



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

Habitat Advisory Panel Meeting

June 5, 2007

Mystic, CT

Draft Meeting Summary

Advisory Panel:

Mr. Dave Wallace (Chair), Ms. Maggie Raymond (V.Chair), Mr. John Williamson, Mr. Richard Taylor, Mr. Gib Brogan, Mr. Ron Smolowitz, Mr. Greg DiDominico, Ms. Sima Frierman, Mr. Ben Cowie-Haskell and Lt. E.J. Marohn

Council Staff:

Ms. Leslie-Ann McGee (PDT Chair)

Audience:

Approximately 5 interested parties

The Habitat Advisory Panel met on the morning of June 5, 2007 to review the public comment on Phase 1 of the EFH Omnibus Amendment and to consider recommendations to the Committee on final decisions. Staff gave a review of the timeline for Phase 1 and Phase 2 and also the public comment letters received and fielded questions from the Advisory Panel.

Habitat Areas of Particular Concern (HAPC)

Mr. Smolowitz stated that it is appropriate to identify areas that are no fishing zones but we don't have the data or science to support this and need to use our collective knowledge and develop a research program to accompany it. EFH should be based on 3 minute squares but we don't have the science to support this and therefore we shouldn't be designating EFH due to a lack of science. We use fish presence as a proxy but we don't know anything about food and the importance of those habitats to fish is unclear. Important hard structure is in between canyons not necessarily within the canyons (see Alternative 3B). Instead of HAPCs, we should be designating them as research areas

and studying them. He doesn't believe that that inference is science. It is important to find an area to protect large cod and water quality at the same time.

Mr. Williamson maintained that the danger is that we are pre-supposing what the management measures will be once these HAPCs are designated and this is not fair. The need for science and better understand how these areas function and need for experiments exist.

Mr. Taylor said that without a mandatory associated science component without looking at the resulting impact, it is impossible to draw the lines correctly.

Mr. Brogan suggested that the Phase 1 HAPC designations are a way to focus the attention in Phase 2 to look at management alternatives in the most important places. Different levels of protection can be evaluated for these areas and this is not a black and white issue.

Ms. Frierman said that these are areas that should be designated as research areas before deciding whether they are HAPC.

Staff provided the AP with a quote from the NOAA NMFS Guidance on Implementing the EFH Final Rule as it references HAPCs: *"The purpose of identifying HAPCs is to focus conservation efforts on localized areas within EFH that are vulnerable to degradation or are especially important ecologically for managed fish. Although federal agencies must still consult on activities that may adversely affect EFH, HAPCs are a management tool that could be used to inform the public of areas where fishing and/or non-fishing actions could receive increased scrutiny from NMFS regarding impacts to EFH. HAPCs can also be used to target areas for area-based research."*

Ms. Smolowitz – stated that we need the science and the falsehood is that once they are designated HAPC the Council is going to say the science is done. We know the science does not exist and that the proposals aren't based on science that can hold up. The canyon blocks he proposed should be research areas. We have three big habitat closed areas in the groundfish closures and we have no research that shows any improvement in the habitat or fisheries not even the scallop abundance. The Council wanted to separate science from management but the science is not there.

Mr. DiDominico agrees with Mr. Smolowitz and that our biggest concern is that it is no consolation that we could allow fishing in these areas with every thing except bottom-tending mobile gear. To say we are going to consider "fishing" is that there will be recreational fishing but bottom-tending mobile gear will be excluded. We lose more from the lack of science as compared to when there is science.

Mr. Cowie-Haskell stated that these concerns about management measures are premature in the Phase 1 process and are more appropriate in Phase 2. To extrapolate

from the one experience with the HAPC in Georges Bank is a stretch. There are scientific papers that justify that HAPCs, depending on the habitat in the area, can have some benefit for protecting EFH. We need to recognize that there is a process and we need to follow that process which looks at HAPCs on their face value from the regulations.

Mr. Williamson suggested that HAPCs should employ a strong research and monitoring component. Are the measures that we take addressing the goals or having effects that weren't expected? Can this be a consensus statement?

Mr. Wallace noticed that some of the closed areas when proposed had a number of academics that were interested but it was contingent on the funding and when it dried up their interest went away. There are a number of closed areas that aren't serving their stated purpose and should become open areas. Where does the money come from to do this research?

Mr. Smolowitz agreed with Mr. Williamson about the need for a consensus statement with respect to research plans. The way forward is to avoid the HAPC designations, call them something else and establish a research plan.

Motion 1

Smolowitz/DiDominico

The Habitat Advisory Panel recommends that NEFMC postpone action on any HAPC designations until Phase 2 when the Council can deliver HAPC alternatives that are based on sound scientific documentation and a research strategy to assess the ongoing benefits of any HAPC designations, and options for management measures to protect HAPCs, including a full NEPA analysis of the cumulative impacts of HAPC designations and the associated impacts of fishing restrictions that may shift effort onto other important habitat areas, and the impacts on fishing communities of such restrictions.

Favor: (5) – Frierman, DiDominico, Raymond, Taylor, Smolowitz

Opposed: (3) – Williamson, Brogan, Cowie-Haskell

Abstain - Marohn

Mr. Williamson believes that the AP shouldn't devote much time to this motion because the Council has established a process and the AP should follow it.

Mr. Brogan stated that this motion is out of line considering the process the Council has gone through the appropriate process and changing the process now as it is getting close to a decision is not appropriate.

Mr. Smolowitz wanted the Council to state the potential threats to each HAPC and that the only one that is highly justifiable is the inshore juvenile cod HAPC. Further, a quantification of rarity is lacking and the document does not include a description of how much each area is EFH or the EFH contained in the HAPC area (quotes from a Peter Auster memo).

Ms. Raymond said that the Associated Fisheries of Maine is on record disagreeing with the two phase process. If the Committee or Council agrees on this position (motion), it doesn't mean that these alternatives disappear. It means that they become part of Phase 2 where they belong and as such, she supports the motion.

Mr. Taylor stated that he knows conceptually that the entire shelf is HAPC but the hard thing is to pick out the most special places. While agrees with thrust of the motion, it is too complex to pass on to the Committee and suggested two riders:

Rider 1: In the process of multiple HAPC designations, we conduct a relative ranking of each alternative (why do we think they are important and which ones are the most important).

Rider 2: Link this directly to funding source.

Mr. Cowie-Haskell thought that the motion sets a bar that is way too high. In the 8 years since the Peter Auster comment was written, a great deal has been learned. Why should we expect that the science would get considerably better in only 8 years? We are required to use the best available science which is included in the RFP and the associated proposals. He does not support the motion.

Me. Smolowitz said that his intent is not to slow down the process but in fact to speed up the process.

Staff suggested a timeframe be added to the motion

Mr. Smolowitz stated that his timeframe is Phase 2 where the science should be matched with the management. The science needs to be very specific, what is being protected the quantify rarity and the cumulative impacts of the management measures.

Staff offered that this may have timeline ramifications for all of Phase 2.

Mr. Cowie-Haskell said that a clarification from the maker of the motion is in order especially if it is not asking for improved science before designating EFH.

Mr. Smolowitz said that the existing science needs to be applied. What is the rarity of the environment? What threat are you trying to protect this area from by species? What

is the existing science say about the change of biodiversity in the Northern Edge area? What is the threat? His overall objection is that we are dealing with TMS and not 3 min square.

Mr. Cowie-Haskell maintained that if Mr. Smolowitz is asking for that level of analysis, you are not going to be able to do it because science is not there. The bar is being set too high and it is unachievable based on current knowledge.

Mr. Smolowiz believes that the Council can't separate designation and management of HAPC areas.

Mr. Williamson stated that there are four criteria in the law for HAPC designations and 4 additional criteria set out by the Council. None of those criteria are about what management measures will be applied. All we should be doing today is commenting on the analysis and whether each one of them meets the eight criteria and not the impacts of management measures on fishing communities. This is an inappropriate motion and will vote against.

Audience:

Mr. Frulla stated that the HAPC designations need to be refined if based only on science and may not be a constructive conversation. Extending the Northern Edge is a reach. Boxing a whole of the GSC is out of reach and should link the discussion to management measures and concerned about the "trust us" approach.

Mr. Cowie-Haskell: He will issue a minority report on why he and others dissented on the motion and will provide it to staff prior to the Committee meeting.

EFH Designations

Ms. Frierman stated that there is no allowance for a species that doesn't have EFH where a species is hardy enough to survive under many conditions and has short life span. She said that in her opinion some species can survive anywhere.

Mr. Taylor asked questions on the methods which staff answered. He noted that the halibut preferred designation was a great improvement over the status quo.

Prey Species

Mr. Brogan hopes that the treatment of prey species as EFH and their removal from the ecosystem can be considered an adverse impact on EFH. Staff noted that prey species is included in the text descriptions for the new EFH designation alternatives.

Non-Fishing Impacts

Mr. Borgan noted that this is an area where HAPC designations can be beneficial as it can give the Council and the agency more to base their comments on and can be a way to protect fishery resources.

Other business

Mr. Williamson – Any discussion of this is looking forward to Phase 2. It is important to know after any management action, that over time a monitoring plan to evaluate the benefit of these areas is ongoing. To move in the direction of ecosystem-based fishery management, there is a need to take precautionary approach which is a managerial vs. science approach. Fisheries are dependent on the foundation of marine ecology to thrive. It is not enough to prevent overfishing. There is a foundation that has been affected over time by human-induced activities, not just fishing. When we take action on EFH designations, we need to understand better the intent of any management actions in Phase 2 and a good idea of what data will be needed to improve that. The monitoring and research experiment can be designed into the management action.

Motion 2

Williamson/Cowie-Haskell

Mangers should in considering the benefits, scale, shape and bounds of HAPC alternatives bear in mind how research and monitoring will be applied in conjunction with management actions taken in Phase 2.

Motion was withdrawn by the maker with permission from the seconder.