried every day to make the designated areas provide for our Industry, we are now at the expected precipice and need an immediate **Emergency Action to Open This Area for the next 5 years** while we collect and provide accurate data about the habitat to the NEFMC and GARFO so a suitable rule might be enacted at a later date. Data collection of this type takes many years, and we need all the time requested to collect this data if required.

We need your immediate support for this requested measure which must be undertaken if the NE Surf Clam Industry is to survive. The decline of this Industry is a direct result from the discriminatory and meritless closure of the area which has decimated our staffs and made the future of our Industry and jobs questionable. Please give this issue your immediate and serious attention.

The undersigned will appreciate your swift action in approving this request for Emergency Action. Thank you.

Very truly yours,



Howard Monte Rome

Cc: Janet Coit, NOAA Deputy Administrator

Eric Reed, NEFMC Council Chair

Michael Pentony, Regional Administrator NOAA

Michelle Bachman, NEFMC Fishery Habitat Analyst

Tom Nies, NEFMC Executive Director

Robbie Gosselin, Gosselin & Sons Trucking

Alan Renquirrel, Nantucket Sound Seafood

David Costa, Costa Trucking

Sam Martin, Galilean Seafoods

Congressman Seth Moulton

Dan McKiernan, MA. Division of Marine Fisheries



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

January 19, 2022

Stephan Ryba, Chief
Regulatory Branch
New York District
U.S. Army Corps of Engineers
26 Federal Plaza
New York, NY 10278-0900

Dear Mr. Ryba:

We have reviewed the proposed reissuance and modification of 41 Nationwide Permits (NWP) published in the Federal Register on December 27, 2021. We have also reviewed the final draft of the New York District's proposed Regional Conditions.

On January 13, 2021, the U.S. Army Corps of Engineers (USACE) published a final rule in the Federal Register (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP went into effect on March 15, 2021, and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

We provided you with our essential fish habitat (EFH) general concurrence for 13 of the 16 NWP listed above last September. This follows up that letter and the extensive coordination



between our staff over the past two years on the development of regional general and permit-specific conditions for the NWP and serves as our programmatic EFH consultation and general concurrence for the reissuance of 40 existing and one new NWP which go into effect on February 25, 2022, and expire on March 14, 2026.

The Magnuson Stevens Fishery Conservation and Management Act (MSA) requires federal agencies such as the Corps to consult with us on projects that may adversely affect EFH. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the consultation process. In addition, the Fish and Wildlife Coordination Act (FWCA) requires all federal agencies to consult with us when proposed actions might result in modifications to a natural stream or body of water. It also requires that federal agencies consider the effects that these projects would have on fish and wildlife and provide for the improvement of these resources. Under this authority we seek to protect and conserve a wide variety of aquatic resources, but especially those that are not federally managed and do not have designated EFH, such as anadromous fish. Because the activities authorized by NWP may impact EFH and other NOAA Fisheries trust resources, consultation with us under these two authorities is required.

Although an EFH assessment was not provided to us for the new and reissued NWP, we have worked closely with your staff over many years, and are able to evaluate the potential effects of some of the NWP on a programmatic basis. As a result, we are able to issue a General Concurrence for several of the NWP listed below. A general concurrence identifies specific types of federal actions that may adversely affect EFH, but for which no further consultation is required because we have determined, through an analysis of that type of action, that the action will likely result in no more than minimal adverse effects both individually and cumulatively. For actions to qualify for general concurrence, we must determine that the actions meet all of the following criteria pursuant to 50 CFR 600.920(9): 1) The actions must be similar in nature and similar in their impact on EFH; 2) The actions must not cause greater than minimal adverse effects on EFH when implemented individually, and; 3) The actions must not cause greater than minimal cumulative adverse effects on EFH.

For some of the NWP where the direct, indirect, individual, and cumulative effects cannot be evaluated programmatically (i.e., the actions authorized may have a more than minimal adverse effect to EFH on an individual or cumulative basis, or insufficient information is available to evaluate effects), individual coordination with us through the pre-construction notification (PCN) process is necessary to comply with the consultation requirements of the MSA and FWCA. In addition, PCNs to us are necessary when NWP applicants request waivers of some of the regional conditions, such as time of year restrictions on in-water work as noted in the regional general conditions and some of the permit-specific regional conditions, as well as for certain activities that are proposed with 50 feet of submerged aquatic vegetation.

EFH General Concurrence

The following 2021 NWP qualify for our general concurrence provided they meet the provisions of the General Conditions of the NWP and the New York District's Regional Conditions applicable to all NWP (unless otherwise stated) or specific NWP:

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water from Uplands Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered 404 Programs
25. Structural Discharges
28. Modifications of Existing Marinas
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
41. Reshaping Existing Drainage Ditches
45. Repair of Uplands Damaged by Discrete Events
46. Discharge in Ditches
49. Coal Remining Activities
59. Water Reclamation and Reuse Facilities

Applicability

This general concurrence applies only to the NWP's listed above. For the remaining NWP's, we request the submission of a PCN for activities that are proposed for each of the following:

- NWP 27 - Aquatic Habitat Restoration, Establishment and Enhancement Activities

- NWP 38 - Cleanup of Hazardous Waste Sites
 - in tidal waters and in non-tidal areas adjacent to tidal waters and waterways supporting anadromous fish migration and spawning
- NWP 53 - Removal of Low Head Dams
- NWP 54 - Living Shorelines

In addition, this General Concurrence only applies to activities within the State of New York. Although portions of New Jersey are under the jurisdiction of the New York District, the Philadelphia District has the lead in developing regional conditions for all of New Jersey, including those areas under the New York District's jurisdiction. A separate General Concurrence will be issued to the Philadelphia District for NWPs within New Jersey.

Essential Fish Habitat Mapping

EFH mapping is now available on our [EFH Mapper](#). Additional information on EFH and FWCA consultations, EFH Frequently Asked Questions, a revised EFH assessment worksheet and links to the federal fisheries management councils can be found on the [Habitat and Ecosystem Services Division website](#) and our [EFH consultation](#) website.

Pre-Construction Notifications and Comment Period

Because consultations under the MSA and FWCA are between NOAA Fisheries and the lead federal agency, PCNs, including those that request waivers to the in-water work time of year restrictions included in the regional conditions should be transmitted to us by the USACE, not the project proponent or applicant. For NWPs that always require a PCN to us, the PCN should be accompanied by an EFH assessment. The [EFH assessment worksheet](#) available on our [EFH consultation website](#) can be used or the assessment can be in another format as long as it included the following required elements:

- A description of the proposed action.
- An analysis of the potential adverse effects of the action on EFH, and the managed species.
- The federal agency's conclusions regarding the effects of the action on EFH.
- Proposed mitigation, if applicable.

Additional information, such as an analysis of alternatives, the results of on-site inspections, literature reviews and the views of recognized experts may also be necessary depending upon the scale and nature of the adverse effects to EFH.

A minimum 30-day comment period is required for us to review required PCNs under the MSA for EFH consultation procedures [50 CFR 600.920(h)(a)]. Because our EFH review extends into non-tidal rivers and streams supporting migratory fish passage (important prey for federal predatory species), a 30-day review and comment period should be anticipated for all projects in tidal and non-tidal rivers and streams. However, a 15-day comment period (with the option to extend to 30-days) is typically sufficient if we determine no additional information is necessary to complete our EFH review. Please also note that a distinct and further EFH consultation must

be reinitiated pursuant to 50 CRF 600.920 (j) if new information becomes available, or if the project is revised in such a manner that affects the basis for our determination.

As noted in our previous letter on the initial 16 NWP's that were issued in 2021, we do not need to review or be notified of activities within the Buffalo District or the following counties within the New York District, which are not resource areas under our agency review protocol: Franklin, Clinton, Essex, Hamilton, Warren, Fulton, Montgomery, Schenectady, Schoharie, and Otsego.

Project Tracking

Our EFH regulations require that actions qualifying for general concurrence must be tracked to ensure that their cumulative effects are no more than minimal. Tracking should include numbers of actions and the amount and type of habitat adversely affected, and should specify the baseline against which the actions will be tracked. This information should be provided to us on an annual basis, generally at the end of each fiscal year. The information may be provided to us in a spreadsheet format that includes the NWP issued, closure method, DA number, applicant, authority, county, and latitude and longitude. We will reach out to your staff near the end of each fiscal year so that the information can be included in our required internal reporting on programmatic consultations and General Concurrences.

Conclusion

Thank you and your staff for all of their efforts to work with us to develop regional general conditions and permit-specific regional conditions that avoid and minimize adverse effects to EFH and other NOAA trust resources. These efforts have allowed us to reduce the number of NWP's that require individual coordination and consultation between our agencies, improving consultation and permitting efficiencies while still protecting aquatic resources. Should you have any questions or to discuss this matter further, please contact Karen Greene at (978) 559 9871 (karen.greene@noaa.gov) or Jessie Murray at (978) 675-2175 (jessie.murray@noaa.gov).

Sincerely,



Louis A. Chiarella
Assistant Regional Administrator
for Habitat and Ecosystem Services

cc: USACE NAN – R. Pinzon, R. Miranda, C. Minck
USACE Buffalo – B. Brown
NOAA PRD – M. Murray-Brown, E. Carson-Supino
MAFMC – Chris Moore
NEFMC – Tom Nies
ASMFC – Lisa Havel



New England
Fishery Management
Council



January 7, 2022

Amanda Lefton
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road (VAM-OREP)
Sterling, Virginia 20166

Dear Ms. Lefton,

Please accept these comments from the New England Fishery Management Council (New England Council) and the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) regarding the Request for Information (RFI) to obtain input on avoiding, minimizing, and compensating for impacts from offshore wind energy projects to commercial and recreational fisheries.

The New England Council has primary management jurisdiction over 28 marine fishery species in federal waters and is composed of members from Maine to Connecticut. The Mid-Atlantic Council manages more than 65 marine species¹ in federal waters and is composed of members from the coastal states of New York to North Carolina (including Pennsylvania). In addition to managing these fisheries, both Councils have enacted measures to identify and conserve essential fish habitats (EFH), protect deep sea corals, and sustainably manage forage fisheries. The Councils support efforts to mitigate the effects of climate change, including the development of renewable energy projects, provided risks to the health of marine ecosystems, ecologically and economically sustainable fisheries, and ocean habitats are avoided.

While the Councils recognize the importance of domestic energy development to U.S. economic security, it is important to note that the marine fisheries throughout New England and the Mid-Atlantic are profoundly important to the social and economic well-being of communities in the Northeast U.S. and provide numerous benefits to the nation, including domestic food security.

Both Councils updated their [policy](#) on wind energy development in December 2021, working together on policy development and adopting the same language. Our comments in this letter build upon this policy. Note that we have made many of these same comments to BOEM over the past year in other letters on individual wind projects throughout the New England and Mid-Atlantic regions.

Key recommendations

Detailed recommendations on each of the RFI topics are provided in later sections of this letter. Our key recommendations include the following:

¹ Fifteen species are managed with specific Fishery Management Plans, and over 50 forage species are managed as “ecosystem components” within the Mid-Atlantic Council’s FMPs.

- If all topics in the RFI cannot be adequately addressed in the proposed timeline, then a subset of these topics should be prioritized for near-term development with the remaining topics developed over a longer time frame. We recommend prioritizing development of guidelines for financial compensation and environmental monitoring in the near term.
- We support national-level guidance and consistency in mitigation approaches across wind projects over wide geographic areas.
- The RFI topics should be developed through an iterative, transparent, Council-like process, including workshops with fishery stakeholders.
- Fishery stakeholders should be consulted early in and throughout the development of the design of each wind project.
- Project designs should first seek to avoid impacts to commercial and recreational fishing and transit and to marine habitats. If avoidance is not possible, spatial conflicts with existing users should be minimized, thereby reducing the need for other interventions.
- To improve safety, BOEM should consult with the fishing industry and the U.S. Coast Guard to require Automatic Identification System transponders on offshore wind structures, radar system upgrades, training for fishing vessels, and deployment of fishery liaisons on survey vessels.
- Environmental monitoring should occur before, during, and after construction, and methods should be consistent across projects.
- Financial compensation for impacts should be managed through a third-party group and the process should be consistent across wind projects. Compensation should not be processed through or allocated among states due to the regional nature of federal waters fisheries.

General approach

The RFI states that development of guidance for commercial and recreational fisheries will focus on the following four topics: 1) project siting, design, navigation, and access, 2) safety measures, 3) environmental monitoring plan, and 4) financial compensation for economic impacts. BOEM has indicated an intent to develop guidance on these topics by late spring 2022. All four topics in the RFI are important and we are concerned that they cannot all be adequately addressed in the proposed timeframe. As an alternative, we recommend that BOEM first effectively and thoroughly address a prioritized subset of these topics and then address the remaining issues over a longer period. We recommend prioritizing the environmental monitoring and financial compensation topics as BOEM and developers have already made many decisions and set several precedents regarding project siting, design, navigation and access, as well as safety measures to avoid, minimize, or reduce impacts.

We support the development of national guidance for the topics covered in the RFI. We recognize that BOEM can require mitigation for individual wind projects but lacks the legal authority to implement regional or national mitigation requirements. Therefore, BOEM aims to develop national level guidance, rather than requirements. However, commercial and recreational fisheries and fishery species will experience cumulative impacts from multiple wind projects and these impacts cannot be sufficiently mitigated if all impacts must be tied to an individual project in order to be subject to the guidance developed by BOEM. Specifically, some impacts are likely to be difficult or impractical to assign to a specific lease area or project and

individuals and fishing businesses are likely to be affected by more than one project. In addition, the impacts of an individual project will not be felt only by fishermen from nearby ports, but also by commercial and recreational fishermen over a wide geographic area. For example, vessels traveling from ports north and south of the project area may transit through and/or fish in the area. Consistency in mitigation programs could simplify the compensation process for fisheries, including shoreside businesses. Consistency in the approaches used to collect data to understand any changes in fishery performance in and around offshore wind facilities will also have many benefits.

The December 2021 listening sessions hosted by BOEM on this issue were not sufficient for fishery stakeholders to understand possible mitigation approaches and identify specific recommendations across the large range of topics identified in the RFI. These topics, including consideration of which data to use to calculate compensation, how to address fisheries with limited data, and methodologies for calculating economic impacts, should be further developed through a transparent, Fishery Management Council-like process, including focused workshops to engage all fishery stakeholder groups. A Council-like process would include multiple opportunities for input, learning, and iterative feedback. Under the Council process, detailed written briefing materials are distributed in advance of meetings, ample time is provided for technical presentations and questions, and in many cases the bulk of time at a meeting is spent developing and debating management options. This process is often repeated at multiple levels, including within technical teams, among industry advisors, and within Council committees, with recommendations finalized by the Council as a whole. This process has many benefits for the complex and multidimensional issues addressed in fisheries management. This approach can help ensure that all parties understand the process and feel as if they had an opportunity to provide meaningful input.

In addition, BOEM should work with NOAA Fisheries to evaluate if and to what extent the forthcoming mitigation guidance aligns with existing policies and best practices as it relates to fisheries and habitat resources mitigation, social and economic impacts assessment, environmental justice, and scientific principles. Finally, federal and state-operated fishery independent monitoring surveys are critically important for stock assessments and setting fishery catch limits. BOEM should also consider how to avoid, minimize, and mitigate impacts to these surveys through development of national or regional guidance.

Project siting, design, navigation, and access

A precautionary approach to avoiding impacts to fisheries, habitat, and marine species should be taken with all areas of project siting and design. Spatial conflicts between wind projects and fishing activity should be minimized. This will reduce the need for other interventions. For example, coordinated turbine and substation array layouts across nearby projects could help allow for safe fishing operations and transiting through multiple projects. Consideration should also be given to using fewer, but larger turbines to reduce the number of turbines needed to produce the same electrical output while minimizing the footprint of impacts to marine habitats and fisheries. Surface structure setbacks can also help facilitate transit and fishing and can provide other benefits if they are of sufficient width. Offshore wind project developers should consult directly with affected fishermen to develop project layouts that minimize impacts.

Varying fishing practices and environmental conditions at different sites underscore the importance of involving people familiar with each lease area when designing projects. Fishermen should be involved in early stages of lease area development (e.g., during call area development) and during the early planning stages for individual projects. Unfortunately, to date, many details about wind projects have already been solidified before the construction and operations plans are released and scoping begins. Fisheries engagement during COP development is largely at the discretion of developers, and this engagement can look different across projects. Stronger guidance from BOEM on fisheries engagement in project siting, design, navigation, and access is needed.

Transmission cables, wind turbines, electrical service platforms, or other structures should not be placed in areas with complex habitats. Foundation locations and cable routes should be microsited to avoid complex habitats in accordance with NOAA Fisheries' Recommendations for Mapping Fish Habitat. Structures should not be placed in fishery management areas established to protect important or sensitive habitats (e.g., Habitat Areas of Particular Concern, deep-sea coral protection areas, and other areas closed to fishing with the primary goal of protecting habitat).

Export and inter-array cables should be buried to an adequate depth to reduce conflicts with other ocean uses, including fishing operations and fishery surveys, and to minimize effects of heat and electromagnetic fields. If scour protection or cable armoring is needed, the materials should be selected based on value to commercial and recreational fishery species. Natural materials or materials that mimic natural habitats should be used whenever possible and should not be obtained from existing marine habitats. The materials used must not be toxic.

Coordinated transmission across multiple projects provides an opportunity for reducing the footprint associated with cabling; however, to date, transmission has been proposed project by project. We appreciate the conversations that BOEM and DOE held with Council leadership and other fisheries stakeholders in August 2021 on coordinated transmission; however, we are not aware of further progress made on this issue and we hope this can be addressed through the development of guidance.

Safety measures

Threats to safety and navigation (e.g., radar disruption, ice shedding, vessel allisions and collisions, security threats, and impacts on search and rescue efforts) should be routinely monitored within and around wind projects. Safety issues should be efficiently identified and addressed using best management practices (e.g., see section 3.4 of [MAFMC Offshore Wind Best Management Practices Workshop](#) held in 2014).

Automatic Identification System (AIS) transponders should be placed on wind turbine, offshore substation, and any other offshore structures to help improve safety and prevent collisions and allisions. However, fishermen have noted there is a need to declutter radar within lease areas, otherwise fine scale targets may be lost while navigating through them. If AIS is most appropriate on a subset of structures only, BOEM should consult with the fishing industry and the U.S. Coast Guard to identify where AIS would be most helpful.

Developer-funded radar system upgrades and training for fishing vessels would support safer navigation through these areas. BOEM should consider several options to improve safety and prevent radar cluttering and be adaptive to determine what works best as projects are constructed. A fisheries liaison should be on all wind survey, construction, and monitoring vessels to help with safety, monitoring, and to witness and verify any encounters with fishing gear.

Environmental monitoring plan

Understanding wind farm impacts on commercial and recreational fisheries and fishery species will be foundational to mitigation and compensation efforts. Monitoring to assess these impacts should be done at project and regional scales to understand project-specific and cumulative effects on marine species, habitats, and ecosystems and must occur before, during, and after construction. The methods used should be consistent across projects.

Fisheries and fishery species may be impacted by habitat changes (e.g., reef effects and habitat conversion), electromagnetic fields, ecosystem changes (e.g., shifts in larval recruitment or migration), hydrodynamic changes, turbine noise, and other factors. Therefore, data to measure changes in all these factors must be collected. Data on the benefits of applying noise dampening technology during construction and operations should also be collected as this is not well understood.

It will also be essential to monitor shifts in the spatial distribution of fishing effort in response to wind energy development, which could be significant if some vessels avoid fishing within wind farms entirely. Generally, we recommend using multi-year averages to assess fisheries conditions and impacts as landings, value, and other socio-economic characteristics can vary year to year. Changes in patterns of fishing activity can be cyclical and this should be accounted for when evaluating impacts to fisheries. BOEM should coordinate with NOAA Fisheries on the best data to collect and analytical methods to evaluate any changes in fishing and transit. All datasets have limitations. Local fishermen should be consulted to better understand use patterns not captured in the data.

We acknowledge that there are many challenges associated with predicting future conditions and impacts from offshore wind development with a high degree of certainty. For example, climate change is changing the spatial distribution of fish and thus fishing grounds of certain species. It may be challenging to disentangle the impacts of climate-based distribution changes on fisheries from impacts of wind projects. However, these interacting impacts will be important to consider when calculating compensation. It may be possible to use models that forecast species distributions under various climate change scenarios for estimating potential impacts.² However, modeling cannot substitute thorough monitoring.

Financial compensation

A standardized compensation process on a national level should be developed through BOEM's guidance. A third-party group should be created to administer financial compensation to help

² The ongoing work by Dr. Malin Pinsky at Rutgers University is one example. More information can be found here: <https://www.lenfestocean.org/-/media/assets/2021/03/pinskyfactsheet.pdf>

ensure consistency and standardization across projects. Financial compensation should not be administered by developers or individual states. Compensation funds for individual states' fishermen (like what was established in the Vineyard Wind 1 and South Fork Records of Decision), or administered by individual states, would pose many challenges. Federal waters fisheries are regional in nature which will make it difficult to fairly divide compensation among states and determine the state through which an individual fishermen should be compensated. For example, many fishermen hold permits to land in more than one state and may fish off one state but land their catch in one or more other states. Most offshore wind projects, especially in the New England and Mid-Atlantic regions, will impact fishermen from many states.

Furthermore, BOEM should require a standardized and equitable process across all developers for submitting claims and receiving compensation for impacted stakeholders. Financial compensation should be provided to all affected fishery stakeholders, including those directly and indirectly impacted, including commercial, recreational, and shoreside infrastructure and support service sectors, and including stakeholders who participate in fisheries that do not require federal permits. Vessel monitoring systems (VMS) and AIS should not be the only way to qualify for compensation given not all vessels have VMS and AIS, especially smaller vessels. Compensation should not only be provided to vessel owners but also to captains, crew, dealers, and processors for any loss in revenue as a result of lost fishing opportunity from offshore wind development. The values of shoreside infrastructure and support services were not estimated as part of previous environmental reviews so quantification of impacts will be important to estimate. Some of these recommendations are also included as part of RODA's Impact Fees Report published December 2021.

BOEM should establish clear guidelines on how to assess and compensate for entangled or damaged fishing gear and lost fishing opportunities. Consideration should be given to the most recent market prices, as well as historical prices, as prices and revenues can fluctuate based on a variety of factors. Past market conditions may not be the best predictor of future demand, prices, and revenues. In addition, if fishermen choose to change where they fish due to safety considerations, changes in the distribution of target species, or other concerns regarding impacts during and post-construction, compensation should be provided for lost efficiency (e.g., due to increased transit times) even if there is no change in the target species or the volume harvested. It is important to consider that many fishing permits are gear-based; thus, gear-switching should not be used or assumed as a mitigation strategy. For fishermen who decide to modify their gear or retrofit their vessels to fish within wind turbine arrays, the costs associated with this change should be compensated. Fixed and variable costs that incur over the long term should be accounted for in any compensation mitigation plan before, during, and post-construction activities for the life of the project.

The Councils support creation of a fisheries development and research fund related to ecosystem changes associated with offshore wind energy development. However, innovation funds and funds allocated for adaptive fishing should not comprise the majority of compensatory measures. Fishermen who choose to cease fishing in the project areas entirely once construction begins will incur significant losses and would not benefit from fisheries development funds. Upstream and downstream fishing-related businesses must be compensated appropriately given these businesses are inherently tied to the fishing industry so any loss in landings and revenue will directly negatively affect onshore processing companies, for instance.

As previously stated, we do not support state-specific mitigation funds; however, states should be involved in the development of the mitigation process. Impacted states should be determined based on proximity to wind projects, cable locations, fishermen homeported or permitted to land in those states, and shoreside businesses located in each state. Section 388 of the EPAct³ provides a formula for allocating royalties, fees, rentals, and other payments from sources other than oil and gas among states. BOEM should clarify if this section of the EPAct applies here or could be used as the basis for determining which states should be involved in mitigation for a particular project. The 15-mile distances from shore referenced in the EPAct are insufficient given how far wind leases are located from shore. This could lead to a greater role for additional states beyond those already engaged via CZMA consistency mechanisms.

Conclusion

We look forward to working with BOEM on further development of guidance on these important topics. Please contact us if you have any questions.

Sincerely,



Thomas A. Nies
Executive Director, New England Fishery Management Council



Dr. Christopher M. Moore
Executive Director, Mid-Atlantic Fishery Management Council

cc: J. Beaty, M. Luisi, W. Townsend, J. Bennett

³ “The allocation is based upon a formula that equitably distributes to states 27% of the revenues collected by the federal government, based on the proximity of the project to the affected states’ offshore boundaries. The act established that states that have a “coastline that is located within 15 miles of the geographic center of the project” are entitled to a revenue share. More than one state may be eligible to receive a portion of these revenues, depending upon the location of a project. To determine each eligible state’s share of those revenues, the agency uses an “inverse distance formula, which apportions shares according to the relative proximity of the nearest point on the coastline of each eligible State to the geographic center of the qualified project area.” <https://sgp.fas.org/crs/misc/R40175.pdf>



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

January 7, 2022

William T. Walker, Chief
Regulatory Branch
Department of the Army
U.S. Army Corps of Engineers
Norfolk District
803 Front Street
Norfolk, VA 23510-1011

Dear Mr. Walker:

We have reviewed the reissuance and modification of 41 Nationwide Permits (NWP) published in the Federal Register on December 27, 2021. We have also reviewed the final draft of the Norfolk District's (NAO) proposed Regional Conditions applicable in the Commonwealth of Virginia, including Northern Virginia military installations within the Baltimore District's area of responsibility.

On January 13, 2021, the U.S. Army Corps of Engineers (USACE) published a final rule in the Federal Register (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. The following 16 NWP went into effect on March 15, 2021, and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances



We provided you with our essential fish habitat (EFH) general concurrence for 13 of the 16 NWP listed above last September. This follows up that letter and the extensive coordination between our staff over the past two years on the development of regional general and permit-specific conditions for the NWP and serves as our programmatic EFH consultation and general concurrence for the reissuance of 40 existing and one new NWP which go into effect on February 25, 2022, and expire on March 14, 2026.

The Magnuson Stevens Fishery Conservation and Management Act (MSA) requires federal agencies such as the Corps to consult with us on projects that may adversely affect EFH. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the consultation process. In addition, the Fish and Wildlife Coordination Act (FWCA) requires all federal agencies to consult with us when proposed actions might result in modifications to a natural stream or body of water. It also requires that federal agencies consider the effects that these projects would have on fish and wildlife and provide for the improvement of these resources. Under this authority we seek to protect and conserve a wide variety of aquatic resources, but especially those that are not federally managed and do not have designated EFH, such as anadromous fish. Because the activities authorized by NWP may impact EFH and other NOAA Fisheries trust resources, consultation with us under these two authorities is required.

Although an EFH assessment was not provided to us for the new and reissued NWP, we have worked closely with your staff over many years, and are able to evaluate the potential effects of some of the NWP on a programmatic basis. As a result, we are able to issue a General Concurrence for several of the NWP listed below. A general concurrence identifies specific types of federal actions that may adversely affect EFH, but for which no further consultation is required because we have determined, through an analysis of that type of action, that the action will likely result in no more than minimal adverse effects both individually and cumulatively. For actions to qualify for general concurrence, we must determine that the actions meet all of the following criteria pursuant to 50 CFR 600.920(9): 1) The actions must be similar in nature and similar in their impact on EFH; 2) The actions must not cause greater than minimal adverse effects on EFH when implemented individually, and; 3) The actions must not cause greater than minimal cumulative adverse effects on EFH.

For some of the NWP where the direct, indirect, individual, and cumulative effects cannot be evaluated programmatically (i.e., the actions authorized may have a more than minimal adverse effect to EFH on an individual or cumulative basis, or insufficient information is available to evaluate effects), individual coordination with us through the pre-construction notification (PCN) process is necessary to comply with the consultation requirements of the MSA and FWCA. In addition, PCNs to us are necessary when NWP applicants request waivers of some of the regional conditions, such as time of year restrictions on in-water work as noted in the regional general conditions and some of the permit-specific regional conditions.

EFH General Concurrence

The following 2021 NWP's qualify for our general concurrence provided they meet the provisions of the General Conditions of the NWP's and the Norfolk District's Regional Conditions applicable to all NWP's (unless otherwise stated) or specific NWP's:

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water from Uplands Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered 404 Programs
25. Structural Discharges
28. Modifications of Existing Marinas
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
41. Reshaping Existing Drainage Ditches
45. Repair of Uplands Damaged by Discrete Events
46. Discharge in Ditches
49. Coal Remining Activities
59. Water Reclamation and Reuse Facilities

Applicability

This general concurrence applies only to the NWP's listed above. For the remaining NWP's, we request the submission of a PCN for activities that are proposed for each of the following:

- NWP 27* - Aquatic Habitat Restoration, Establishment and Enhancement Activities
- NWP 38 - Cleanup of Hazardous Waste Sites
 - in tidal waters and in non-tidal areas adjacent to tidal waters and waterways supporting anadromous fish migration and spawning
- NWP 53 - Removal of Low Head Dams
- NWP 54* - Living Shorelines

*PCN coordination is required for fill impacts exceeding one-half (0.5) acres

Essential Fish Habitat Mapping

EFH mapping is now available on our [EFH Mapper](#). Additional information on EFH and FWCA consultations, EFH Frequently Asked Questions, a revised EFH assessment worksheet and links to the federal fisheries management councils can be found on the [Habitat and Ecosystem Services Division website](#) and our [EFH consultation](#) website.

Pre-Construction Notifications and Comment Period

Because consultations under the MSA and FWCA are between NOAA Fisheries and the lead federal agency, PCNs, including those that request waivers to the in-water work time of year restrictions included in the regional conditions should be transmitted to us by the USACE, not the project proponent or applicant. For NWP's that always require a PCN to us, the PCN should be accompanied by an EFH assessment. The [EFH assessment worksheet](#) available on our [EFH consultation website](#) can be used or the assessment can be in another format as long as it included the following required elements:

- A description of the proposed action.
- An analysis of the potential adverse effects of the action on EFH, and the managed species.
- The federal agency's conclusions regarding the effects of the action on EFH.
- Proposed mitigation, if applicable.

Additional information, such as an analysis of alternatives, the results of on-site inspections, literature reviews and the views of recognized experts may also be necessary depending upon the scale and nature of the adverse effects to EFH.

A minimum 30-day comment period is required for us to review required PCNs under the MSA for EFH consultation procedures [50 CFR 600.920(h)(a)]. Because our EFH review extends into non-tidal rivers and streams supporting migratory fish passage (important prey for federal predatory species), a 30-day review and comment period should be anticipated for all projects in tidal and non-tidal rivers and streams. However, a 15-day comment period (with the option to

extend to 30-days) is typically sufficient if we determine no additional information is necessary to complete our EFH review. Please also note that a distinct and further EFH consultation must be reinitiated pursuant to 50 CRF 600.920 (j) if new information becomes available, or if the project is revised in such a manner that affects the basis for our determination.

Project Tracking

Our EFH regulations require that actions qualifying for general concurrence must be tracked to ensure that their cumulative effects are no more than minimal. Tracking should include numbers of actions and the amount and type of habitat adversely affected, and should specify the baseline against which the actions will be tracked. This information should be provided to us on an annual basis, generally at the end of each fiscal year. The information may be provided to us in a spreadsheet format that includes the NWP issued, closure method, DA number, applicant, authority, county, and latitude and longitude. We will reach out to your staff near the end of each fiscal year so that the information can be included in our required internal reporting on programmatic consultations and General Concurrences.

Conclusion

Thank you and your staff for all of their efforts to work with us to develop regional general conditions and permit-specific regional conditions that avoid and minimize adverse effects to EFH and other NOAA trust resources. These efforts have allowed us to reduce the number of NWPs that require individual coordination and consultation between our agencies, improving consultation and permitting efficiencies while still protecting aquatic resources. Should you have any questions regarding our comments, please contact Mr. David L. O'Brien (phone: 804-684-7828 or email: david.l.obrien@noaa.gov) in our Virginia field office.

Sincerely,



Louis A. Chiarella
Assistant Regional Administrator
Habitat and Ecosystem Services Division

cc: Melissa Nash, NAO Regulatory
Naomi Handell, NAD Regulatory
Mark Murray-Brown, NOAA PRD
Brian Hopper, NOAA PRD
Chris Moore, MAFMC
Tom Nies, NEFMC
Lisa Havel, ASMFC



ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

Grant Moore, President
exec@offshorelobster.org

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January 7, 2022

Mr. Brian Hooker
Biology Team Lead
Office of Renewable Energy Programs
Bureau of Ocean Energy Management

Dear Mr. Hooker,

The Atlantic Offshore Lobstermen's Association submits the following comments regarding the BOEM's Offshore Wind Fisheries Mitigation request for information (RFI). These comments are in addition to the verbal comments I submitted during the BOEM workshop sponsored by the Rhode Island Coastal Resources Management Council.

Although I found aspects of the discussion helpful and informative, in general I thought it was difficult for the fishing industry to submit useful comments during the workshop process. Given the large number of participants at sessions, individuals were asked to limited their comments to a minute or two, which would be the equivalent of asking Congress to debate the merits of term limits with the same time constraints. Simply not a useful format to deal with such an important and multifaceted issue. While BOEM provided a list of questions for consideration in the RFI, the workshop presentation lacked those specifics. Typically, fisheries scoping meeting materials include a detailed scoping document with a full range of issues and alternatives described, as well as a list of information sought, to garner detailed and useful comments.

Most troubling were staff statements that BOEM does not have the authority to establish or require nationwide, or even regional, mitigation plans nor the authority to create, administer, or mandate contributions to a compensation fund for fisheries mitigation. These statements call into question the veracity of the entire exercise. If these are indeed the case, BOEM needs to work directly with the Administration and Congress to rectify these deficiencies. It is unacceptable for this exercise to produce only a minimum standards and best practices document for offshore wind moving forward, especially when EIS's have already been approved and construction and operations permits granted.

Assuming BOEM can acquire legal authority in the near term, I offer the follow suggestions:

- The Agency needs to develop a process that evaluates projects in terms of direct impacts, indirect impacts, and cumulative impacts. This should include retroactive analyses of existing projects in the pipeline.
- Impacts should be evaluated at the project, regional, and national level to consider the cumulative impacts of a full build out on fishing fleets and the seafood sector. For example, in the MA/RI lease area, BOEM should evaluate each project individually, the aggregate impacts across the 1500 square mile area, and the cumulative impacts on Southern New England fisheries and access to seafood of the MA/RI and NY Bight lease areas.

- Mitigation impacts, alternatives and costs should be analyzed for each stage of wind development (surveys, construction, operations, and decommissioning) to develop compensation requirements. Evaluations should include scientific and economic impact analyses that are externally peer-reviewed.
- Mitigation alternatives should present a full range of alternatives to fishing fleets which address the noted negative impacts, including the consequences of redirection of effort to other areas. The alternatives should include compensations options for effort reduction and permit/business buyouts in areas that will become de facto fishery closures.
- BOEM needs to stop stating that wind energy areas will remain open to fishing, rather the Agency should be working with the fishing industry, US Coast Guard, and marine insurance providers to fairly assess the likelihood of closures because of operational logistics, safety, and liability concerns.
- To reduce the likelihood of commercial fishing closures in wind energy areas and to address safety concerns, transit lanes, marking requirement, and tower spacing and orientation, should be standardized regionally. Navigation requirements will be easier for the public to understand if standardized. RODA has provided detailed guidance on some of these issues. Costs associated with equipment upgrades to address safe navigation (such as vessel radar) should be borne by wind energy developers, but should not be considered a mitigation cost.
- Evaluation criteria, mitigation, compensation, and fee requirements should be standardized for all projects nationally, or at minimum at the ecosystem level, so there is parity across fisheries and wind energy companies.
- Mitigation funds should be administered by a nongovernmental group that charges minimal administrative fees (less than 10%), and includes requirements for external audits of any expenditures. Results of audits should be available to the public. Mitigation funds should not be negotiated by individual states for their fishing industries, given that fishermen from multiple states will be impacted by each offshore wind site.
- Finally, it should be the responsibility of the developer to post a performance bond for the removal of all of their equipment, should the project fail for any reason. Cost associated with the latter should not be considered mitigation.

Thank you for the opportunity to comment.

A handwritten signature in blue ink that reads "David Borden". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Borden".

David Borden
Executive Director



Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201, Dover, DE 19901
Phone: 302-674-2331 | FAX: 302-674-5399 | www.mafmc.org
Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman
Christopher M. Moore, Ph.D., Executive Director

December 27, 2021

Bridgette Duplantis
Bureau of Ocean Energy Management
Office of Renewable Energy Programs
45600 Woodland Road (VAM-OREP)
Sterling, Virginia 20166

Re: Central Atlantic Wind Planning Areas

Dear Ms. Duplantis,

Thank you for your presentation to the Mid-Atlantic Fishery Management Council (Council) on December 13, 2021. As discussed during that meeting, we are providing additional information on the Frank R. Lautenberg Deep Sea Coral Protection Areas established by the Council. We recommend that these areas, including both the discrete and broad deep sea coral zones, be excluded from all stages of offshore wind energy planning and development. More specifically, we ask that these areas be removed from the Central Atlantic Planning Areas prior to the Task Force meeting in February 2022.

The Council defined the discrete and broad deep sea coral zones in June 2015 after a multi-year, transparent process with extensive stakeholder engagement.¹ The fishing prohibitions in these areas became effective in January 2017 and include prohibitions on use of all bottom-tending commercial fishing gears, with specific exemptions for transit, lobster trap gear, and red crab trap gear (81 Federal Register 90246, 12/14/2016; 50 CFR § 648.372). All other bottom-tending gears (including, but not limited to bottom-tending otter trawls, bottom-tending beam trawls, hydraulic dredges, non-hydraulic dredges, bottom-tending seines, bottom longlines, pots/traps, and sink or anchored gillnets) are prohibited in both the discrete and broad deep sea coral zones. This prohibition is not fishery-specific and the same restrictions apply to all discrete zones and in the broad zone.²

The Council protected deep sea corals by restricting fishing in areas where fishing effort and prime coral habitats overlap, as well as by preventing future expansion of fishing effort into less heavily fished areas where corals are known or are highly likely to be present. The Council defined deep sea coral habitat based on a combination of historical records of coral presence³ and habitat suitability

¹ For more information, see <https://www.mafmc.org/actions/msb-am16>.

² Although these restrictions were implemented through Amendment 16 to the Mackerel, Squid, and Butterfish Fishery Management Plan, they apply to all bottom tending gear, not just for the mackerel, squid, and butterfish fisheries (with specific exclusions for American lobster, red crab, and transiting).

³ NOAA National Database for Deep Sea Corals and Sponges (Database version: 20211110-0). <https://deepseacoraldata.noaa.gov/>. NOAA Deep Sea Coral Research & Technology Program.


modeling.⁴ This information is summarized in the attached map. The Council focused on structure-forming corals when defining the protected areas; however, the restrictions on fishing effort also benefit other corals and other habitat types within the discrete and broad deep sea coral zones.

It is important to note that the database of historical coral records is presence-only and largely reflects areas that have been prioritized for deep sea coral and other benthic habitat surveys. Many shelf and slope areas within the Frank R. Lautenberg Deep Sea Coral Protection Areas have not been adequately surveyed for the presence of deep sea corals. Therefore, a lack of records in the database should not necessarily be interpreted as a lack of coral presence. Similarly, because the habitat suitability model relies heavily on the historical records, a lack of modeled suitable habitat in a given area does not necessarily indicate the absence of corals or poor habitat suitability. The Council acknowledged this important data limitation in taking a precautionary approach by designating the broad coral zone to prevent future expansion of fishing effort into deeper waters where corals may be present, but where there has been less sampling of coral habitat compared to the discrete zones.

The Council supports efforts to mitigate the effects of climate change, including the development of renewable energy projects, provided risks to the health of marine ecosystems, ecologically and economically sustainable fisheries, and ocean habitats are avoided.⁵ Most deep sea corals are slow-growing and fragile; therefore, damage caused by the installation, maintenance, operations, and decommissioning of offshore wind energy projects must be avoided. Placing wind energy structures in the Frank R. Lautenberg Deep Sea Coral Protection Areas would negate the protections established by the Council after a thorough, transparent, and stakeholder driven process. Therefore, we recommend that BOEM exclude all Frank R. Lautenberg Deep Sea Coral Protection Areas from all stages of wind energy development, including these early stages for the Central Atlantic Planning Areas.

We look forward to further engaging with you on this issue. Please contact me if you have any questions.

Sincerely,



Dr. Christopher M. Moore

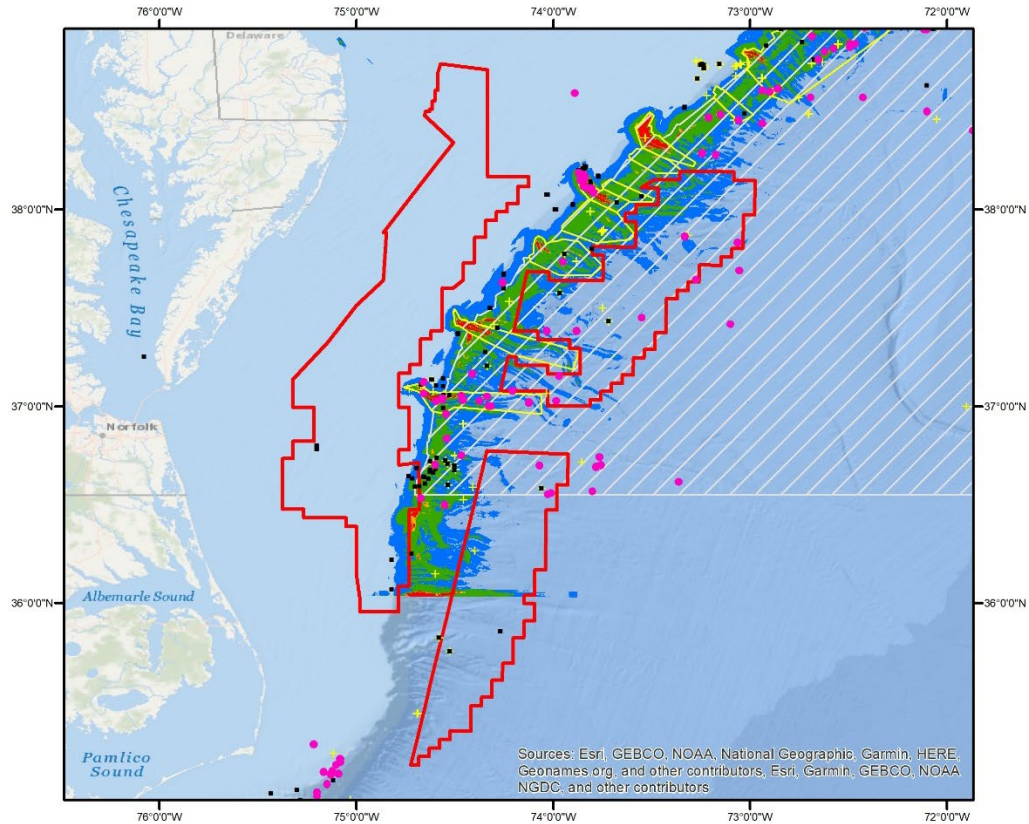
Executive Director, Mid-Atlantic Fishery Management Council

cc: J. Beaty, M. Luisi, W. Townsend, J. Bennett, A. Lefton, T. Nies

⁴ Kinlan, B.; Poti, M.; Dorfman, D.; Caldow, C.; Drohan, A.; Packer, D.; Nizinski, M. (2016). Model output for deep-sea coral habitat suitability in the U.S. North and Mid-Atlantic from 2013 (NCEI Accession 0145923). Threshold Logistic Outputs for Alcyonacea. NOAA National Centers for Environmental Information (NCEI). <https://www.ncei.noaa.gov/archive/accession/0145923>.

A description of how this model was used to define the Frank R. Lautenberg Deep Sea Coral Protection Areas can be found in section 6.3.2.4 of the Environmental Assessment for the Deep Sea Corals Amendment, available at <https://www.mafmc.org/actions/msb-am16>.

⁵ The full Council policies on wind energy development can be found at: <https://www.mafmc.org/habitat/>.



Legend

- BOEM Central Atlantic Wind Planning Area (Dec 2021)
- Frank R. Lautenberg Deep Sea Coral Protection Areas**
- Discrete Deep-Sea Coral Zones
- Broad Deep-Sea Coral Zone
- Deep-Sea Coral and Sponge Records**
- ▲ Black Coral
- Gorgonian and Alcyonacea Coral
- + Sea Pen
- Stony Coral
- Alcyonacea Coral Habitat Suitability Likelihood**
- Medium-Low
- Medium
- High
- Very High

Figure 1: BOEM Central Atlantic Planning Areas (as of December 2021), Frank R. Lautenberg Deep Sea Coral Protection Areas, modeled coral habitat suitability for Alcyonacea corals (gorgonian and non-gorgonian outputs combined; expected to be the best predictor of habitat suitability for structure-forming corals),⁶ and historical records of known coral presence with structure forming corals highlighted.⁷ “Gorgonian and Alcyonacea Coral” includes soft coral, gorgonian coral, and stoloniferan coral.

⁶ See footnote 4.

⁷ See footnote 3.

From: Tom Nies

Sent: Wednesday, December 22, 2021 4:12 PM

To: MONTE ROME <montesan04@yahoo.com>

Cc: Sam Martin <smartin@atlanticcap.es.com>; Chris Shriver <cshriver@atlanticcap.es.com>; Allen & Lori Rencurrel <lrencurrel@charter.net>; Ronald Smolowitz <rjsmolowitz@cfarm.org>; Eric Reid <ericreidri@gmail.com>

Subject: RE: Comments on GSCHMA nantucket shoals surf clam area

Good Afternoon, Monte:

Thank you for speaking with me this afternoon. As promised, I am following up our conversation with an email.

The Council has not forwarded your request for an emergency action to the National Marine Fisheries Service. We would need a Council vote in order to do so. The Council did not discuss your request at the December Council meeting. Before we could take action on the request, we would have to provide advance notice before the meeting. That did not happen in December because we received your letter the day the meeting started. As I said during the call, we will put the issue on the agenda for our meeting the first week of February. In addition, the [Habitat Committee](#) is meeting on January 18, and you could raise the issue under Other Business.

Another avenue you may want to pursue is to send your request directly to NOAA Fisheries and/or the Secretary of Commerce. Section 305(c) of the MSA addresses emergency actions. While Section 305(c)(2) describes how the Secretary of Commerce responds to an emergency action request from a Council, Section 305(c)(1) says that if the Secretary finds an emergency exists, the Secretary may promulgate emergency regulations to address it. There does not appear to be a requirement that a request come from a council, though that is typically what occurs. Even if the Secretary does not take any action other than to refer your request back to the NEFMC, at least this would alert her to the issue. You may want to review the agency's policy directive on when emergency regulations can be used; it is available [here](#).

I forgot to mention on our call that the NEFMC and MAFMC leadership plan to meet in early January to discuss the GSCHMA. This idea surfaced at the MAFMC meeting. The Council will receive a report of that meeting in February.

Finally, just one point of clarification on something mentioned in your letter. While the Council comments on many EFP requests, the decision to grant an EFP rests with GARFO.

Please let me know if you need any additional information.

Tom Nies
Executive Director
New England Fishery Management Council
tnies@nefmc.org
978-465-0492 ext 113

From: MONTE ROME [<mailto:montesan04@yahoo.com>]

Sent: Wednesday, December 22, 2021 4:38 PM

To: Tom Nies <tnies@nefmc.org>; Chris Shriver <cshriver@atlanticcap.es.com>; Sam Martin <smartin@atlanticcap.es.com>; Barry Cohen <bcohen@atlanticcap.es.com>; Allen & Lori Rencurrel <lrencurrel@charter.net>; Peter Hughes <phughes@atlanticcap.es.com>; Tom Dameron <capttomd@gmail.com>; Daniel P. LaVecchia <dlavecchia@lamonicafinefoods.com>

Subject: Response to Message

Good Morning Tom,

Have you had time to review our case?

Now we hear that the truckers who work only hauling clams for both Intershell and Atlantic Capes are indicating that they may have to find other trucking work because the loads of clams have gotten so sporadic that they cannot make their businesses work. This represents infrastructure breakdown and these truckers provide essential services for our Surf Clam Industry.

The community of surf clam harvesters, truckers, and the teams of people needed for processing are failing. Magnuson calls for EMERGENCY ACTIONS as has been requested when communities are affected by rule making that thwarts the harvest of ocean generated products due to rulemaking which causes communities to suffer unnecessarily. In this case it is clearly understood that the rulemaking was developed before adequate scientific data had been developed. In the PDT memo of March 7, 2019, the Habitat PDT working draft stated the following:

Data gaps and key questions to be answered

What are the major unknowns that are making management difficult?

- 1) Not having habitat type data (maps) at the scale of fishing activities (individual tows). Such data are needed to assess impacts of actual fishing activity, i.e., to answer question: Are fishermen able to avoid more complex habitat types?
- 2) How much variability is there within the GSC HMA with regards to bottom habitat types, stability, natural disturbance, especially as affected by depth? How does Rose and Crown compare to Davis Bank, and what is variation within each area. What about 3 designated exemption areas?
- 3) To what extent do different habitat types / locations provide suitable habitat for groundfish, especially juveniles, and in particular Atlantic Cod.
- 4) No information on location, extent of mussel beds in HMA, nor on their resilience to dredging

Please Tom, take care of this at your earliest convenience. There is no habitat damage going on here and we as clam harvesters know that we can not fish in areas coded as habitat which have been coded using adequate science. Our businesses are getting stalled and the food security we have been providing our Nation by our careful harvesting of the clams in this area that has been regenerative for more than 40 years is destroying our community. This is your responsibility which needs a positive response immediately.

I await your quick response and Happy Holidays.

Best regards, Monte Rome



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES
OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

December 22, 2021

Mr. Lawrence Oliver
Chief, Environmental Branch
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

Re: Isles of Shoals Harbor of Refuge FNP Breakwater maintenance and repair

Dear Mr. Oliver:

We received your letter and Essential Fish Habitat (EFH) Assessment dated November 24, 2021, regarding proposed repair and maintenance of the Isles of Shoals Harbor of Refuge FNP Breakwater in Rye, NH and Kittery, ME. Originally constructed between 1821 and 1913, the structures consist of three breakwaters; Star Island to Cedar Island (800 feet), Cedar Island to Smuttynose Island (900 feet), and Smuttynose Island to Malaga Island (300 feet). The purpose for the proposed maintenance and repair projects is to restore full functionality of the FNP breakwaters to meet their authorized purpose, repair damages resulting from coastal storms and restore the functionality of the harbor of refuge. The most recent maintenance of the FNP breakwaters were performed in 1821, 1904 and 1974.

The need for the proposed project is to address damages from coastal storms to the structure that have occurred since previous maintenance activities. These damaged areas have resulted in decreased functionality of the authorized structures. The proposed work would be accomplished within the scope of authority of the FNP's original authorizations. Each of the three breakwaters would be restored to a top elevation of +15.5 feet at MLLW, with a 20-foot top width and slopes of 1:1.5 seaward and 1:1 leeward. All repairs for this project will be conducted from land-based equipment or by a jack-up barge, if needed. Eelgrass beds were identified immediately adjacent to the northwestern side of the first FNP breakwater which adjoins Star and Cedar Island. If jack-up barges are required for work on the mid section of the Star-Cedar breakwater, 2000 square feet of impact to the adjacent eelgrass bed is possible (200 sqft per jack-up barge deployment x 10 deployments). Stone will be barged in or recovered from adjacent sub-tidal areas. Recovered stone will result in removal of rock containing macroalgae. Work will be completed between April 1 and November 30. According to the Eelgrass Damage Assessment and Mitigation Plan, initial eelgrass surveys were conducted in October 2020, pre-construction surveys are planned to occur in April 2022 and post deployment surveys will take place in the summer 2022. Impacts to eelgrass will be remediated with in-kind, on-site mitigation through donor bed shoot harvest and transplant in impacted areas.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act require federal agencies to consult with one another on projects such as this. Insofar as a project involves EFH, as this project does, this process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the relevant consultation procedure. We offer the following comments and recommendations on this project pursuant to the above referenced regulatory process.



General Comments

Gosport Harbor and the surrounding areas contain productive fishery habitats that support numerous important living marine resources including federally managed finfish including winter flounder, Atlantic cod, red hake, white hake, ocean pout and pollock. Eelgrass beds and attached macroalgae are also present within the project area. The U.S. Environmental Protection Agency has designated submerged aquatic vegetation, including eelgrass, as “special aquatic sites” under the Section 404(b)(1) of the federal Clean Water Act, due to its important role in the marine ecosystem for nesting, spawning, nursery cover and forage areas for fish and wildlife. Direct and indirect impacts to this critical habitat should be minimized to the greatest extent possible through use of land based construction operations when feasible. In the event jack-up barges are located in adjacent eelgrass beds, monitoring reports and mitigation plans would be provided to resources agencies for review and comment.

The project area also provides habitat for winter flounder spawning and juvenile development. Winter flounder eggs, once deposited on the substrate, are vulnerable to sedimentation effects in less than 1 mm of sediment. Decreased hatching success of winter flounder eggs is observed when covered in as little as 1 mm of sediment and burial in sediments greater than 2.5 mm may cause no hatch (Berry et al. 2011). Elevated turbidity can also impact fish species through greater utilization of energy, gill tissue damage and mortality. Egg and larval life stages may be more sensitive to suspended sediments, resulting in both lethal and sub-lethal impacts (Newcombe and Jensen 1996). To avoid such impacts, turbidity producing activities should be suspended during periods when these sensitive life stages are present.

Intertidal and inshore subtidal mixed sand, gravel, cobble, and boulder habitats serve as important shelter and forage habitat for a variety of species including Atlantic cod, pollock, black sea bass, ocean pout, red hake, white hake, windowpane flounder, winter skate, little skate, striped bass, cunner, tautog, and scup. The structural complexity of rocky habitats are important for fish in that they provide shelter and refuge from predators (Auster 1998; Auster and Langton 1999; NRC 2002; Stevenson et al. 2004). It is also well established that intertidal zones serve as areas of refuge from predation and foraging habitat for juvenile fish during periods of high tide (Helfman et al. 2009). Recent literature regarding the importance of shallow water habitats for managed fish species was reviewed and discussed in “Shallow Water Benthic Habitats in the Gulf of Maine: A Summary of Habitat Use by Common Fish and Shellfish Species in the Gulf of Maine” (Stevenson et al. 2014). Care should be taken to avoid and minimize permanent conversion of intertidal and inshore subtidal mixed sand, gravel, cobble, and boulder habitats, given their importance as juvenile Atlantic cod Habitat Area of Particular Concern (HAPC).

Essential Fish Habitat

Gosport Harbor is designated as EFH under the MSA for multiple managed fish species, including yellowtail flounder, longhorn sculpin, hake, winter flounder and Atlantic cod. In addition, this area is designated as juvenile Atlantic cod HAPC. As described above, the proposed Isles of Shoals Harbor of Refuge FNP Breakwater maintenance and repair project may adversely affect EFH by impacting nearby winter flounder habitat, eelgrass beds, complex rocky habitats, juvenile cod HAPC and shellfish habitat located within the project area. We recommend pursuant to Section 305(b)(4)(A) of the MSA that you adopt the following EFH conservation recommendations:

1. Land based construction activities be utilized when applicable and jack-up barge activities in eelgrass beds should be limited to minimize impacts to eelgrass beds adjacent to the Star-Cedar breakwater.
2. Eelgrass surveys should be conducted in the same season, for direct comparison of results.
3. All temporary construction areas should be returned to pre-construction conditions and temporary ramps should be completely removed.



4. No greater than minimal sedimentation or turbidity producing repair or stone recovery activities should occur below mean high water from March 15 to June 30 to protect winter flounder early life stages. If this time of year restriction is not feasible, work between March 15 to June 30 should take place in the dry when the tide is waterward of the work site or behind turbidity controls.

Please note that Section 305(b)(4)(B) of the MSA requires you to provide us with a detailed written response to these EFH conservation recommendations, including a description of measures you adopt for avoiding, mitigating or offsetting the impact of the project on EFH. In the case of a response that is inconsistent with our recommendations, Section 305(b)(4)(B) of the MSA also indicates that you must explain your reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with us over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate or offset such effects pursuant to 50 CFR 600.920(k).

Please also note that a distinct and further EFH consultation must be reinitiated pursuant to 50 CFR 600.920(l) if new information becomes available or the project is revised in such a manner that affects the basis for the above EFH conservation recommendations.

Endangered Species Act

Threatened and endangered species under our jurisdiction may be present in the action area. A consultation pursuant to section 7 of the Endangered Species Act of 1973 is required. If you have any questions regarding the status of this consultation, please contact Roosevelt Mesa at 978-281-9186 or roosevelt.mesa@noaa.gov.

Conclusion

In summary, we recommend that land based construction activities be utilized when applicable and jack-up barge activities in eelgrass beds be limited to minimize impacts to eelgrass beds adjacent to the Star-Cedar breakwater. Monitoring and mitigation reports should be provided to us for review and comment. All temporary construction areas should be returned to pre-construction conditions and temporary ramps should be completely removed. Lastly, no sedimentation or turbidity producing repair or stone recovery activities should occur below mean high water from March 15 to June 30 to protect winter flounder early life stages. If this time of year restriction is not feasible, work between March 15 to June 30 should take place in the dry when the tide is waterward of the work site or behind turbidity controls. We look forward to your response to our EFH conservation recommendations, and continued coordination on this project. Please contact Kaitlyn Shaw at 978-282-8457 or kaitlyn.shaw@noaa.gov if you would like to discuss this further.

Sincerely,



Louis A. Chiarella
Assistant Regional Administrator
for Habitat and Ecosystem Services

cc: Roosevelt Mesa, NOAA PRD
Todd Randall, US ACOE
Tom Nies, NEFMC
Chris Moore, MAFMC
Lisa Havel, ASMFC



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From: MONTE ROME [<mailto:montesan04@yahoo.com>]

Sent: Tuesday, December 21, 2021 8:58 AM

To: Tom Nies <tnies@nefmc.org>; Sam Martin <smartin@atlanticcaples.com>; Chris Shriver <cshriver@atlanticcaples.com>; Allen & Lori Rencurrel <lrencurrel@charter.net>; Ronald Smolowitz <rismolowitz@cfarm.org>

Subject: Re: Comments on GSCHMA nantucket shoals surf clam area

Good Morning Tom,

In follow-up to my comments to my letter of 12/07, please update me (and my colleagues) on my request for you to forward this 'emergency action' request to the Secretary of Commerce. Was it forwarded to the appropriate office? If not please advise why and when we will have a response from the Secretary's office. Thanks

All Federal surf clam boats that are currently working in the 'habitat area' are **not catching in any way near efficiency** as was stated in my comment letter. I do believe that the New England surf clam business is showing more than signs of weakening because of the lack of clams and the loss of employees who are not able to make a living working 2 or 3 days a week.

I again stress that the habitat committee as well as the committees serving the creation of the Omnibus amendment wrongfully coded the GSCHMA portion of the EFH as spawning grounds for cod and essential fish survival habitat which more appropriately must be re-labeled based on the prevalent species in the area as **ESSENTIAL SURF CLAM HABITAT**. All of the surf clam participants are painfully aware that the measures restricting our businesses were implemented with much less than adequate 'best available science' and in fact 'no available science', which was revealed in one way or another in every PDT meeting so well attended by our industry members.

We need your help and ask that you push this request for emergency action immediately so as to rescue the New England Surf Clam Industry as Magnuson dictates it should be assisted and supported.

Awaiting your response I remain,

Very truly yours,

Monte Rome



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

December 21, 2021

Ms. Michelle Morin
Program Manager
Office of Renewable Energy
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, VA 20166

RE: Scoping Comments for the Notice of Additional Public Scoping and Name Change for Vineyard Wind South Proposed Wind Energy Facility Offshore Massachusetts (BOEM-2021-0047)

Dear Ms. Morin:

We have reviewed the November 22, 2021, *Federal Register* Notice of Additional Public Scoping (Notice) on the Environmental Impact Statement (EIS) and Name Change for the Vineyard Wind South Project. Park City Wind LLC (Applicant) is proposing the construction, operation, and decommissioning of wind energy facilities off the coast of Massachusetts within the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS-A 0534. The Notice calls for comments on updated project information related to identified variations in the offshore export cable corridor (OECC) routes. This notice includes project revisions from the initial June 30, 2021, Notice of Intent (NOI) to prepare an EIS for the project. As you know, we provided comments on July 27, 2021, in response to the initial scoping period for this project. Both our July, 27, 2021, letter and this letter respond to your request for information as a Cooperating Agency with legal jurisdiction and special expertise over marine trust resources, and as a consulting agency under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Fish and Wildlife Coordination Act (FWCA), and the Endangered Species Act (ESA). We are also an action agency for this project to the extent the Applicant submits a request for regulations and Letters of Authorization to NOAA pursuant to the Marine Mammal Protection Act (MMPA). If deemed sufficient to do so, we will rely on and adopt your Final EIS to satisfy our independent legal obligations to prepare an adequate and sufficient analysis under the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality (CEQ regulations (2020)) in support of our proposal to issue the MMPA Incidental Take Authorization (ITA) for the proposed project.

BOEM intends to prepare an EIS to consider whether to approve, approve with modifications, or disapprove a Construction and Operations Plan (COP) submitted by the Applicant and analyze the proposed construction and operation of commercial-scale wind energy facilities on the outer continental shelf (OCS) approximately 19.9 miles south of Martha's Vineyard and 23.7 miles from Nantucket. The wind facilities, now collectively referred to as New England Wind (formally known as Vineyard Wind South), are proposed to be constructed in two phases. Phase



1 of the project is known as Park City Wind and Phase 2 is known as Commonwealth Wind. Collectively, these two phases include the construction, operation, and eventual decommissioning of up to 130 wind turbine generators (WTGs). We understand that BOEM intends to prepare a single EIS that will consider both projects but that BOEM may issue one or two COP decision letters specific to the two projects considered in the COP.

The November 22, 2021, Notice cites the project name changes and provides additional information to the original COP regarding cable routing variations for Phase 2 of the project. These changes relate to the intent of the Applicant to install all Phase 2 offshore export cables within an offshore export cable corridor (OECC) through Muskeget Channel to landfall sites in Barnstable, Massachusetts. The Notice describes two variations of the Phase 2 OECC: (1) the Western Muskeget Variant that includes the installation of one or two export cables in the western Muskeget Channel; and (2) the South Coast Variant that diverges from the initial OECC at the northern boundary of the lease area and travels west-northwest near Buzzards Bay, Massachusetts, and through state waters to an onshore substation. The South Coast Variant includes an offshore routing envelope that indicates a large region within Buzzards Bay where the Phase 2 offshore export cables could potentially be installed before making landfall. The location of a potential substation in southwest Massachusetts has not been identified.

The Notice commences an additional public scoping process for identifying issues and potential alternatives for consideration in the New England Wind COP EIS based on the additional information provided related to changes in cable routing. Through the Notice, you are requesting information specific to these two proposed OECC variations, including feedback on impacts to biological and physical resources, fisheries, socioeconomic, and cultural resources, impacts to the human environment, reasonable alternatives to the two variations, and other activities in or near the two variations. In our role as a Cooperating Agency under NEPA, we offer comments and technical assistance related to significant issues, information, and analysis needs for the EIS related to resources in the project area over which we have special expertise or legal jurisdiction. Our July 27, 2021, scoping comments are applicable to the two OECC variations and we recommend you consider that information as you develop the EIS for this project. We also offer the following additional comments and information in response to your November 22, 2021, Notice.

General Comments

We understand that during the NEPA process, you allow applicants to make modifications and updates to their COPs. It is our understanding that you are anticipating additional updates to the New England Wind COP early next year. These updates may include more information related to the landing location and habitat data for the South Coast variant. We do not yet have a schedule for receipt of that information or associated habitat data for the proposed OECC variations. The lack of a completed and updated COP for review limits the extent of technical assistance we can provide during this scoping process. As a result, we expect to provide additional comments and technical assistance upon receipt of any updated information, including further comments on any potential alternatives to minimize and mitigate impacts of the project on marine and estuarine resources.

To reduce the potential need for multiple reviews, supplemental analyses, and project delays, you should ensure information is complete for both project phases before advancing the environmental review process. Moving forward with the process absent that information may affect the ability to provide a complete and comprehensive analysis of NMFS trust resources in a single EIS. Including all relevant information in one comprehensive EIS is easier for the reader to follow and provides the best chance for properly analyzing the full scope of the potential impacts of the project. Should the project timeline not allow for gathering sufficient information to accurately identify and describe NMFS trust resources and sufficiently analyze direct, indirect and cumulative effects of both project phases in the project EIS, it may be appropriate to then consider whether some form of supplemental analysis would be necessary.

We understand you will be updating the permitting timeline for this project based on this additional scoping process. We are not yet clear if you plan to use the expedited two-year timeline to complete the NEPA process and consultations for both project phases simultaneously, or if that will be determined after receipt of an updated COP early next year. While the FAST-41 dashboard has been populated with targeted milestone dates related to our consultations and authorization, we expect these targeted dates to change due to project changes and delays in available information. As mentioned in our July 27, 2021, comment letter, we have not received a detailed timeline for this project to help inform our agency's FAST-41 milestone dates. As you develop an updated permitting timeline, we recommend you account for the timing of updated COP information and maintain coordination with us on both the detailed and permitting schedule.

A clear understanding of the full proposed action and sufficient information to analyze the impacts of that action are necessary to initiate consultation with our agency. For example, it will be important for us to understand if BOEM anticipates one COP decision for the project or a separate decision for each project phase. Additionally, habitat data for the entire project area (lease and all cable routes) will be necessary for the analysis of impacts for the Essential Fish Habitat (EFH) consultation. We recommend you review the information in our July 27, 2021, scoping comments related to our consultation and authorization procedures and coordinate closely with us as you consider the regulatory process for this project and prepare an updated permitting timeline.

In addition, a portion of this project, including the proposed OECCs and onshore landing locations are located in state waters. BOEM has recently stated that project activities in state waters are outside of your jurisdiction. Therefore, it is critical that the NEPA document describe how BOEM, as the lead federal agency, will deal with authorization of project components in state waters. Specifically, the NEPA document should describe how measures to avoid and minimize impacts to NOAA trust resources in state waters will be incorporated and/or required as conditions of any potential COP approval.

NOAA Trust Resources

Our July 27, 2021, scoping letter also outlines NOAA trust resources in the project area. All of the information provided in those comments are relevant for the project variations, including

information related to fisheries and socioeconomics, protected species and habitat, as well as NOAA scientific surveys. We recommend you use that information as you develop the EIS for this project. Here we provide additional information related to habitat resources associated with the OECC variations, with focus on the South Coast Variation. Information provided in the July comment letter, particularly related to complex habitats and juvenile cod Habitat Areas of Particular Concern (HAPC) should help inform your evaluation of the Muskeget Channel Variation.

The proposed South Coast Variant OECC overlaps with important marine and estuarine habitats, including complex hard bottom habitats, eelgrass, and shellfish habitats. Along the offshore cable route, we know there are extensive complex habitat areas, particularly offshore of the Elizabeth Islands, which may be more vulnerable to long-term and permanent impacts from the project. The South Coast Variant OECC also currently includes a very large envelope for potential cable landing locations along the west coast of Buzzards Bay.

Buzzards Bay provides important estuarine habitats for a number of marine resources and federally managed species. Estuaries and bays play a critical role in the life history of many managed fish species, particularly as nursery grounds for early life history stages. Buzzards Bay supports a wide variety of habitats important to early life history stages of managed species, including mudflats, shellfish beds, eelgrass (i.e., submerged aquatic vegetation, or SAV), and shallow water habitats that support sensitive life history stages. Many of the habitat types found throughout Buzzards Bay are federally recognized for their importance to NOAA-trust resources and overall ecological values. For example, complex habitats, including both rocky substrates and submerged aquatic vegetation (SAV) are found throughout Buzzards Bay, with SAV beds predominant within the Bay and rocky habitats more abundant along portions of the coastline and near the Elizabeth Islands and south.

As discussed in our July 27, 2021 letter, due to their importance for federally managed species, rocky habitats and SAV have been identified as a Habitat Area of Particular Concern (HAPC) for juvenile Atlantic cod by the New England Fishery Management Council, and SAV and macroalgae were designated as HAPC for juvenile and adult summer flounder by the Mid-Atlantic Fishery Management Council. Additionally, intertidal mudflats have been designated by the EPA as “Special Aquatic Sites” due to their ecological value for fish and wildlife and susceptibility to degradation. These habitats support diverse communities of shellfish and benthic invertebrates living within or on the substrate that serve as an important food source for the federally managed species, including winter flounder. Further, shellfish beds provide important foraging habitat for managed fish species. Shellfish species that form structural reefs (e.g., oysters, mussels, etc.) also serve additional roles for fish species, such as providing shelter from predation.

The timing of construction activities within Buzzards Bay should be considered in the development of the EIS. Multiple managed fish species have specific habitat requirements or temporal periods where early life history stages may be more susceptible to construction related impacts. For example, winter flounder spawn in areas less than 5 meters deep during specific timeframes, and eggs and early life history stages are susceptible to construction impacts that

may result in direct impacts (e.g., entrainment) or indirect (e.g., sedimentation or turbidity). Similarly, longfin squid eggs are deposited on the substrate and susceptible to both direct and indirect impacts. Such impacts should be considered and evaluated in the EIS, as well as potential minimization measures that may be employed (e.g., time of year restrictions) to avoid impacts.

Additional Alternatives to Consider

In our July 27, 2021, scoping comments we recommended a Fisheries Habitat Impact Minimization Alternative that considers alternative cable routing to avoid and minimize impacts to sensitive habitats, including HAPC, as described above. We recommend the habitat alternative be expanded to include these cable routing variants. Our ability to provide you with specific details and technical assistance related to this proposed alternative is limited by the habitat data available to us. We expect once you receive an updated COP with habitat data, we will be able to assist with the development of potential alternatives for reducing impacts to sensitive habitats. For example, should habitat information you receive in the updated COP demonstrate that the Western Muskeget Channel Variant includes less overlap with juvenile cod HAPC, BOEM should consider use of that variant as an alternative option for cable routing from the proposed option.

In addition, a component of the Fisheries Habitat Impact Minimization Alternative should include a full evaluation of alternative export routes for the South Coast Variant OECC. This should evaluate potential alternative options to reduce impacts to complex habitats along the offshore cable route as well as reduce impacts to Buzzards Bay and associated estuarine habitats. As indicated in the Notice, a large envelope is currently being considered for potential cable landing locations, which includes the western portions of Buzzards Bay. Given the important resources in Buzzards Bay, we would recommend BOEM evaluate alternatives for cable routing, including routes that avoid sensitive habitat areas such as eelgrass, hard bottom habitats, and shellfish beds, as well as land-base cable routing that would help avoid and minimize impacts to Buzzards Bay. While planning for potential land-base routing alternatives and routes that minimize impacts to important resources may be considered now using desktop data, once you receive the habitat data for the updated OECC variants, we will be better equipped to assist you in the development of a habitat impact minimization alternative for this project.

Conclusion

Thank you for the opportunity to provide comments during this extension of the scoping process for the New England Wind Project. We will continue to support the Administration's efforts to advance offshore renewable energy through our participation in the offshore wind development regulatory and planning processes. We are committed to implementing our national strategic goals to maximize fishing opportunities while ensuring the sustainability of fisheries and fishing communities. In addition, we strive to recover and conserve protected species while supporting responsible resource development. To the extent possible, we will continue working with you to provide the necessary expertise, advice, and scientific information to avoid areas of important fishing activity and sensitive habitats; minimize impacts to fisheries and protected species, and support the conservation and sustainable management of our marine trust resources. To ensure

we can continue to meet our collective objectives and ambitious timelines, it is imperative that we capitalize and build upon our collaboration on recent projects and integrate lessons learned into future project development and review. This will improve the quality of the NEPA document for this project and future projects, expedite our reviews, and result in more efficiencies in the process.

Should you have any questions regarding these comments, please contact Sue Tuxbury in our Habitat and Ecosystem Services Division at (978) 281-9176 or susan.tuxbury@noaa.gov. For questions regarding the EFH consultation for this project, please contact Alison Verkade in our Habitat and Ecosystem Services Division at (978) 281-9266 or alison.verkade@noaa.gov. For questions regarding ESA and section 7 consultation, please contact Julie Crocker in our Protected Resources Division at (978) 282-8480 or Julie.Crocker@noaa.gov. For questions regarding MMPA Incidental Take Authorizations, please contact Jaclyn Daly in the Office of Protected Resources at (301) 427-8438 or jaclyn.daly@noaa.gov.

Sincerely,



Michael Pentony
Regional Administrator

cc: Brian Hooker, BOEM
JT Hesse, BOEM
Tom Nies, NEFMC
Chris Moore, MAFMC
Bob Beal, ASMFC
Tim Timmerman, EPA
Greg Lampman, NYSERDA
James Gilmore, NYSDEC
Jeffery Zappieri, NYDOS
Dan McKiernan, MADMF
Lisa Engler, MACZM
Jeffery Willis, RICRMC
Julia Livermore, RIDEM
Brian Thompson, CTDEEP
Peter Aarrestad, CTDEEP Fisheries
Jon Hare, NEFSC
Candace Nachman, NMFS Policy
Cristi Reid, NMFS Policy
Christine Jacek, USACE
Tammy Turley, USACE
Naomi Handell for USACE-NAN



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*

December 16, 2021

Mr. Michael Pentony
GARFO Regional Administrator
NMFS/NOAA Fisheries
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

Thank you for your letter requesting that the New England Fishery Management Council develop an action to amend our fishery management plans to implement the appropriate fishing regulations in the Northeast Canyons and Seamounts Marine National Monument. After consideration of your request, the Council did not adopt this action as one of our priorities for 2022.

Please let me know if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Reid'. The signature is fluid and cursive.

Eric Reid
Chair

cc: Mr. Mike Luisi, Chair, MAFMC



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930-2276

December 10, 2021

Peter Weppler
Chief, Environmental Analyses Branch
Department of the Army
U.S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
26 Federal Plaza
New York, New York, 10278-0090

RE: EFH Consultation for the New York New Jersey Harbor Deepening Channel Improvement Study for Port Jersey Port Authority Marine Terminal, Elizabeth Port Authority Marine Terminal, and Port Newark, New Jersey.

Dear Mr. Weppler:

Thank you for your December 1, 2021, letter following up on the November 23, 2021, conference call between staff from our Habitat and Ecological Services Division (HESD), Protected Resources Division (PRD), and the U.S. Army Corps of Engineers (USACE), New York District (District) on the New York New Jersey Harbor Deepening Channel Improvement Study (HDCI). As indicated in your letter, we originally provided the six essential fish habitat (EFH) conservation recommendations (CRs) listed below pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) following a November 6, 2021 consultation for the project:

1. Anchorage Channel:
Seasonal protections are not necessary except in the following areas: Port Jersey Channel, adjacent to shallow flats less than 6 meters deep at MLW. In these areas, dredging should be avoided from January 15 to May 31 to protect winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow flats out for a distance equal to of one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at MLW.
2. Kill Van Kull:
Avoid dredging and blasting from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.
3. Newark Bay:
 - a. Avoid dredging from January 15 to May 31 in following reaches: North of



Shooters Island Reach, the portion of the Newark Bay South Reach south of the South Elizabeth Channel, the Newark May Middle Reach north of the Elizabeth Channel, the Port Newark Pierhead Channel, the Newark Bay North Reach and Port Jersey Channel to protect winter flounder early life stages and their EFH. The seasonal restriction applies from edge of the existing channel adjacent to the shallow areas out for a distance equal to of one-half the width of the channel. For example, if the channel is 500 feet wide, then the dredging should be avoided within 250 feet of the channel edge adjacent to the shallow flats less than 6 meters deep at MLW.

- b. Avoid dredging from March 1 to May 31 of each year to minimize impacts to migrating and spawning anadromous fishes which are prey species for federally managed bluefish, summer flounder, windowpane and skates.
4. All blasting work should be designed to include 25 microsecond delays in the charge triggering when blast material volumes exceed 64 pounds per shot, regardless of the number of holes to be used in the blast unless otherwise negotiated.
 5. Coordinate with us to develop a sequential dredging plan in areas where seasonal constraints vary within a reach.
 6. Continue to coordinate with us in the development of a plan to compensate for all direct impacts to shallow waters and any indirect loss of habitat value within wetlands, shallow waters, and mudflats that may occur as a result of project implementation. Plans should include clear goals, success criteria, performance measures, a monitoring and maintenance plan, as well as an adaptive management plan to help ensure long-term success of the proposed mitigation.

According to your letter, the District has accepted in full and in part some of our conservation recommendations and declined to incorporate other recommendations. EFH CRs 1, 2, and 3 were tentatively accepted, but you anticipate reinitiating consultation to further refine both the timing and locations. We look forward to working with you and your staff to refine these recommendations as project plans are developed. As it relates to these CRs, we recognize the typo in CR 3 that the Port Jersey Channel is not located within Newark Bay and acknowledge that the USACE uses Mean Low Low water (MLLW), not Mean Low Water (MLW) datum as pertains to elevations and bathymetry.

EFH CRs 5 and 6 were also accepted, as indicated during the November 23, 2021, conference call and reiterated in your letter. Specifically, as it relates to CR 5, the District has agreed to develop maps to identify where and how the CRs would be implemented to achieve biddable and executable contracts from an engineering and construction perspective. Additionally, the District anticipates developing a proposal to restore and/or enhance the Sea Bright Offshore Borrow Area (SBOBA), including a monitoring program to be developed by a USACE-NMFS working group. We look forward to continued coordination with you and your staff as the development of the maps and mitigation proposal progresses, and look forward to assisting you in ensuring all goals and plans for the mitigation are appropriately addressed for the project.

Although the District recognizes the importance of blasting best management practices (BMPs), EFH CR 4 was not accepted. While the District did not agree with specifying maximum underwater noise, underwater overpressure, or charge weight, a mitigation and monitoring blast program is anticipated to be developed and used to minimize blasting impacts, similar to procedures that were undertaken by the New England District. As indicated in your letter, the District anticipates coordinating with both HESD and PRD to develop appropriate plans. The District also anticipates to include other BMPs, such as deterrents, monitors and a biological monitoring program on blasting contracts, designed by a USACE-NMFS working group to be site and project-specific. We agree with this response and appreciate the District's efforts to minimize blasting impacts through the development of a program and BMPs that are achievable for the site specific needs.

As always, a distinct and further EFH consultation must be reinitiated pursuant to 50 CRF 600.920 (j) if new information becomes available, or if the project is revised in such a manner that affects the basis for the EFH determination.

We continue to appreciate the collaboration and coordination between our agencies on this and other civil works project within the District as well as the efforts your staff have made to address our concerns. Should you have any additional questions or comments, please call Jessie Murray at (978-675-2175 or by e-mail (jessie.murray@noaa.gov)).

Sincerely,

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Date: 2021.12.10 13:53:12 -05'00'

Karen Greene
Mid-Atlantic Branch Chief
Habitat and Ecosystems Services Division

cc: GARFO PRD – E. Carson-Supino
GARFO HESD – J. Murray
New York District ACOE – J. Gallo, J. Miller, K. Baumert, C. Alcoba
NJDEP – S. Biggins, K. Davis
FWS – R. Popowski, S. Sinkevich
EPA Region II – M. Finocchiaro
NEFMC – T. Nies
MAFMC – C. Moore
ASMFC – L. Havel

Comments to the Council on an existing emergency for the survival of the New England Surf Clam Industry from Intershell International and Atlantic Capes Fisheries:

In the time period since the GSCHMA closed the Nantucket Shoals for the use of bottom tending mobile gear including the use of hydraulic dredge gear used in the process of harvesting surf clams, we have gained a better sense of the value of the areas which were excepted from the closure for surf clamming activities and which areas have been helpful and those that have not been helpful for the continuation of the surf clam industry in New England.

The McBlair Shoal has been a bust for CPUE, the fishing Rip has been difficult because of its location and the amount of boulders which damage our gear. Gear damage is a costly reality, and as we have indicated repeatedly, we do not fish in areas which have been coded as rocky habitat which have been identified by HMA managers as sacred to fish habitat. Old South has been acceptable, but we have not gotten enough of the year in the area to make a significant impact to annual catch and sales.

Since the closure there has been 1 EFP issued which has yielded an exceptional CPUE of more than 2 cages of catch per hour and has upset the balance of economics of the surf clam business in the New England. The recipient of the EFP has had clam products to sell while Intershell and Atlantic Capes have both missed many sales this past summer season for lack of clams.

As fallout from not having equal access to productive fishing grounds, both Atlantic Capes and Intershell have lost many of their semi-skilled employees and our vessels are having great difficulty staffing our vessels because the returns to captains and crew have been out of line with relative effort requirements.

The NEFMC tag line on the home page for the Council reads: Conserving and managing fishery resources by relying on sound science, promoting public participation, and balancing competing interests. In the case of the GSCHMA this has not occurred. Sound Science was not applied because there was less than adequate science accepted by the council (the Best Available Science was contained in the SCMFIS work but rejected because of labeling and the Council opted for science which was not from the specific HMA of concern but rather from an area more appropriately related to the specifics of the GSC which does not represent the conditions that exist on the sandy bottom known specifically as the Nantucket Shoals area.

The balance of competing interests was also not carefully considered in the Council's approval of the EFP which was issued and then renewed without council review and comparison to other participants vying for clams to maintain the New England Surf Clam business.

On behalf of the New England processors known as Intershell International and Atlantic Capes Fisheries I formally call on the Council to take these comments with serious consideration regarding the access areas created for the members of the Industry who are working outside the EFP, and allow all vessels to work in productive areas equivalent to the access areas provided to with the only existing EFP.

In a meeting with the lead council for the management of the Surf Clam fishery, I learned that an **emergency action** is appropriate in this situation for the opening of adequate areas for all Industry participants. Per this guidance, this situation is extremely urgent and special circumstances exist which are causing substantial harm to our communities which will not be able to be reconciled in the time it will take to follow standard rule making corrections to this issue and permit businesses to survive during the process. Therefore, I formally request that the Council immediately submit a request for this emergency action to the Secretary of Commerce so as to comply with the National Standards which apply to this EMERGENCY. This emergency action request is pursuant to section 305(c) of the Magnuson Stevens Act and the issues at hand serve to meet the criteria set out in this passage of the legislation.


12/7/2021