



## New England Fishery Management Council

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

# MEETING SUMMARY

## Habitat Committee

January 18, 2022

9:00 am -1:00 pm

Via Webinar

The Habitat Committee met on January 18, 2022 via webinar to discuss 1) a framework to designate a Habitat Area of Particular Concern (HAPC) in Southern New England, 2) updates on the potential Northern Edge habitat management action, 3) review a draft letter expressing Council concerns about the Amitie telecommunications cable project, 4) a clam industry request for secretarial emergency action related to the Great South Channel Habitat Management Area, and 5) any other business.

**MEETING ATTENDANCE:** Eric Reid (Committee Chair), Peter Aarrestad, Togue Brawn, Lou Chiarella (GARFO), Libby Etrie, Peter Hughes (MAFMC), Scott Olszewski, Geoff Smith, and Melissa Smith; NEFMC staff: Michelle Bachman (Plan Development Team Chair), Jenny Couture, Rachel Feeney, and Janice Plante; NOAA General Counsel: Mitch MacDonald; NOAA GARFO: David Stevenson, Alison Verkade, Doug Potts. In addition, three other Council members, five AP members, and approximately 17 members of the public attended, including other members from the PDT.

### **KEY OUTCOMES:**

- The Committee recommended that the Council initiate a framework adjustment to designate a Habitat Area of Particular Concern in Southern New England at its next meeting in February.
- Members received a presentation on a white paper drafted by the PDT exploring issues related to habitat management on the Northern Edge of Georges Bank.
- The Committee agreed to submit a letter expressing Council concerns about the Amitie telecommunications cable project.
- The clam industry detailed their concerns related to the fishery on Nantucket Shoals in Great South Channel Habitat Management Area. The Committee was briefed on their request for secretarial emergency action and on a related meeting between NEFMC and MAFMC leadership.
- The Committee also received updates on the timeline for addressing 2022 work priorities, Council activities related to offshore wind, and other offshore wind updates including the New York Bight final sale notice and the Memorandum of Understanding between BOEM and NOAA.

***AGENDA ITEM #1: HABITAT AREA OF PARTICULAR CONCERN (HAPC) IN SOUTHERN NEW ENGLAND***

***Presentation – HAPC***

Ms. Couture updated the Committee on the purpose of potentially designating a HAPC in Southern New England. Her presentation provided some background, articulated a draft problem statement and rationale for the action, outlined potential objectives, and identified information sources to consider during development of the action.

***Discussion***

A Committee member asked why Cox Ledge was not listed as a Habitat Management Area (HMA), despite being recommended by the Council (OHA2), or recommended as an HAPC during Omnibus Habitat Amendment 2. Staff noted that new HAPC designations were developed early in the OHA2 development process, and that Cox Ledge was not identified as an area of concern at the time. The Cox Ledge HMA was developed based on Swept Area Seabed Impact model results indicating higher vulnerability of the area to fishing gear impacts. The Council's recommended HMA designation for Cox Ledge was disapproved by NOAA Fisheries because the tradeoffs between shortening ground cables and increasing effort, and therefore the resulting net impacts, were (and are) not well understood. Staff were not certain whether additional work on ground cables has been completed since OHA2 to change this conclusion but did not think so.

There was a question on the efficacy of a HAPC designation at this specific point in time, since offshore wind areas are already leased, and permitting has been completed for two Southern New England Projects (Vineyard 1 and South Fork). Staff noted that EFH consultations on the remaining Southern New England wind projects are yet to occur, and this HAPC could be implemented before they do.

There was also a question on how the process to designate a HAPC would be streamlined as compared to designating an HMA. Consistent with other HAPCs in the New England region, this HAPC designation is not envisioned as including fishing restrictions but would add a conservation focus during essential fish habitat (EFH) assessments. The group discussed that implementing fishing restrictions in an area is generally complicated and controversial, and therefore would be expected to take longer to complete (and would be more complex to analyze and require additional documentation).

**Public Comment:**

- Jeff Kaelin, Lund's Fisheries, Cape May, NJ: Expressed support for an HAPC in Southern New England, however, want to include Mid-Atlantic species as part of a joint framework action with the Mid-Atlantic Fishery Management Council (MAFMC) given loligo, scup, fluke, etc. are likely in this same habitat area. Staff had noted in the slides that this HAPC would pertain to species managed by NEFMC. The Chair noted that this topic is not on the agenda for the MAFMC's next meeting.
- Ron Smolowitz, Coonamessett Farm Foundation: Thought this action would be a waste of the Council's time and resources given the EFH consultations (whereby the HAPC would be considered) would not result in requirements, rather only conservation recommendations.

**1. MOTION: ETRIE/M. SMITH**

Recommend that the Council initiate a Framework to develop an HAPC in Southern New England to provide conservation focus for NEFMC-managed species with EFH in the area. The problem statement and rationale for the framework are articulated in the Habitat PDT memo dated 1/12/2022, pages 3 and 4.

**Rationale:** Given development pressures in Southern New England it seems appropriate to highlight habitat of concern, particularly as relates to spawning habitat, via an HAPC designation. The seconder noted that she was currently looking at Council-managed areas in the Gulf of Maine, including those considered but not designated in OHA2 and the coral amendment, to identify areas that should be considered during offshore wind development.

**Discussion on the Motion:**

A few Committee members were supportive of an action to designate a HAPC, though there was a lengthy discussion on whether fishing gear restrictions should be included via an HMA designation, or whether fishing gear impacts should at least be referenced in the problem statement where other impacts to EFH are listed. Staff noted that whether fishing impacts are explicitly called out in the problem statement for the action or not, the Council and NOAA Fisheries would be required to evaluate the impacts of future fishery management actions to the HAPC once designated (i.e., NOAA Fisheries consults with itself, so to speak, via the EFH consultation process, as it would when considering conservation recommendations for the actions contemplated by other federal agencies).

In terms of next steps, the PDT will work to complete the tasks outlined at the end of the memo and can work on assembling information in the coming weeks. In response to a question about which specific areas are being considered for the designation, staff noted that this work would be part of the development of the action once initiated; a range of different alternatives can be recommended through the Committee to the Council.

In response to a question, staff noted that should the Council wish to implement fishing restrictions in the HAPC, or a subset of the HAPC in the future, that would require a framework to one or more Council fishery management plans to develop the regulations. Given that we do not restrict fishing as part of an HAPC designation, but rather attach such restrictions to habitat management area designations, future fishing restrictions would likely mean co-designating the area as an HMA.

**1A. MOTION TO AMEND: G. SMITH/BRAWN**

Recommend that the Council initiate a Framework to develop an HAPC in Southern New England to provide conservation focus for NEFMC-managed species with EFH in the area. The problem statement and rationale for the framework are articulated in the Habitat PDT memo dated 1/12/2022, pages 3 and 4, adding ‘commercial and recreational fishing’ to the last sentence of the problem statement on page 3.

**Further Discussion on the Motion:** There was lengthy discussion on whether commercial and recreational fishing should be added to the problem statement as part of other factors and

activities that could impact EFH in Southern New England. NOAA General Counsel reviewed the [HAPC regulations](#) noting that the Council can designate a HAPC that is not focused on fishing. A couple of members suggested removing this third sentence on the bottom of page 3 entirely given the HAPC action is intended to be focused on offshore wind development and the potential for offshore aquaculture in the region. One Committee member was concerned that the HAPC would be too narrowly focused on offshore wind and aquaculture and if the HAPC would apply to other development projects in the future. The GARFO representative re-stated that a HAPC can be designated as long as one of the four HAPC requirements are met and that a specific type of development need not be stated.

#### **MOTION 1A TO AMEND FAILED 1/7/0.**

#### **1B. MAIN MOTION AS AMENDED: ETRIE/M. SMITH**

Recommend that the Council initiate a Framework to develop an HAPC in Southern New England to provide conservation focus for NEFMC-managed species with EFH in the area.

Problem statement: A new Habitat Area of Particular Concern (HAPC) in Southern New England is needed to provide conservation focus for specific New England Council-managed species with EFH in the area. This is due to concerns about impacts from offshore development, specifically offshore wind in the near term, and possibly offshore aquaculture in the future.

**Further Discussion on the Motion:** The Committee agreed that it was more straightforward to focus the problem statement on impacts of greatest concern.

#### **MAIN MOTION, AS AMENDED, PASSED BY CONSENSUS.**

#### ***AGENDA ITEM #2: UPDATES ON NORTHERN EDGE HABITAT MANAGEMENT***

##### ***Presentation***

Ms. Bachman updated the Committee on the white paper documenting new information to consider should the Council wish to revise habitat management areas and restrictions on fishing in the Northern Edge region. The PDT focused the white paper on information related to understanding the adverse effects of fishing on habitats in the region, including Dr. Scott Gallager's Before-After-Control-Impact study, funded by the Scallop Research Set Aside program, another earlier RSA study, the Fishing Effects Model, and recently published literature on gear effects. The white paper also includes a review of recent fishing activity and other relevant background. The Committee was invited to request additional information or analysis that would support future Council decision making on this issue. Because this action is not a 2022 work priority, the next Council decision on Northern Edge habitat management would be related to future prioritization of this work.

##### ***Discussion***

A Committee member suggested including the HAPC criteria at the bottom of page 6 of the white paper. The Committee did not have any other questions or discussion on the topic.

### ***AGENDA ITEM #3: UPDATES ON AMITIE TELECOMMUNICATIONS CABLE PROJECT***

#### ***Presentation***

Ms. Couture presented a draft letter expressing Council concerns about the Amitie telecommunications cable. NOAA Fisheries is awaiting information necessary to complete their essential fish habitat consultation. The Council's comments are intended to support the consultation process and indicate our own concerns related to the potential impacts of the project.

#### ***Discussion***

A Committee member asked whether the telecommunications cable was a new cable and whether any old cables would be removed. Staff noted that yes this is a new cable and that any defunct or pre-existing cables not in use would be removed where a cable crossing is planned. Another Committee member asked whether the inshore juvenile cod HAPC designation overlapped with the proposed cable route and suggested including a reference to this HAPC in the Council's comment letter. The HAPC, which extends along most of the New England coastline to 20 meters depth does overlap with the cable landfall area. The Committee recommended mentioning the Northern Gulf of Maine scallop management area in the comments. A member inquired if the minimum depth for cabling for this project aligned with the agreed upon target depth by the clam industry and AT&T from a few years ago, but no one present was certain of this depth. Target burial depth for this project is 4-6 ft.

#### **Public Comment:**

- Jeff Kaelin, Lund's Fisheries, Cape May, NJ: Asked if any of the proposed cable route would be in non-hard bottom habitats and if the cables would be buried. Staff noted that the cables would be buried 4-6 feet where possible and that much of the area is hard bottom substrate. The intent is to microsite the cable within the corridor surveyed by the developer and avoid hard bottom as much as possible.
- Chris McGuire, The Nature Conservancy: Inquired whether the proposed project includes any post-construction monitoring and if not, suggested recommending monitoring in the Council's comments (staff noted these can draw from the Council's offshore energy or cable policies). He also recommending including time of year construction restrictions as part of the Council's comment letter, based on the existence of cod spawning areas in state and federal waters. The Committee agreed to include these comments in the letter.

#### **2. MOTION: BRAWN/ETRIE**

Recommend that the Council send a letter on the Amitie cable project including the comments made by the Committee and public during today's meeting.

**The Committee adopted the motion by consensus.**

### ***AGENDA ITEM #4: CLAM INDUSTRY REQUEST FOR SECRETARIAL EMERGENCY ACTION***

Ms. Bachman briefed the Committee on the recent clam industry request for secretarial emergency action related to the Great South Channel Habitat Management Area. This included a summary of a related January 14 meeting between NEFMC and MAFMC leadership. History of

the management area was provided in a background document and briefly summarized in the presentation.

### ***Discussion***

A couple of members discussed the Council's Clam Framework (a trailing action to OHA2) that resulted in the dredge exemption areas. Omnibus Habitat Amendment 2 was approved on the basis that the action minimized impacts of fishing on EFH to the greatest extent practicable. The concept of conservation equivalence was raised by a committee member. This suggests that if any new management changes lessen the protection of habitat within an area, the Council will have to consider other changes to offset the impacts, such as effort reductions or additional habitat management areas. One member wondered whether an emergency action would affect the Council's work priorities, assuming a follow-on action would be needed to offset the habitat impacts.

The criteria for Secretarial emergency action were also discussed. NOAA General Counsel explained the criteria that need to be met for this type of action to occur, including recent unforeseen events or recently discovered circumstances that present serious conservation and management problems in the fishery. The types of situations this action could cover include ecological, economic, social, and public health, for which this action most likely would apply to improving the economic situation of the industry. See here for guidance: <https://www.fisheries.noaa.gov/national/laws-and-policies/fisheries-management-policy-directives>; 01-101-07 Policy Guidelines for the Use of Emergency Rules).

A few members asked about the exempted fishing permit (EFP) process, whereby the Council receives notification of and can comment on an EFP proposal and NOAA Fisheries authorizes any EFPs. The Committee asked for additional information regarding Mr. Smolowitz's current EFP research, which is intended to understand the type of habitat in the area by season and how fishing impacts habitat through the analysis of video taken using dredge-mounted cameras. Mr. Smolowitz stated that his research includes documentation of the habitat including all biota and substrate and noted that he has seen an increase in black sea bass, which could be preying on young of the year codfish. A Committee member expressed concern over Mr. Smolowitz's experience with the delay and denial of his second EFP.

The Council Chair commented that today's dialogue will help inform future discussions of the issue including during the Executive Committee (1/21) and during the next Council meeting (2/1). The main industry request is to reinstate the surfclam fishing exemption in the Great South Channel Habitat Management Area for 24-36 months.

### **Public Comment:**

- Sam Martin, Atlantic Capes Fisheries: expressed frustration in the current surfclam exemption areas noting that his business is operating at a loss since the HMA was closed to fishing, despite investing in new technology to fish further offshore. The HMA closure was not due to a resource problem but the presence of complex habitat. He requested the exemption be reinstated to allow surfclam fishing for 24 – 36 months in the HMA, specifically access to Rose and Crown and Davis Bank. This would help the industry stay afloat and also would increase the data needed to understand fishing gear impacts on

habitat. He noted that the current exemption areas are not sufficient because one area does not have surfclams, another is seasonal, and the third area has increased vessel interaction.

- Howard (Monte) Rome, Intershell: stated that this is a crisis for the entire surfclam industry where the number of bushels harvested decreased significantly since the HMA was closed to fishing. Like Mr. Martin, he noted the current exemption areas are not sufficient to sustain an entire industry and some areas cannot be fished because of the rocky habitat. He expressed frustration not being involved when the HMA was closed to fishing in 2018, that the action was discriminatory to the clam industry, and that there needs to be a fair and equitable solution as soon as possible.
- Chris Shriver, Atlantic Capes Fisheries: Noted similar concerns as Mr. Marin and Mr. Rome. The number of employees has declined because there is not a steady supply of surfclams from the HMA. He wants to support the science through collecting additional data within the fishing areas with high clam biomass.
- Allen Rencurrel, Nantucket Sound Seafood: The Council needs to abide by the Magnuson-Stevens Act and consider reopening all or part of the HMA to help everyone in the industry make a living. The Nantucket Shoals area is the only area with a consistent biomass of surfclams but only for fishing 2-3 days/week.
- Barry Cohen, Atlantic Capes Fisheries: After the HMA fishing closure, Mr. Cohen purchased several larger clam boats to seek out new beds but he described that certain areas are not viable, fuel has increased, there are certain areas with paralytic shellfish testing, and so on.
- Louis Lagace, F/V Mariette: Expressed urgency in opening the HMA to surfclam fishing, noting similar comments as the previous industry representatives. Certain areas cannot be fished profitably due to lower surfclam biomass, potential for ruined gear from the rocky habitat, etc.
- Ron Smolowitz, Coonamessett Farm: Explained that <1% of the HMA was available to the surfclam industry and that his current research through an EFP is being held up. He noted that the area is highly productive and that the Council must consider better use of research areas and the economic and scientific issues that are ongoing. GARFO rejected Mr. Smolowitz's second EFP due to lack of complete analysis for previously collected data.
- Allison Lorenc, Conservation Law Foundation: commented that CLF does not support the current exemption areas or additional exemptions and, following the requirements of Magnuson, the HMA should be protected from destructive fishing gear or risk becoming an HMA in name only.

#### ***AGENDA ITEM #5: OTHER BUSINESS***

Council staff summarized 1) a rough 2022 work priorities timeline, 2) offshore wind-related Council activities including recent, near-term, summer, and ongoing work, and 3) other offshore wind updates including the New York Bight final sale notice and the memorandum of understanding between NOAA and Bureau of Ocean Energy Management.

#### ***Discussion***

One member asked if the Habitat Advisory Panel (AP) and the Committee would be engaged in the development of the Southern New England Habitat Area of Particular Concern given only two Council meetings are planned to discuss this action. The Committee Chair noted there is no timeline for specific engagement, however, the AP and Committee have been heavily involved in previous Council management discussions and decisions.

No other items were discussed.

The Habitat Committee meeting adjourned at approximately 1:00 p.m.