



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

9:00 AM

Tuesday, June 13, 2023

Via Zoom

Login: <https://shorturl.at/vDHPV>

Call In: 1-929-436-2866

Webinar ID: 899 8198 9879

Passcode: 581452

1. Introductions, Announcements and Review of June Agenda (9:00 – 9:05)
2. Review and Approval of May 2023 Draft Business Meeting Minutes (9:05 – 9:15)
3. Comments (9:15 – 9:45)
 - a. Chairman
 - b. Commissioner
 - c. Law Enforcement
 - d. Director
4. MFAC Annual Elections (9:45 – 10:00)
5. Action Items (10:00 – 10:30)
 - a. Recreational Scup Limits
 - b. Recreational Black Sea Bass Limits
 - c. Letter to Former DFG Commissioner Amidon
6. Discussion Items (10:30 – 11:15)
 - a. Federal Fisheries Management Update
 - b. Permitting Sub-Committee Update
 - c. Update on Ongoing Rule Making and Future Public Hearings
7. Presentation on DMF's Derelict Gear Removal White Paper (11:15 – 12:00)
8. Other Business (12:00-12:15)
 - a. Commission Member Comments
 - b. Public Comment
9. Adjourn (12:15)

All times provided are approximate and the meeting agenda is subject to change. The MFAC may amend the agenda at the start of the business meeting.

Future Meeting Dates

TBD

MARINE FISHERIES ADVISORY COMMISSION

May 16, 2023

DMF's South Coast Field Station at SMAST East

836 S. Rodney French Blvd

New Bedford, MA

In attendance:

Marine Fisheries Advisory Commission: Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Kalil Boghdan; Shelley Edmundson; Bill Amaru; Bill Doyle; Arthur "Sooky" Sawyer; Lou Williams. Note Tim Brady arrived at the beginning of the discussion on menhaden management and Sooky Sawyer departed following the horseshoe crab quota discussion.

Division of Marine Fisheries: Daniel McKiernan, Director; Mike Armstrong, Deputy Director; Bob Glenn, Deputy Director; Kevin Creighton, Assistant Director; Story Reed, Assistant Director; Jared Silva; Julia Kaplan; Nichola Meserve; Melanie Griffin; Anna Webb; Tracy Pugh; Jacob Dorothy; Alex Boeri; and Derek Perry.

Massachusetts Environmental Police: Lt. Matt Bass and Ofc. Eammon Mullaly.

Members of the Public: Phil Coates, Jeffery Coates, Justin Pascarelli, David Tahtinen, Joe Weinberg, John Preti, Deb Cramer, Sharl Heller, Brett Hoffmeister, Connor McManus, and Heather Haggerty.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane thanked everyone for their attendance. He then called the May 16, 2023 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW OF MAY 16, 2023 BUSINESS MEETING AGENDA

Chairman Kane stated his preference to move DMF's horseshoe crab recommendation from the first action item to the last action item. This would allow for the MFAC to address more routine business before addressing the more controversial horseshoe crab management agenda item. **Kalil Boghdan made a motion to approve the agenda with the amendment recommended by the Chair. Bill Amaru seconded the motion. The Chairman called the motion to a vote. The motion passed by unanimous consent.**

REVIEW AND APPROVAL OF MARCH 21, 2023 DRAFT BUSINESS MEETING MINUTES

Mike Pierdinock and Kalil Boghdan requested several grammatical edits to the draft March 21, 2023 MFAC business meeting minutes.

Chairman Kane sought a motion to approve the March 21, 2023 business meeting minutes. **Bill Doyle made the motion to approve March 21, 2023 business meeting minutes as amended by Mike Pierdinock and Kalil Boghdan. Sooky Sawyer seconded the motion. The motion passed by unanimous consent.**

CHAIRMAN'S COMMENTS

Chairman Ray Kane thanked MFAC members for their attendance. He stated Tim Brady was running late due to teaching commitments and would be arriving around 10:30AM.

Ray stated Ron Amidon was no longer the Commissioner of the Department of Fish and Game, as Governor Healey appointed Tom O'Shea to be the new Commissioner. Ray suggested the MFAC send a letter to former Commissioner Amidon recognizing his contributions to marine fisheries management in Massachusetts.

LAW ENFORCEMENT COMMENTS

Lt. Matt Bass handled the comments for the Massachusetts Environmental Police (MEP). Lt. Bass began his comments by discussing ongoing court cases involving lobster violations, as well as a menhaden overage case from last year. Jared Silva noted DMF took administrative action on the menhaden permit involved in the incident and recently reached an agreement requiring the permit holder to leave the fishery but allowing the permit to be transferred. Lt. Bass then discussed this year's right whale season, their recent migration out of state waters, and the opening of fixed gear fisheries. He noted the recreation fishing season had begun and MEP was observing some routine striped bass violations. With the start of the recreational fishing and boating season, MEP also had to respond to boating safety calls, including several fatalities.

Lt. Bass concluded his comments by discussing personnel. One additional officer recently started in the field and they were working to hire 14 more officers. These new hires would maintain personnel levels.

Mike Pierdinock asked if the menhaden that was illegally caught was counted against the quota. Story Reed stated that the illegal landings occurred in-season last year and DMF and MEP were able to document the total number of fish caught. Accordingly, it was counted against the 2022 quota.

DIRECTOR'S COMMENTS

Director Dan McKiernan announced that the Healey Administration appointed Tom O'Shea to be the new Commissioner of the Department of Fish and Game. Tom began his career as a wildlife biologist and manager at the Division of Fisheries and Wildlife before moving on to the Trustees of Reservations and with this appointment he is now coming back to state service. Dan looked forward to working with Tom and noted the unique perspective he will likely bring given his prior experience in state government.

Dan also expressed his thanks to former Commissioner Ron Amidon and highlighted some of Ron's numerous contributions.

Dan concluded his comments by discussing DMF's winter flounder spawning and eDNA research. He noted the MFAC were provided a detailed memo from Deputy Director Mike Armstrong on the subject and encouraged MFAC members to reach out to Mike directly on the subject.

ACTION ITEMS

Summer Flounder Management

Director McKiernan provided background on his recommendations regarding commercial summer flounder management. The recommendations enumerated below were designed to enhance the utilization of the state's available summer flounder quota.

1. Increase the January 1 – April 22 (Period I) trip limit from 3,000 pounds to 10,000 pounds.
2. Increase the summertime (April 23 – August 31) trip limit for net fishers from 500 pounds to 600 pounds.
3. Increase the summertime (April 23 – August 31) trip limit for hook and line fishers from 300 pounds to 400 pounds.
4. From September 1 – September 30, increase the trip limit from 800 pounds to 1,500-pound trip limit for all gear types if more than 20% of the quota remains; if less than 20% of the quota remains the trip limits for the April 23 – August 31 period will apply.
5. From October 1 – December 31, increase the trip limit from 3,000 pounds to 10,000 pounds provided more than 5% of the quota remains; if less than 5% of the quota remains the trip limits from the September 1 – September 30 period will apply.
6. Revise the bycatch allowance rule to match the federal fishery management plan (FMP) and prohibit any vessel fishing with mesh smaller than 5.5" diamond or 6" square from retaining, possessing, or landing more than 100 pounds of summer flounder.
7. Adjust the summer flounder landing window to allow vessels to land summer flounder between 6AM and 10PM.

Chairman Kane opened the floor for initial discussion and questions on DMF's recommendations.

Sooky Sawyer asked about what would occur if the Period I (January 1 – April 22) fishery exceeded its quota allocation (30% overall). Jared Silva stated that once the winter fishery achieves its allocation the trip limit is automatically reduced to 100 pounds. This effectively limits the extent to which the allocation can be exceeded to ensure the Period II fishery has access to their quota share.

Mike Pierdinock asked if these recommendations would apply differently to state and federal permit holders. Director McKiernan and Jared Silva explained how summer flounder is permitted and managed at the state and federal levels. A federal permit is needed to fish for summer flounder in federal waters and a state permit is needed to fish for, possess, and land summer flounder in Massachusetts. The federal government does not establish a federal waters trip limit. Therefore, vessels are constrained by the limits set by the state (or states) where they will land the fish. The wintertime and fall fisheries generally occur in federal waters and are managed to accommodate offshore fishing activity. The summertime fishery, while occurring in both state and federal waters, is managed with primary consideration given to the state waters fishery.

Bill Amaru stated his general support for DMF's recommendations.

After this brief discussion, Chairman Kane brought forward each recommendation. DMF's first recommendation sought to establish a 10,000-pound summer flounder trip limit during the period of January 1 – April 22. Chairman Kane welcomed additional discussion, but there were no comments or questions.

Chairman Kane sought a motion. **Sooky Sawyer made a motion to approve the Director's recommendation. Bill Doyle seconded the motion. The motion was passed unanimously 7-0-1, with Chairman Kane abstaining.**

DMF's second recommendation sought to establish a 600-pound summer flounder trip limit for vessels using net gear during the period of April 23 – August 31. Chairman Kane welcomed discussion.

Mike Pierdinock stated he could not support the recommended trip limit increase. He noted this season occurs during the recreational fishing season and the trip limit increase could increase inshore fishing activity and negatively impact local availability. Jared Silva responded that he did not expect cumulative inshore landings to approach levels that occurred even five-years ago because of the significant attrition in the trawl fishery. This action was being recommended to keep the fishery profitable for the remaining participants and avoid further attrition.

Mike Pierdinock then asked about the minimum net mesh size and how the increase in trip limit would impact bycatch. Mike P. was particularly concerned about how increase commercial fishing activity may impact recreational fisheries, particularly given the lack of larger, legal sized summer flounder available inshore. DMF staff did not expect the trip limit increase would result in a measurable increase in bycatch and discarding given the large mesh (6.5") required of this fishery and that scup are among the most common bycatch species and the scup quota is very underutilized.

Bill Amaru opined the additional 100 pounds makes the fishery more profitable. Bill suggested DMF could address Mike Pierdinock's concerns through changes to the recreational fishing regulations. In particular, he thought DMF should consider a change to the recreational minimum size so anglers could have better access to the smaller fish

that are generally available inshore. Director McKiernan stated he is concerned about the disparate minimum sizes between the commercial (14") and recreational (16.5") sectors and how a high recreational minimum size may be negatively impacting the recreational fishery. However, he stated that the recreational rules along the coast are status quo for this year. Moreover, unless liberalizations in harvest are allowed in future years, any change to the minimum size would have to be balanced against season length and bag limit.

Chairman Kane sought a motion. **Bill Amaru made a motion to approve the Director's recommendation. Lou Williams seconded the motion. The motion was passed 6-1-1, with Mike Pierdinock voting against the motion and Chairman Kane abstaining.**

DMF's third recommendation sought to establish a 400-pound summer flounder trip limit for hook and line fishers during the period of April 23 – August 31. Chairman Kane welcomed discussion.

Mike Pierdinock stated that while he did not support the prior recommendation, he did support this recommendation. Mike P. noted hook and line gear was more benign and did not potentially pose the same bycatch and discard concerns as net gear.

Chairman Kane sought a motion. **Sooky Sawyer made a motion to approve the Director's recommendation. Shelley Edmundson seconded the motion. The motion was passed unanimously 7-0-1, with Chairman Kane abstaining.**

DMF's fourth recommendation sought to establish a 1,500-pound summer flounder trip limit for all gear types during the period of September 1 – September 30, provided more than 20% of the quota remains available on September 1; if less than 20% of the quota is available on September 1, the summertime trip limits remain in effect. Chairman Kane welcomed discussion.

Mike Pierdinock stated he could not support the motion for the same reasons he did not support the increase to the summertime trip limit for net fishers.

Bill Amaru stated he did not support the recommended motion either. He felt such a substantial trip limit could negatively impact inshore fishing conditions, particularly if it invites larger offshore vessels into inshore areas.

Bill Doyle noted the limited support for the recommendation among the MFAC members representing both commercial and recreational fishing interests. He asked how the MFAC could refrain from acting on this recommendation. Jared Silva suggested they could not move the motion or vote a motion down. Alternatively, Director McKiernan withdrew his recommendation.

DMF's fifth recommendation sought to establish a 10,000-pound summer flounder trip limit during the period of October 1 – December 31 period, provided more than 5% of

the quota remains available on October 1; if less than 5% of the quota is available on October 1, the September trip limits remain in effect. Chairman Kane welcomed discussion, but there were no comments or questions.

Chairman Kane sought a motion. **Sooky Sawyer made a motion to approve the Director's recommendation. Lou Williams seconded the motion. The motion was passed unanimously 7-0-1, with Chairman Kane abstaining.**

DMF's sixth recommendation sought to adjust the landing window to allow the commercial possession and landing of summer flounder in Massachusetts between 6AM and 10PM year-round. Chairman Kane welcomed discussion.

Mike Pierdinock asked about the timing of the current landing window. Jared Silva stated the window is currently 6AM to 8PM. This measure was adopted years ago when the fishery was more quota limited to enhance trip limit enforcement. Jared noted that given current conditions in this fishery, adding two hours in the evening would afford greater flexibility to fishers and dealers to offload fish. Of particular concern was dealing with congestion on Cape Cod during the summer, particularly given the lack of shoreside processing infrastructure and fewer trucks are being sent to service the various ports.

Chairman Kane sought a motion. **Sooky Sawyer made a motion to approve the Director's recommendation. Bill Doyle seconded the motion. The motion was passed unanimously 7-0-1, with Chairman Kane abstaining.**

DMF's seventh recommendation sought to refine the bycatch allowance rule to match the federal fishery management plan and prohibit any vessel fishing with mesh smaller than 5.5" diamond or 6" square from retaining, possessing, or landing more than 100 pounds of summer flounder in Massachusetts. This rescinds the requirement that this 100-pound limit apply if a vessel is in possession of more than 250 pounds of longfin squid. Chairman Kane welcomed discussion, but there were no comments or questions.

Chairman Kane sought a motion. **Kalil Boghdan made a motion to approve the Director's recommendation. Bill Amaru seconded the motion. The motion was passed unanimously 7-0-1, with Chairman Kane abstaining.**

Menhaden Management

Director McKiernan briefed the MFAC on his menhaden recommendations. DMF held two separate public scoping meetings and a public hearing to discuss the management of this fishery and develop these recommendations. Dan asked Nichola Meserve to speak to each recommendation, which are described in further detail below.

Chairman Kane opened the recommendation up for initial discussion and questions.

Kalil Boghdan asked how many fishers are generally active. Nichola stated that there are about two to three carrier vessels and about 12 full-time harvesters.

Lt. Bass asked for clarification regarding the carrier vessel restrictions. Story Reed spoke to the issue and discussed how their use is driven by operational scale.

Ray Kane asked who from DMF would annually inspect purse seines. Jared Silva stated this would be done by DMF's Fisheries Dependent Investigations program. The inspections will occur annually (prior to the fishing season) or in-season should the net size be altered. New inspections would not be required if the net is repaired provided dimensions are not altered.

Tim Brady asked for clarification on whether the harvesters can sell over the rail. Nichola Meserve and Jared Silva confirmed this is allowed provided they fisher also holds a bait dealer permit.

Mike Pierdinock asked for clarification on the hand hauling rules for Boston Harbor. Dan, Nichola, and Jared explained the history of the rule and noted the primary Boston Harbor seiner requested it be eliminated to allow him to fish more efficiently. Given the various harvest restrictions and the carrier vessel prohibition, DMF did not anticipate this change would enhance user group conflicts.

Lou Williams expressed concern over the recommended June 14 control date for the menhaden endorsement and Coastal Access Permit (CAP) for Purse Seines. He noted the control date could be used in a manner that would exclude fishers who made investments to participate in the fishery this season. He suggested that this control date be moved to a date certain this summer to be inclusive of new entrants this year. There was discussion among Lou Williams, Ray Kane, Director McKiernan, and Jared Silva about how the control date could be used.

After this brief discussion, Chairman Kane brought forward each recommendation.

DMF's first recommendation addressed the incidental catch and small-scale fishery rules. DMF sought to:

- Define the following gear groupings for the harvest of menhaden:
 - a. Small-scale directed gear: cast nets, traps (excluding floating fish traps), pots, haul seines, hook and line, bag nets, hoop nets, hand lines, and bait nets.
 - b. Non-directed gear: pound nets, anchored/stake gillnets, trammel nets, drift gill net, trawls, fishing weirs, fyke nets, and floating fish traps.
- Restrict landings after the quota is taken to small-scale directed and non-directed gears only (i.e., no purse seines) at a 6,000-pound limit harvested from state waters.
- Restrict landings during the Episodic Event Set Aside (EESA) fishery—in the event this additional in-season quota is available to Massachusetts—to a 6,000-lb trip limit (both limited access and open access) harvested from state waters;

the limited access trip limit may be modified by the Director to a maximum of 120,000 pounds.

Chairman Kane welcomed additional discussion on this recommendation, but there were no questions or comments.

Chairman Kane sought a motion. **Sooky Sawyer made a motion to approve the Director's recommended. Lou Williams seconded the motion. The motion was passed unanimously 8-0-1, with Chairman Kane abstaining.**

DMF's second recommendation addressed fishery limits for the quota managed fishery. DMF sought to:

- Adopt a June 15 menhaden fishery season start date and restrict landings prior to this date to small-scale directed and non-directed gears only (i.e., no purse seines) at a 6,000-pound limit harvested from state waters, with an exception for limited access weir fishers to land at a 120,000-pound limit.
- Revise the limited access fishery's quota use triggers and trip limits, as follows:
 - 120,000-pound trip limit until 50% quota use
 - 25,000-pound trip limit from 50% quota use until 90% quota use, rather than 85% as proposed for public comment.
 - 6,000-pound trip limit from 90% quota use until 100% quota use, unless the 90% trigger is tripped after August 31, in which case the trip limit shall remain 25,000 pounds until 100% quota use.
- Beginning in 2024, require that all vessels used to carry or hold fish in the limited access fishery (i.e., harvester or carrier vessel) have their fish hold capacity certified and marked to demonstrate 25,000-lb and 120,000-lb storage levels by an accredited marine surveyor.
- Restrict landings during the EESA fishery to a 6,000-pound trip limit harvested from state waters; the limited access trip limit may be modified by the Director to a maximum of 120,000 pounds.

Chairman Kane welcomed additional discussion on this recommendation.

Bill Amaru asked about the cost of fish hold surveys. Story Reed stated the expected cost was approximately \$800, which was based on feedback from fishers who have been required to do in other states.

Chairman Kane sought a motion. **Sooky Sawyer made a motion to approve the Director's recommendation. Tim Brady seconded the motion. The motion was passed unanimously 8-0-1, with Chairman Kane abstaining.**

DMF's third recommendation addressed purse seining restrictions. This included adopting new rules and codifying certain long-standing permit conditions. DMF sought to:

- Open fishing days of Monday–Thursday until 50% quota use, thereafter Monday–Friday until 100% quota use.
- State-wide closed days of Saturdays, Sundays, Memorial Day, July 4, and Labor Day.
- State-wide, year-round night fishing closure.
- Year-round closure of Buzzards Bay.
- Friday closed day in Beverly Harbor.
- Year-round closures in certain Boston Harbor areas (i.e., Charles River, Mystic River, Chelsea River, Dorchester Bay, Neponset River, Marina Bay, Weir River, and Winthrop Harbor, all upstream of established landmarks, and “A Anchorage Areas” with an exception for off Merrymount in Quincy).
- A maximum purse seine size of 600’ in length within the Inshore Restricted Waters. This action eliminates the hand haul and 400’ x 60’ maximum net size requirements for the areas of Hingham Bay, Winthrop Bay, and Quincy Bay within Boston Harbor, thus enabling mechanical hauling of a 600’ length net consistent with other open Inshore Restricted Waters.
- All purse seine nets subject to net size restrictions must be annually inspected and tagged by DMF prior to fishing for compliance with these restrictions. After its certification, any net that is altered with regards to the net size restrictions must be re-inspected prior to its use. An exemption will be granted for nets certified (with documentation) in other states under a comparable program.
- The Director may issue permit conditions further affecting the use of purse seines.

Chairman Kane welcomed additional discussion, but there were no comments or questions.

Chairman Kane sought a motion. **Sooky Sawyer made a motion to approve the Director’s recommendation. Tim Brady seconded the motion. The motion was passed unanimously 8-0-1, with Chairman Kane abstaining.**

DMF’s fourth recommendation addressed carrier vessel restrictions. This included adopting new rules and codifying certain long-standing permit conditions. DMF sought to:

- Allow only limited entry permit holders to use carrier vessels and only when commercial trip limits are at 120,000-lb and 25,000-lb (i.e., from June 15 until 90% quota use).
- Allow a harvester vessel to offload to one or more carrier vessels per day, provided the applicable limited entry trip limit is not exceeded in the aggregate. The public hearing proposal erroneously indicated that a harvester vessel would be limited to using a single carrier vessel, which is counter to the current allowance that DMF did not intend to change.
- Restrict a carrier vessel from receiving menhaden from only a single harvester vessel per day and only per day on any day open to purse seining.

- Restrict a carrier vessel from receiving, possessing, and landing more than the applicable limited entry trip limit during any calendar day and offloading more than once per day.
- Prohibit year round the use of carrier vessels in Boston Harbor.

Chairman Kane welcomed discussion, but there were no comments or questions.

Chairman Kane sought a motion. **Tim Brady made a motion to approve the Director's recommendation. Shelley Edmundson seconded the motion. The motion was passed unanimously 8-0-1, with Chairman Kane abstaining.**

DMF was also moving forward with a series of new permitting and reporting measures. Under state law, these new rules do not require MFAC approval. However, the Director requested the MFAC's feedback. For reporting, DMF sought to require daily electronic harvester reports prior to landing from all limited access permit holders beginning in 2024. On permitting, DMF sought to adopt a June 14, 2023 control date for Menhaden permit endorsements and for CAP-Purse Seine permit endorsements. The use of the control date would be subject to future rule making.

Lou Williams reiterated his objections to the control date not being inclusive of individuals who invested to fish this season. Lou recognized that DMF was not currently moving to use the control date, and when and if this does occur, criteria could be developed to be inclusive of these fishers. However, he suggested DMF provide these fishers with certainty now. Sooky Sawyer agreed with Lou William's position and suggested an August 1 control date. He noted this would allow new entrants time to establish landings history this season. Director McKiernan stated he was amenable to this change. There was a consensus among MFAC members for an August 1 control date and Dan agreed to adopt it.

Groundfish Maximum Retention and Electronic Monitoring Exemption

Jared Silva discussed the background and rationale regarding the recommended exemption to groundfish minimum sizes for vessels participating the federal groundfish maximum retention and electronic monitoring (MREM) program.

Dan McKiernan recommended the MFAC vote in favor of adopting regulatory language to allow (1) authorized commercial fishers to possess, land, and sell and (2) authorized dealers to acquire and possess groundfish that do not conform to the state's minimum size standards provided they were lawfully caught in federal waters by sector vessels participating in the federal MREM program.

Chairman Kane welcomed discussion, but there were no questions or comments. Chairman Kane sought a motion. **Tim Brady made a motion to approve the Director's recommendation, Shelley Edmundson seconded the motion. The motion was passed unanimously 8-0-1, with Chairman Kane abstaining.**

Horseshoe Crab Management

Director McKiernan briefed the MFAC on DMF's recommended horseshoe crab management measures, which are described below.

The first recommendation was to adopt an April 1 – May 31 closure to protect spawning horseshoe crabs. During this closure, the retention, possession, and landing of horseshoe crabs by any person will be prohibited. Exempt from this are pot fishers in possession of horseshoe crabs as bait who can document the lawful source of the crab. This will replace the existing five-day lunar closures around each new and full moon between April 16 and June 30. If approved this would go into effect in 2024.

The second recommendation was to adopt a biomedical horseshoe crab quota of 200,000 crabs to be allocated equally among all permitted biomedical processors and also reduce the bait fishery quota from 165,000 horseshoe crabs to 140,000 horseshoe crabs.

The third recommendation was to establish a 100-crab limit from January 1 – March 31 and a 400 crab limit from June 1 – December 31 (or quota) for all regulated fishery endorsement holders. This recommendation was contingent on the approval of the first recommendation adopting an April 1 – May 31 spawning closure.

The fourth recommendation was to adopt those best management practices for biomedical dealers and processors currently established by permit condition as regulation. This included: (1) handling, transporting, and storing horseshoe crabs in containers that are no more than 2/3 full; (2) keeping horseshoe crabs in containers where they can be kept moist and segregated by source (i.e., state biomedical hand harvest, state biomedical trawl harvest, out-of-state biomedical, rent-a-crab) and area of harvest (e.g., DSGA); (3) maintaining temperature-controlled environments where ambient air temperature can be held between 50°F and 60°F in transit and 70°F at the processor facility; (4) marking all bled crabs with a distinct mark annually established by DMF; (5) returning all bled horseshoe crabs to the sea with hand harvested animals returned to the shellfish growing area where they were harvested and trawl caught animals returned to an adjacent body of water—this activity may be contracted out to a third party; and (6) not keeping horseshoe crabs out of seawater for periods of time longer than 36 consecutive hours.

The fifth recommendation was to adopt those best management practices for biomedical harvesters currently established by permit condition as regulation. This included: (1) requiring the sale of biomedical crabs only to a licensed biomedical processor or dealer; (2) restricting a harvester from concurrently participating in the bait and biomedical fishery; (3) prohibiting a harvester from retaining, possessing, or landing horseshoe crabs that have the current year's mark on them; and (4) requiring horseshoe crabs be stored in containers no more than two-thirds full, except if actively fed by seawater.

Chairman Kane opened the floor for initial discussion and questions regarding these recommendations.

Shelley Edmundson suggested moving the spawning closure start date from April 1 to April 16 in order to potentially enhance conch pot bait availability for the spring fishery.

Sooky Sawyer asked for Shelley to elaborate on the mid-April closure start date. Shelley stated that the extra two weeks may allow for some additional harvest to meet springtime bait and biomedical demand. This could help assuage some concerns from the conch pot fishery regarding bait availability and also make crabs available to the biomedical processors early in the season through the rent-a-crab program.

Shelley then advocated for the MFAC to support DMF's spawning closure recommendation. She was concerned how harvest of this animal during the spawning period may impact this resource over the long-term.

Bill Amaru stated he intended to abstain from voting on DMF's horseshoe crab recommendations. However, he spoke to the general robust health of horseshoe crab populations on Cape Cod and to actions taken by Cape Cod municipalities to enhance shoreline habitat. He voiced his support for status quo management until additional scientific studies are conducted and demonstrate further conservation is warranted.

Bill then asked about the timing of horseshoe crab spawning activity. Director McKiernan stated spawning beach survey data shows spawning activity typically begins around May 1. The majority of this spawning activity occurs throughout May but continues until the end of June. During the spawning period, activity typically peaks around new and full moon tides, but the scientific literature and fishery dependent data demonstrate spawning and staging are occurring outside of these lunar events during the spring. While the existing spawning closures protect the animals from harvest during peak spawning activity, they do not fully protect the animals from harvest during this vulnerable life stage. The Director strongly advocated for additional spawning protections.

Kalil Boghdan acknowledged horseshoe crab management was complicated and controversial with little common ground among stakeholders. He also stated he generally opposed the harvest of any species when aggregated to spawn. Kalil commended DMF for their thoughtful recommendations, which he felt attempted to balance the varied interests, and stated he would support the recommended spawning closure.

Tim Brady asked if horseshoe crabs are overfished. Dan and Bob Glenn discussed the horseshoe crab stock assessment. At present, biological reference points for overfished and overfishing have not been adopted, a product of the localized nature of the species. Rather, the stock assessment compares surveys within a region to a 1998 baseline to determine if stock conditions have improved, declined, or remained neutral. Massachusetts is part of the Northeast Region and the 2019 stock assessment found

the region's population had improved from poor condition to neutral condition. Massachusetts population survey trends were generally positive and drove this improved assessment. Tim noted the proposed spawning closures would have a severe negative economic impact on hand harvesters and he expressed concerns about adopting such measures absent scientific evidence the population was overfished or otherwise declining.

Lou Williams agreed with Bill Amaru and Tim Brady.

Dan and Bob Glenn acknowledged current horseshoe crab surveys show positive trends. However, they do not begin to observe animals until they are three to four years old. Given the life history of this animal, there are no existing surveys that can reliably project recruitment. Absent such an early warning system, DMF and the MFAC can only react once we observe population declines. Given the importance of this resource to the various stakeholders, and to public health generally, DMF was recommending a precautionary management approach be adopted. This was of particular given recent increases in harvest driven by the biomedical fishery. Dan also clarified that were his recommendation adopted, hand harvesters could fish during June, a period when crabs are still accessible to these fishers.

Mike Pierdinock asked about the recommended spawning closure dates and how it may impact landings. Dan stated that prior to May 1, horseshoe crab harvest tends to be limited and primarily from mobile gear fishers (e.g., shellfish dredges) who take these crabs as bycatch. Then during May and early June, landings are dominated by the hand harvest fishery. By mid-June, hand harvest wanes with spawning activity and effort shifts over to the mobile gear fishery (e.g., Nantucket Sound trawl fishery). Given the hand harvest fishery targets horseshoe crabs during their spawning period, and most spawning activity occurs in May, the economic impacts of a spawning closure on these fishers are disproportionate to other gear types. As spawning typically does not begin until early May, Dan also stated he was comfortable moving the start of spawning closure back later into April, provided that would address some of the MFAC's concerns regarding bait and biomedical markets.

Mike Pierdinock then asked for DMF to elaborate on the stock assessment for horseshoe crabs. Dan and Bob Glenn explained the stock assessments methods. Bob stated the state's population indices are based both on spawning beach surveys and DMF's trawl survey. These surveys have generally demonstrated the population has expanded over the past decade in Massachusetts. However, harvest increased dramatically in 2022 and DMF anticipates harvest will remain elevated given market demand. This raises substantial concerns about the long-term health of this population, particularly absent early-life stage surveys that can accurately predict recruitment.

Kalil Boghdan asked if spawning occurred from during the summer and fall. Bob Glenn stated spawning peaks in May but continues to occur into June. Spawning horseshoe crabs are not frequently observed on beaches after late-June. Kalil stated he would

support a spawning closure that began later in April if such an amendment was necessary for the recommendation to pass.

Bill Doyle stated his support for a May spawning closure. However, as a compromise measure, he floated the idea of a truncated May 1 – May 25 closure. This would result in the same total number of closed days as the existing lunar closures, but the closures would instead occur during peak spawning season rather than around peak spawning tides.

Mike Pierdinock asked how a May closure would impact bait and biomedical markets. Director McKiernan and Jared Silva discussed the public comments received on this subject. Ray Kane welcomed members of the public to speak to this issue.

Brett Hoffmeister from the Associates of Cape Cod spoke to the impacts it would have on their ability to train staff and begin processing horseshoe crabs. He also expressed concerns about how the closure would negatively impact the fishers he worked with over the years. Brett suggested DMF consider instead a springtime sub-quota coupled with reduced harvest limits.

Heather Haggerty, from Big G Seafood, stated that 65% of the bait crabs they purchase are provided by beach harvesters. A spawning closure would severely reduce the crabs seasonally available to the whelk pot fishery, would effectively eliminate beach harvest, and would make the bait market almost entirely reliant on dragger caught crabs.

Bill Amaru and Lou Williams raised a question regarding the benefit of protecting spawning animals. Bob Glenn stated that in a vacuum there is no difference between taking a mature animal during the spawning season, as opposed to outside the spawning season. However, some life history traits make animals exceptionally vulnerable to harvest during their spawning periods and fishing activity during these periods may disrupt and negatively impact spawning. This is the case with horseshoe crabs as they predictably come up into the intertidal zone to stage and spawn.

Based on MFAC discussion, Dan McKiernan amended his spawning closure recommendation. His amended recommendation was to adopt an April 21 – May 31 spawning closure. With this amendment, he also altered his trip limit recommendation. Provided the spawning closure were adopted, the 100-crab limit would then apply from January 1 – April 20.

Bill Doyle sought clarification that this would allow commercial horseshoe crab fishing during June. Director McKiernan affirmed this.

Chairman Kane sought to move on from general discussion. He then welcomed discussion on DMF's recommended April 21 – May 31 spawning closure. There were no additional comments or questions. The chair then allowed for brief public comment (one in favor; one in opposition).

John Preti spoke on behalf of the hand harvesters. He objected to DMF's spawning closure recommendation. He stated the proposals would end the hand harvest fishery. He advocated for more science before such a decision is made.

No comments were made in favor of the recommended spawning closure.

Chairman Kane sought a motion. **Bill Doyle made a motion to approve the Director's recommendation. Shelley Edmundson seconded the motion. The Motion failed 3-4-2. Bill Doyle, Kalil Boghdan, and Shelley Edmundson voted in favor; Sooky Sawyer, Lou Williams, Mike Pierdinock, and Tim Brady voted against; Chairman Kane and Bill Amaru abstained.**

Dan McKiernan clarified that because this recommendation failed, he was withdrawing his trip limit recommendation.

Chairman Kane then welcomed further discussion regarding DMF's recommendation on horseshoe crab quota. The first aspect of this recommendation was to adopt a biomedical horseshoe crab quota of 200,000 crabs to be allocated equally among all permitted biomedical processors. The second aspect was to reduce the bait fishery quota from 165,000 horseshoe crabs to 140,000 horseshoe crabs. If approved these quota adjustments would go into effect this season.

Kalil Boghdan argued for a lower biomedical quota of 175,000 crabs. He noted this would be consistent with harvest in 2022.

Tim Brady asked about the presumed mortality rates in the biomedical fishery. DMF's horseshoe crab biologist, Derek Perry, spoke to the issue. Scientific literature shows mortality rates range from 3-30%. The assessment uses a 15% mortality, thereby assuming 85% survivability. However, this mortality rate does not consider potential mortality that may occur during harvest and if penned. Moreover, there is a lack of data on the sub-lethal impacts of bleeding on fitness and spawning.

Bill Amaru noted less than 40% of the horseshoe crab's blood is taken during biomedical processing.

Mike Pierdinock asked if the recommendation took biomedical mortality into account. Jared Silva stated the quota figures were developed to control total mortality, which considered anticipated biomedical mortality.

Bill Doyle asked for clarification about the confidentiality rules that restricted DMF's ability to discuss biomedical harvest. Dan and Jared provided clarification regarding how G.L. c. 130, §21 applies.

Tim Brady, Bill Doyle, Bill Amaru, and Mike Pierdinock stated their support for the recommended motion.

Mike Pierdinock requested Chairman Kane to allow the public to speak to the potential impacts the reduced bait quota may have on the bait market. Chairman Kane recognized from Heather Haggerty from Big G seafoods. Heather stated the reduced quota would negatively impact bait availability.

Chairman Kane sought a motion. **Bill Doyle made a motion to approve the Director's recommendation. Tim Brady seconded the motion. The motion was passed 6-1-2, with Kalil Boghdan voting against the motion and Chairman Kane and Bill Amaru abstaining.**

Chairman Kane then welcomed further discussion regarding DMF's recommendation regarding adopting the best management practices for biomedical dealers and biomedical processors.

Jared Silva briefly explained how this recommendation differs from the initial public hearing proposal and why. This is described in detail in DMF's memo.

There were no additional questions or comments.

Chairman Kane sought a motion. **Bill Amaru made a motion to approve the Director's recommendation. Lou Williams seconded the motion. The motion was passed 6-0-2, with Chairman Kane and Bill Amaru abstaining.**

Chairman Kane then welcomed further discussion regarding DMF's recommendation regarding adopting the best management practices for biomedical harvesters.

Jared Silva briefly explained how this recommendation differs from the initial public hearing proposal and why. This is described in detail in DMF's memo.

There were no additional questions or comments.

Chairman Kane sought a motion. **Bill Doyle made a motion to approve the Director's recommendation. Tim Brady seconded the motion. The motion was passed 6-0-2, with Chairman Kane and Bill Amaru abstaining.**

Director McKiernan stated that DMF was also moving forward with a series of new permitting and reporting measures for 2024. Under state law, these new rules do not require MFAC approval. However, the Director sought the MFAC's feedback.

With regards to permitting, DMF sought to: (1) establish a new wholesale dealer biomedical processor permit for any entity processing horseshoe crabs for blood, which may be endorsed for the primary purchase of horseshoe crabs directly from biomedical harvesters; (2) adopt a May 16, 2023 control date to limit the future issuance of biomedical processor permits; (3) establish a new wholesale dealer biomedical dealer permit for any entity conducting the primary purchase of horseshoe crabs from a biomedical harvester for sale to a biomedical processor; and (4) limiting the issuance of

biomedical harvester permits to only those individuals who have been endorsed by a biomedical dealer or processor.

On reporting, DMF sought to require bait and biomedical fishers electronically report all trips electronically on a daily basis. This reporting requirement would be to the permit and therefore apply to all their commercial fishing activity, not just horseshoe crabs. Additionally, DMF would codify existing permit conditions requiring biomedical processors report mortality at all stages.

Bill Doyle expressed concern over how the biomedical permitting system limits competition.

Mike Pierdinock supported the permitting actions.

Bill Amaru expressed concern over reporting requirements. Story Reed and Anna Webb elaborated on what would be required and how the trips would be reported. The purpose of the requirement would be to obtain more real-time information regarding where horseshoe crabs are being harvested from. The data can be inputted into a smart phone application even if outside of cell service and then would upload once in service range.

Chairman Kane welcomed comments from a member of the public.

Justin Pascarelli objected to the permitting proposals. Specifically, he opposed restricting biomedical harvest to only those persons endorsed by a biomedical processor or dealer and using a control date to restrict the issuance of biomedical processor permits. He felt this would limit the ability for new entrants into this fishery and advocated for DMF to issue biomedical harvester permits to any commercial fishery with prior history in the horseshoe crab bait fishery.

Kalil Boghdan and Brett Hoffmeister discussed the ongoing development of a synthetic alternative to extracting horseshoe crab blood for limulus amebocyte lysate production and how the development of such alternatives may impact demand for horseshoe crabs.

DISCUSSION ITEMS

Interstate Fisheries Management Update

Emergency Action on Striped Bass

Deputy Director, Dr. Mike Armstrong, provided a presentation on the emergency action by the Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Management Board (Board) to implement a 31" maximum recreational size limit. This adjusted the ocean fishery's slot limit from 28" to less than 35" to 28" to less than 31". Mike noted the ASMFC will host five virtual public hearings on this emergency action.

Director McKiernan was hopeful DMF would be able to implement emergency rules by Memorial Day, along with the other New England states.

The ASMFC's emergency action responded to the doubling in recreational harvest from 2021 to 2022. This increase in harvest greatly reduced the probability of rebuilding the striped bass stock by 2029. The new slot limit is expected to reduce harvest in 2023 by protecting more than half of the dominant 2015 year-class. This year class began to age into the slot last year and drove the harvest increase. The 2015 year-class is important to the future of striped bass because it is one of the few large year-classes produced over the past 20-years.

Then, Mike A. discussed the ASMFC's development of Addendum II to the interstate fishery management plan. This addendum will be drafted this summer for implementation in 2024. It will investigate a range of commercial and recreational fishery management options to have the stock stay on track to rebuild by 2029.

Ray Kane noted New Jersey did not support the emergency action and there is some chatter about them not implemented compliant measures. He asked how the ASMFC would address non-compliance. Nichola and Dan explained the Board would have to vote up a non-compliance finding. Then the Secretary of Commerce could impose a moratorium on their fishery (both commercial and recreational). There was some additional speculation about the timeline for such actions.

Mike P. sought clarification on whether the upcoming ASMFC public hearings will just address the emergency action or will also address Addendum II. Mike A. confirmed they would narrowly deal with the emergency action. Mike P. requested DMF keep the MFAC updated on the development of Addendum II.

Tim Brady asked why recreational catch and harvest increased last year and why a similar increase was not observed in the commercial fishery. Mike A. stated the increase in recreational catch and harvest was driven by nearshore availability of fish and the robust 2015-year class aging into the harvestable slot limit. The commercial fishery, unlike the recreational fishery, is hard capped by a quota and fishing activity is restricted once the quota is taken. However, the 2022 commercial quota was utilized more expediently than it had been in recent years reflecting strong fishing conditions. Mike P. added there was abundant forage nearshore last year, which made fishing conditions particularly strong and likely contributed to elevated catch and effort.

Mike P. expressed frustrations from the for-hire fishery regarding the emergency action. Certain for-hire operations informed him their booked trips were now being cancelled. Given these economic impacts, he supported an exemption for the for-hire fishery. Locally, the economic impacts are heightened this year given mandatory reductions in harvest for scup and black sea bass and continued limited access to cod. Mike P. then argued in favor managing the for-hire fishery separately from the recreational fishery because there are diverging interests and the business interests of the for-hire industry are being negatively impacted.

Review of May ASMFC Meeting

Dan McKiernan provided the MFAC with an update on the recent May 2023 ASMFC meeting.

The American Lobster Management Board passed Addendum XXVII. This addendum establishes triggers to implement management measures (i.e., gauge size and escape vent adjustments) to make the Gulf of Maine/Georges Bank spawning stock biomass more resilient to a changing environment. Additionally, it will amend existing measures to enhance consistency across Lobster Conservation Areas 1, 3, and Outer Cape, which fish on the Gulf of Maine/Georges Bank stock. DMF will need to implement regulatory amendments to comply with this addendum and anticipates the public hearings will occur later this year for implementation in 2024.

There has been persistent public interest, particularly in New England, for the development of a minimum size for Atlantic bonito. This is due to the increasing prevalence of juvenile fish in the Gulf of Maine and the use these juvenile fish as bait. The ASMFC's Policy Board considered possible paths for the management of Atlantic bonito at the interstate level, however, it is unlikely the ASMFC will develop a FMP for this species (or false albacore). Mike Pierdinock and Dan then discussed the management of Atlantic bonito at the ICCAT and NOAA's Highly Migratory Species office.

Dan McKiernan stated DMF intends to pursue changes to its smooth dogfish commercial trip limit to better utilize the available quota and reduce regulatory discarding. Such changes must be reviewed and approved by the Coastal Shark Management Board. Jared Silva stated DMF was informed this could likely be done through an email ballot, potentially allowing for an in-season adjustment this year.

Update on Ongoing Rule Making and Future Public Hearings

Jared Silva stated DMF will host a virtual public hearing on its recreational black sea bass and scup limits on the evening of June 5 (6PM). These limits were enacted on an emergency basis on April 28. A final recommendation will be brought to the MFAC at their June business meeting. DMF anticipates enacting the emergency recreational striped bass slot limit adjustment by Memorial Day. This will likely proceed to public hearing during the summer and then to MFAC approval in July or August. Lastly, NOAA Fisheries is expected to finalize recreational cod and haddock limits in June 2023. DMF will adopt complementary limits on an emergency basis. The timing of the public hearing and final recommendation schedule will be similar to that affecting striped bass. As a result of this timeline, Jared anticipated the MFAC may need to hold brief meetings in both July and August.

Federal Fisheries Management Update

This discussion item was delayed until the MFAC's June business meeting.

OTHER BUSINESS

Commission Member Comments

Bill Amaru thanked everyone for their hard work and commended the MFAC for a productive meeting.

Mike Pierdinock discussed a bluefin tuna study that involves cooperative community research. Dan stated that DMF's outreach staff would help promote this effort.

Ray Kane thanked the MFAC, the public, and DMF staff for their professional and conscientious approach to today's meeting.

PUBLIC COMMENTS

Phil Coates read a statement from the former MFAC Chair, Elizabeth Stromeyer, regarding the striped bass slot limit and management.

ADJOURNMENT

Chairman Ray Kane requested a motion to adjourn the March MFAC business meeting. **Tim Brady made a motion to adjourn the meeting. The motion was seconded by Bill Doyle. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- May 16, 2023 MFAC Agenda
- March 21, 2023 Draft MFAC Meeting Minutes
- Horseshoe Crab Management Recommendation Memo
- Summer Flounder Recommendation Memo
- Menhaden Management Recommendation Memo
- MREM Recommendation Memo
- Emergency Striped Bass Rule Making Memo and Presentation
- May ASMFC Meeting Summary
- Atlantic Bonito Minimum Size Proposal
- Smooth Dogfish Trip Limits Memo
- DMF Comment on Recreational Haddock Measures
- DMF Comment on Federal Scup Closure
- Winter Flounder Spawning Research Update

UPCOMING MEETINGS

9AM
June 13, 2023
via Zoom



The Commonwealth of Massachusetts

Division of Marine Fisheries

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www.mass.gov/marinefisheries



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Governor

KIMBERLEY DRISCOLL
Lt. Governor


REBECCA L. TEPPER
Secretary

THOMAS K. O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: June 7, 2023

SUBJECT: **Final Rule Making for 2023 Recreational Scup and Black Sea Bass Limits**

Recommendation

I recommend that the MFAC approve the following measures for the 2023 recreational scup and black sea bass fisheries for final rulemaking. These measures were implemented via emergency rulemaking effective April 28, following the MFAC giving its support for them at the March 21 business meeting. No comments were received during the April 28–June 7 public comment period nor at the June 5 public hearing. The rationale for these measures is provided in my proposal memo, contained in the March 21 meeting materials.¹

Species	Mode	Season	Bag	Minimum Size
Scup	Private Vessels	May 1 – Dec 31	30 fish (vessel cap of 150 fish)	10.5"
	Shore	May 1 – Dec 31	30 fish	9.5"
	For-hire Vessels	May 1 – Jun 30	40 fish	10.5"
		Jul 1 – Dec 31	30 fish	
Black Sea Bass	Private Vessels, Shore & For-hire Vessels	May 20 – Sep 7	4 fish	16.5"

Compared to 2022, the measures for scup close January–April for all modes, increase the minimum size limit for vessel-based modes by $\frac{1}{2}$ ", decrease the minimum size for the shore mode by $\frac{1}{2}$ ", and reduce the for-hire bonus season bag limit by 10 fish. For black sea bass, the 2023 measures increase the minimum size limit by $\frac{1}{2}$ " and add four days to the season (previously May 21–Sep 4).

¹ Available online via: <https://www.mass.gov/service-details/marine-fisheries-advisory-commission-meeting-resources>

Recreational Scup & Black Sea Bass Limits

Species	Mode	Season	Bag	Minimum Size
Scup	Private Vessels	May 1 – Dec 31	30 fish (vessel cap of 150 fish)	10.5"
	Shore	May 1 – Dec 31	30 fish	9.5"
	For-hire Vessels	May 1 – Jun 30	40 fish	10.5"
		Jul 1 – Dec 31	30 fish	
Black Sea Bass	All Modes	May 20 – Sep 7	4 fish	16.5"



Recreational Scup Limits

Emergency Action

- For private vessel-based anglers: Recreational scup season of May 1 – December 31 with a 30-fish bag limit and 10.5” minimum size.
- For private shore-based anglers: Recreational scup season of May 1 – December 31 with a 30-fish bag limit and a 9.5” minimum size.
- For for-hire anglers: Recreational scup season of May 1 – June 30 with a 40-fish bag limit and 10.5” minimum size (bonus season) and a July 1 – December 31 season with a 30-fish bag limit and a 10.5” minimum size.

Mode	Open Season	Bag Limit	Size Limit
Private (Vessel)	January 1 – December 31 May 1 – December 31	30-fish	10” 10.5”
Private (Shore)	January 1 – December 31 May 1 – December 31	30-fish	10” 9.5”
For-Hire	January 1 – April 30 May 1 – June 30 July 1 – December 31	30-fish 40-fish 50-fish 30-fish 40-fish	10” 10” 10.5” 10” 10.5”



Recreational Black Sea Bass Limits

Emergency Action

- Recreational black sea bass season of May 20 – September 7 with a 4-fish bag limit and 16.5” minimum size.

Season	Bag Limit	Size Limit
May 20 – September 7	4-fish	16.5”
May 21 – September 4		16”





The Commonwealth of Massachusetts Marine Fisheries Advisory Commission

<https://www.mass.gov/orgs/marine-fisheries-advisory-commission>



Ray Kane
Chair

Mike Pierdinock
Vice-Chair

Bill Doyle
Clerk

Arthur Sawyer

Bill Amaru

Kalil Boghdan

Louis Williams

Shelley Edmundson

Tim Brady

June 13, 2023

Ron Amidon
c/o Department of Fish and Game
100 Cambridge Street
Boston, MA 02108

Ron,

I am writing you on behalf of the Massachusetts Marine Fisheries Advisory Commission (MFAC). We wanted to take this opportunity to credit you for your considerable efforts in supporting the Commonwealth's marine fisheries during your tenure as Commissioner of the Department of Fish and Game and wish you well in all future endeavors, including all the hunting, trapping, and fishing activities we expect you will be engaged in.

I want to lead by this letter by thanking you for your support of the Marine Fisheries Advisory Commission. You played a significant role in the appointment of the current Commission, including ensuring all appointments were up to date upon the arrival of the incoming administration. As you well know, it is difficult to find individuals who are willing to take on a non-compensated position and engage in difficult fisheries management decisions that impact a diverse group of constituents and affect people's livelihoods. I am proud to serve alongside my other eight commission members and remain consistently impressed with their professionalism, dedication, and willingness to take on controversial and complicated challenges. You deserve credit for facilitating this culture.

The impact of your leadership is also evident at the Division of Marine Fisheries (DMF). During your tenure, you were able to assist the agency in improving its organizational structure and securing personnel to advance the agency's programmatic capabilities. Foremost among these accomplishments was securing a management team to work under Director McKiernan and creating a work environment that facilitates professional growth and mobility. This has allowed DMF to continue to foster the culture of professionalism, for which they are renowned coastwide. It is to the benefit of the Commonwealth's marine resources and fishing interests to have such dedicated public servants and scientists working on the difficult marine fisheries issues we face at the state, interstate, and federal levels.

Lastly, I wanted to thank you for your commitment to the Massachusetts Environmental Police. It's long been the position of the MFAC that a successful management program is

contingent on a robust enforcement program. Accordingly, the MFAC has strongly advocated to increase funding for MEP to enhance their presence along our coast. We appreciate your efforts to advance our advocacy with the Baker Administration. After years of persistent budget and personnel shortfalls, MEP has begun to rebuild their ranks. While there is still work to do, you deserve tremendous credit for the progress made.

Sincerely,

A handwritten signature in black ink, reading "Raymond N. Kane". The signature is written in a cursive, flowing style with a prominent initial "R" and a long, sweeping underline.

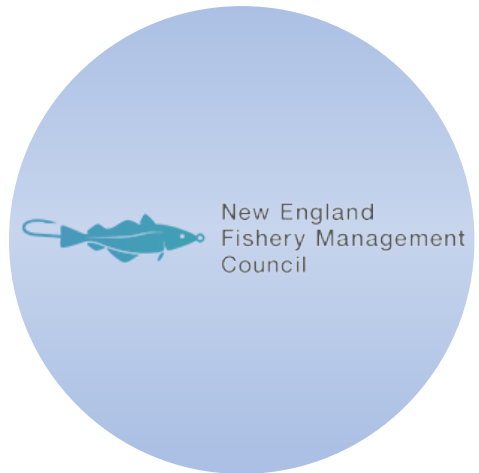
Raymond Kane, Chairman

New England Regional Fishery Updates

**April
Decisions**

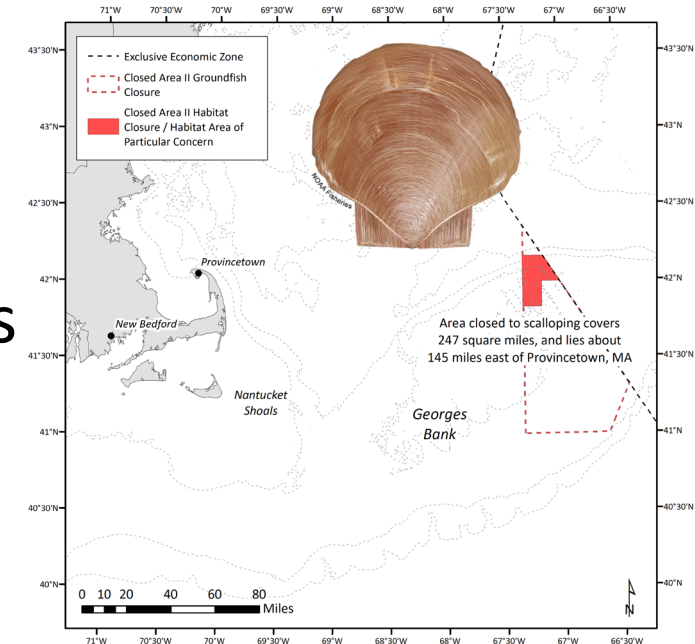
June Outlook

**Other
Regional
Updates**



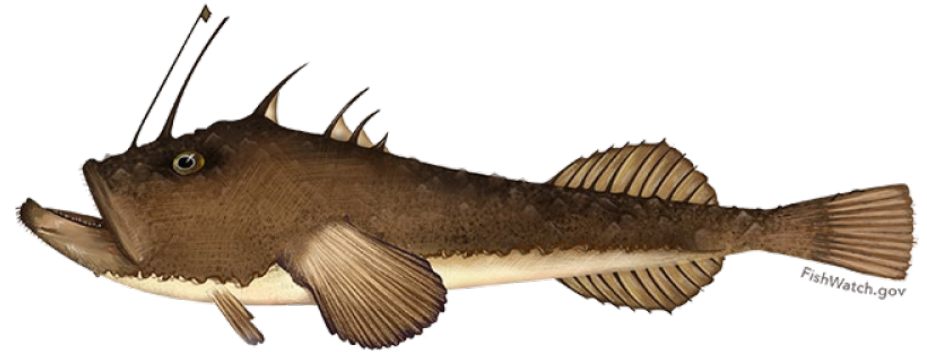
Habitat

- Northern Edge Scallop Access Goals and Objectives
- Salmon Aquaculture FW



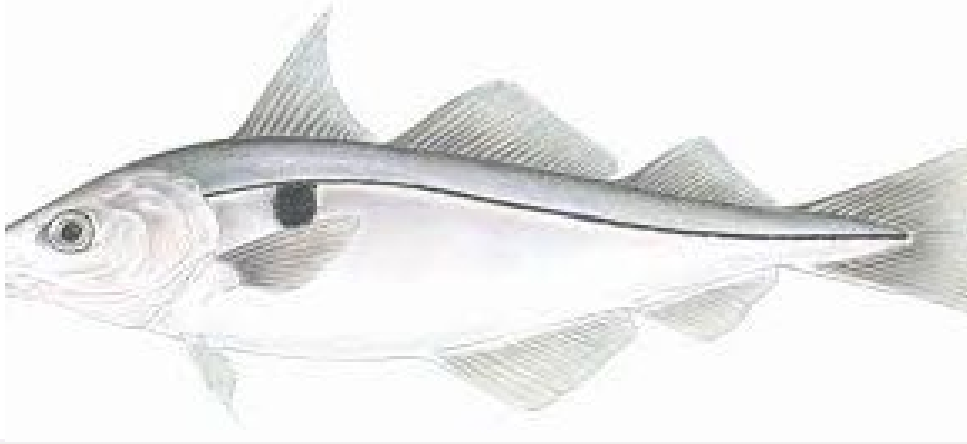
Monkfish

- Research Set-Aside (RSA) Program Review Work Group

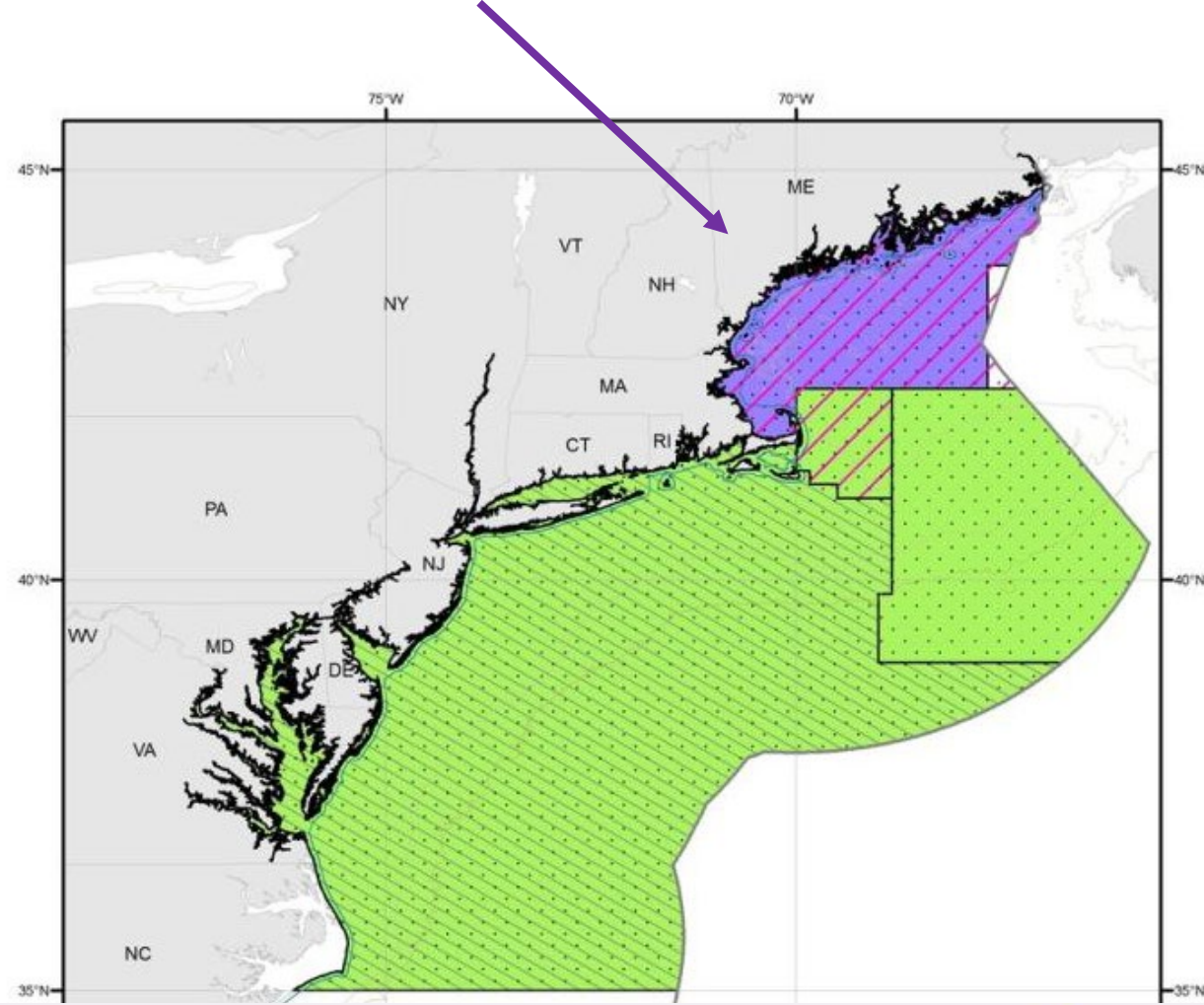


Groundfish

- GOM Haddock Emergency Request
- ABC Control Rule Review
- Cod Structure Transition Plan



GOM Haddock stock area (purple)



Massachusetts Division
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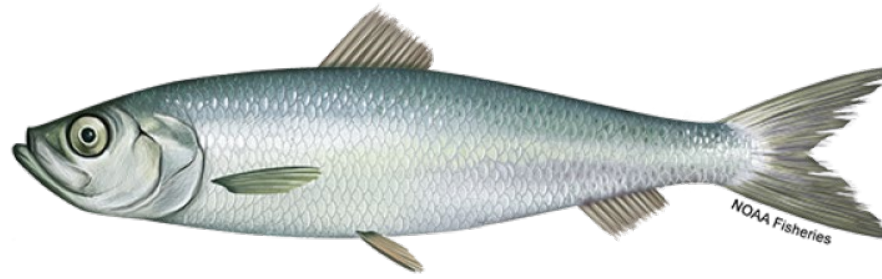


Risk Policy

- Terms of Reference Approved
- June 8th Working Group meeting



Herring

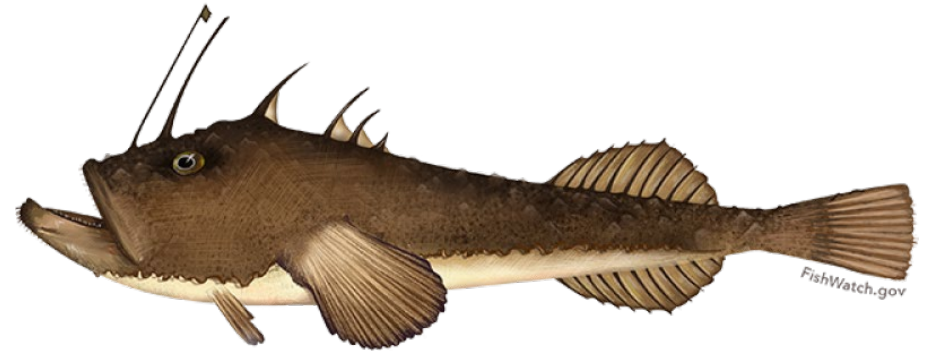


“The Council intends to explore possible detrimental biological and socioeconomic impacts of user group conflicts related to the availability of Atlantic herring through examination of the ecosystem role of Atlantic herring in the area included in Amendment 8 exclusion zone, Atlantic herring as prey for other species in this area, the incidental catch of river herring and shad and other species in this area, updated data on activity by all users in this area, and spatial and temporal variations on the Amendment 8 buffer zone that could address the concerns of the herring fishery and other stakeholders.”



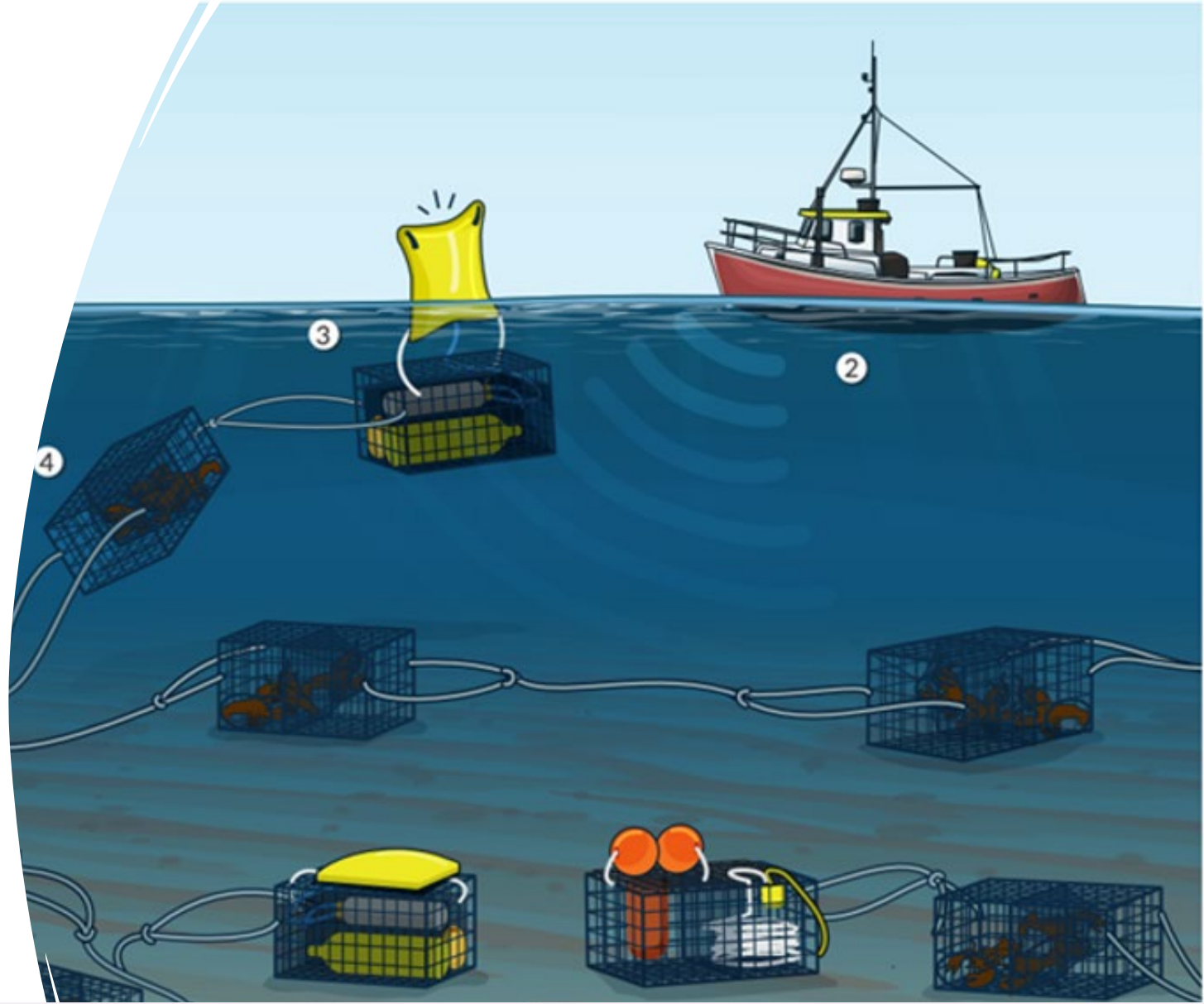
Sturgeon – Gillnet Fisheries

- Joint Monkfish/Dogfish Committee
- Reinitiating BiOp
- Delayed rulemaking



On-Demand Gear Conflict Working Group

- Membership:
 - Danny Eilertson
 - Erica Fuller
 - Ken Murgo
 - Marc Palombo
 - Ross Pearsall
 - Spender Bode
 - Sam Fisher Rosen
 - Terry Alexander
 - Ted Platz



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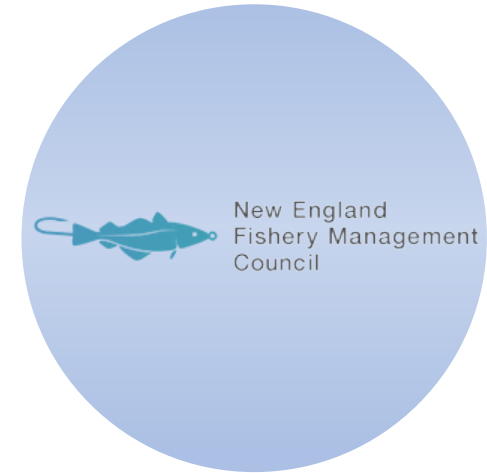


Skates

- Thorny Skate Rebuilding White Paper
- 2024-2025 Specifications



June Outlook



- Freeport, ME
- Last for current Executive Director
- Updates: Northern Edge, Herring inshore MTW closure, and Thorny rebuilding white paper
- Initiate: specifications for groundfish, scallops, and skates
- June 14 (Skates), June 15 (Scallops), June 21 (Groundfish), June 22 (Herring)



Loper Bright Herring IFM/Chevron Challenge



Image: Washington Times

Federal Surveys

- Spring Bottom Trawl Survey (BTS)
- Federal Scallop Dredge and Optical Survey (HABCAM)
- Longer-term visioning (IBS)

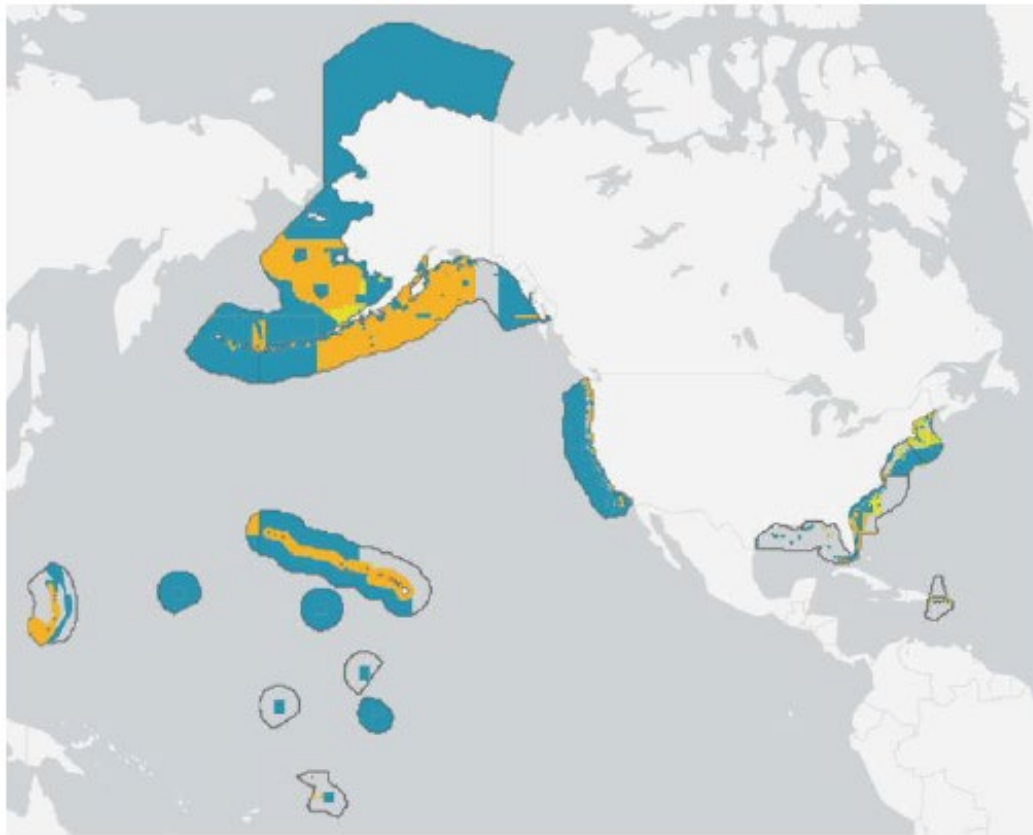


Source: <https://www.facebook.com/NOAAShipHenryBBigelow/photos> (top) and udel.edu (bottom)

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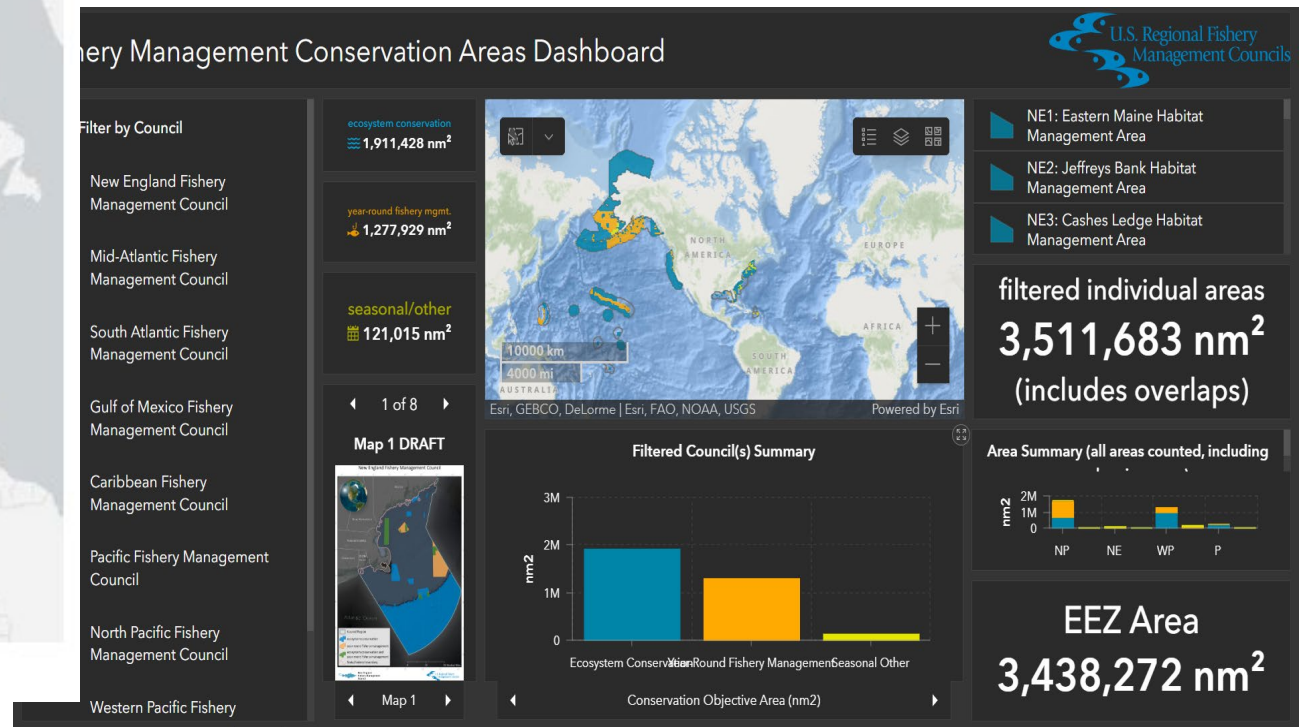
America the Beautiful – 30 x 30



Conservation areas in the U.S. federal waters

- 72% of Federal Waters Classified as “Conservation Areas”
- CCC report and interactive dashboard:

<https://www.fisherycouncils.org/area-based-management>



Massachusetts Division
of Marine Fisheries



Questions?





The Commonwealth of Massachusetts

Division of Marine Fisheries

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Lt. Governor

REBECCA TEPPER
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission Permitting Sub-Committee

FROM: Story Reed, Assistant Director
Jared Silva, Senior Policy Analyst

DATE: April 3, 2023

SUBJECT: **Potential Initial Steps to Address Permit Transferability**

The MFAC's Permitting Sub-Committee (PSC) last met on October 20, 2022. The meeting's purpose was two-fold. First, DMF provided a broad overview of the legal framework establishing the agency's permitting program to help inform discussion. Second, the PSC discussed the varied objectives of DMF's permitting program and permit transferability rules. At the conclusion of the meeting, the PSC developed a list of deliverables for future consideration. This included investigating: (1) transferability standards and activity level thresholds for certain transferable permits; (2) ways of encouraging new entrants into fisheries, specifically younger fishers; and (3) concepts that would allow existing permit holders to diversify permit portfolios.

On April 11, 2023, DMF will reconvene the PSC. The purpose of this meeting will be to review initial concepts to address transferability standards and activity level thresholds. As time allows, DMF staff continue to work on the other deliverables established by the PSC. However, it is our view that addressing transferability standards and activity level thresholds first is a critical initial step in creating a framework to address concepts related to new entry and permit portfolio diversity.

Overview

DMF issues a number of limited entry permits and regulated fishery permit endorsements ("endorsements"). Under state law, these permits and endorsements are non-transferable except if expressly authorized and regulated by the Division of Marine Fisheries. Over the years, DMF has adopted rules to accommodate the transfer of most of its limited entry permits and endorsements. In most instances, the transferability programs were developed based on the LCMA1 Coastal Lobster Permit model ("CLP Model").

The CLP Model allows for the transfer of only "active permits", with the active permit performance criteria being defined as landing and selling at least 1,000 pounds of lobster annually for four out of the past five years or having at least 20 sales involving lobster annually for four out of the past five years. Exceptions to this performance criteria are then carved out to address certain circumstances. For transfer

to immediate family, the performance criteria may be waived¹. For death, disability and military service, the performance criteria may be rolled back to the five-year preceding the event. In addition to this, at the time of transfer, the permit holder must be in good standing with the laws and regulations of the Commonwealth.

DMF also establishes experience criteria for the transferee. For the Coastal Lobster Permit, this requires the person has at least one-year of full-time or the equivalent part-time experience in the commercial lobster trap fishery or at least two-years of full-time and or equivalent part-time experience in another commercial fishery. These experience criteria for the transferee may be waived in the event of transfer to an immediately family member².

Using the CLP Model, DMF adopted similar transferability standards for its limited entry permit endorsements (Table 1). Effectively, these endorsements may be transferred if the permit holder is in good standing and the individual endorsement is actively fished. The default performance standard here is at least one-pound of fish landed and sold annually authorized by the endorsement for four out of the past five-years. However, DMF has adopted higher thresholds for the transfer of certain endorsements by policy; this is commonly done in response to high levels of latent effort (e.g., black sea bass) or poor stock conditions (e.g., conch pot).

DMF also carved out exceptions allowing performance standards to be rolled back to the five-years preceding for death, disability, and military service. However, unlike the Coastal Lobster Permit, DMF does not allow the transfer of latent endorsements to immediate family (except if such transfers are allowed through DMF's bundling policies). Lastly, DMF establishes eligibility criteria for the transferee. For fish pots and conch pots, the standards are the same as the Coastal Lobster Permit—the transferee must have at least one-year of full-time or the equivalent part-time experience in a commercial trap fishery or at least two-years of full-time and or equivalent part-time experience in another commercial fishery. For all other endorsements, the transferee must have at least one-year of full-time or the equivalent part-time experience in any commercial fishery. There are also several transfer rules specific to Coastal Access Permit (CAP) endorsements, which allow the use of certain mobile gear (e.g., trawls and sea scallop dredges). This includes limiting ownership by one person or entity to no more than 5% of the total number of existing permits; and requiring the permit be held for two-years after transfer before being transferred again, with exceptions for death, disability, and military service.

The primary purposes of these programs are to continually drain latent effort from the regulated fishery and right-size the number of permits issued to the number of active participants. Limiting permit latency allows DMF to better manage fisheries for those individuals making a living off the resources. While effective at reducing latent effort, this management program does restrict the transferability of permits. This makes it more difficult for active fishers to maintain a diversified permit portfolio and limits the ability for new entrants into a fishery.

¹ The regulation at 322 CMR 7.03(7)(a) specify performance criteria may be waived in the instance of posthumous transfers of Coastal Lobster Permits to immediate family. However, DMF has historically interpreted this more broadly and waived performance criteria for transfers of Coastal Lobster Permits to immediate family. 322 CMR 7.03(7)(d) allows DMF to issue a Letter of Authorization to an immediate family member to indefinitely waive the Coastal Lobster Permit's "owner/operator" requirement regardless of performance. Therefore, it is reasonable to accommodate immediate family transfers regardless of performance. This prevents an immediate family member from having to annually obtain the LOA waiving the owner/operator requirement until the death of the permit holder when performance criteria can be waived in a posthumous transfer. It also helps avoid posthumous transfers, which can become complicated based on the clarity of the estate planning by the deceased.

² DMF waives experience criteria for transfers to immediate family for the same reasons why it waives performance criteria for transfers to immediate family, as described in footnote #1 above.

In recent years, DMF has tried to address the negative externalities related to limiting transferability when opportunities exist to accommodate latent and actual effort in similar gear types or fisheries. This has primarily been accomplished through the concept of bundling. This allows latent endorsements to be bundled and transferred along with a similar active permit or endorsement (Table 1)³.

Despite these efforts, there is still work that can be done to enhance the transferability of permits without negatively impacting the management of the fishery. For discussion at the PSC, DMF has identified four potential areas where this may occur, and these are the principal subjects of this memo.

Transfer of Latent Permits to Immediate Family

As described above, the CLP Model allows for performance criteria to be waived in instances of transfers to immediate family. However, the transfer of limited entry endorsements does not provide a similar allowance, rather it just allows for the performance criteria to be rolled back in instance of death, disability, or military service. To encourage the continuation of the fishing family tradition, DMF is interested in taking out to public hearing a permitting proposal that would allow for performance criteria of certain endorsements to be waived for transfer to immediate family.

New Bundling Policy for Coastal Lobster Permits

DMF regulations allow for the bundling of latent endorsements with the transfer of an active Coastal Lobster Permit. At present, DMF's policies on bundling only explicitly authorize the bundling of latent Black Sea Bass Pot and Scup Pot endorsements with an active Coastal Lobster Permit (latent Conch Pot endorsements may not be transferred in a bundle). However, the policy does not address the bundling of species-specific endorsements (e.g., Black Sea Bass) or other gear endorsements (e.g., CAP) with the transfer of an active Coastal Lobster Permit. It is sensible to similarly allow bundling of certain latent, transferable, limited entry endorsements to keep these commercial fishing businesses whole. This is similar to how DMF manages the bundling of latent species-specific endorsements with the transfer of active CAP permits.

Routine Review of Activity Standards and Adoption of Endorsement Specific Activity Standards

DMF regulations require an endorsement to be fished for four out of the past five years to be considered active (with DMF adopting endorsement-specific performance criteria and bundling criteria by policy). This standard was based on the CLP Model. This may be appropriate for the inshore lobster fishery, as it is a primary, full-time commercial fishery for most permit holders. However, it may be onerous for fisheries permitted by endorsements, which may be pursued on a more part-time, seasonal, or episodic basis. Accordingly, it may limit the ability for commercial fishers to gain access to fisheries and remain diversified.

To date, DMF has attempted to address this issue through its bundling policies, but it may also be appropriate to consider endorsement specific activity standards. For instance, if a fishery is underutilized and it can withstand the introduction of new effort, then a more lenient activity standard may be appropriate. As conditions in our commercial fisheries change regularly, it may be appropriate to routinely review these standards to both encourage participation and permit diversity but also ensure access is appropriately limited to prevent the inappropriate activation of latent effort.

³ In our trap fisheries, we may bundle a latent fish pot permit(s) with the transfer of an active Coastal Lobster Permit or bundle a latent Scup Pot permit with an active Black Sea Bass or Conch Pot. In our mobile gear fisheries, we may bundle a latent mobile gear permit (e.g., Ocean Quahog and Surf Clam Dredge) with the transfer of an active mobile gear permit (e.g., CAP) and we may latent species-specific endorsements (e.g., Fluke) with the transfer of an active CAP. We do not allow the transfer of latent Menhaden and State-Waters Groundfish endorsements with the transfer of an active CAP, rather these endorsements must be individually active to be transferred. This is a product of high levels of latent effort in each fishery and recent utilization of available allocations. In our rod and reel fisheries, we may bundle latent Tautog, Black Sea Bass, or Fluke endorsement in a transfer with an active Tautog, Black Sea Bass, or Fluke endorsement.

To this effect, DMF is interested in considering the rolling routine review (e.g., once every three or four years) of the transferability standards for limited entry endorsements by the PSC. This would create a process whereby DMF would analyze, and the PSC would review fishery performance and transferability standards for up to five endorsement types annually. The PSC would then be able to provide feedback to the Division on what, if any, changes to the transfer program are appropriate⁴. It likely makes sense to group the endorsements subject to review (e.g., mobile gear, trap gear), so that they are subject to review as a unit.

Given recent fishery performance and quota availability, it may make sense for DMF to initiate this process by reviewing the standards for the Black Sea Bass, Fluke, Tautog, and State Waters Groundfish endorsements. If supported, DMF can reconvene the PSC this summer to review a performance analysis and develop recommendations to the Director that he can potentially adopt for rule making and implementation in 2024.

Establishing Ownership Rules Upon Transfer

The PSC has expressed an interest in enhancing the transferability of permits to encourage new entrants and allow existing participants to diversify their permit portfolio. Now, with DMF beginning to develop mechanisms to accomplish these goals, we have to face the potential challenges regarding accountability and consolidation that may arise if permits become more transferable.

Using the CLP model, one of the ways DMF has worked with the industry to establish permit holder accountability and prevent consolidation is by requiring the Coastal Lobster Permit be owner/operator. In recent years, these requirements have been extended to our fish pot fisheries and our menhaden fishery. To adhere to the goals set forth by the PSC, it may be reasonable to consider requiring certain permits (e.g., CAP, Surf Clam and Ocean Quahog Dredge) become owner-operator upon transfer. Alternatively, we could also consider establishing caps on the portion of the total number of permits issued that an individual entity may hold.

⁴ While the legislature provided the MFAC with explicit authority at G.L. c. 130, §17A to approve certain regulations of the Division regarding the times, places, quantities, sizes, and means of taking fish, it did not provide similar authority over permitting regulations. Accordingly, any advice provided to the Division on permitting would be advisory only, generally consistent with the MFAC's purpose at G.L. c. 130, §1B.

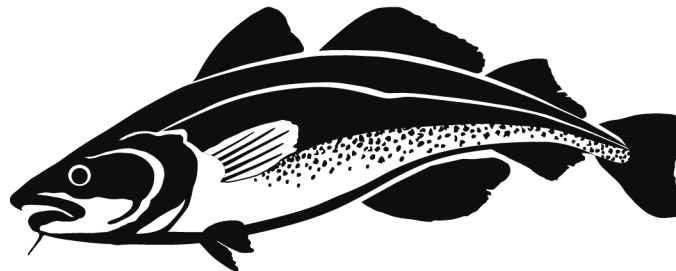
Table 1. Limited Entry Endorsements by Type and Transferability Standards			
Permit/Endorsement Type	Transferable	Activity Standards*	Bundling Allowances
Black Sea Bass	Yes	For all gears except hook and line, must have landed at least 1-pound of black sea bass annually for four out of the past five years. For hook and line, must have landed at least 250-pounds of black sea bass annually for four out of the past five years.	For hook and line, latent black sea bass endorsement may be bundled in transfer with active tautog or fluke endorsement. Latent black sea bass endorsement may be bundled in transfer with an active CAP endorsement.
Black Sea Bass Pot	Yes	Must have landed at least 1-pound of black sea bass taken by black sea bass pot annually for four out of the past five years.	Latent Black Sea Bass Pot endorsement may be bundled in transfer with active Coastal Lobster Permit or active Scup Pot or Conch Pot endorsement.
Bluefish Gillnet	Uncertain		
Coastal Access Permit (CAP)	Yes	Must have landed and sold at least 1-pound of fish annually taken by CAP-authorized mobile gear for four out of past five years.	Latent species endorsements may be bundled in transfer with an active CAP. Does not apply to state-waters groundfish and menhaden, which are only transferable if individually active. Latent endorsements involving other mobile gear (e.g., surf clam/ocean quahog dredge) may be bundled in transfer with an active CAP.
Conch Pot	Yes	Must have landed or sold at least 5,000 pounds of whelk taken by conch pot annually for four out of the past five-years.	Will transfer latent Sea Bass Pot or Scup Pot with active Conch Pot endorsement. Will not transfer latent Conch Pot Endorsement with active Coastal Lobster Permit or Sea Bass Pot or Scup Pot endorsement.
Fluke	Yes	For all gears except hook and line, must have landed at least 1-pound of summer flounder annually for four out of the past five years. For hook and line, must have landed at least 300-pounds of summer flounder annually for four out of the past five years.	For hook and line, latent Fluke endorsement may be bundled in transfer with active Black Sea Bass or Tautog endorsement. For mobile gear, fluke endorsement may be bundled in transfer with an active CAP endorsement.
Horseshoe Crab (Bait)	Yes	Must have landed or sold one horseshoe crab annually for four out of past five years.	No bundling policy.

Menhaden	Yes	Must have landed or sold at least 1-pound of menhaden annually for four out of past five years.	Latent Menhaden endorsements are non-transferable in all instances, including in transfer of an active CAP permit.
Ocean Quahog and Surf Clam Dredge	Yes	Must have landed or sold at least 1 surf clam or ocean quahog taken by authorized dredge gear annually for four out of past five years.	Latent Ocean Quahog and Surf Clam Dredge endorsement may be bundled in transfer with an active CAP or Quahog Dredge endorsement.
Quahog Dredge	Yes	Must have landed or sold at least 1 bay quahog taken by authorized dredge gear annually for four out of past five years.	Latent Quahog Dredge endorsement may be bundled in transfer with an active CAP or Ocean Quahog and Surf Clam Dredge Permit.
Scup Pot	Yes	Must have landed or sold at least 1-pound of scup taken by scup pot annually for four out of the past five-years.	Latent Scup Pot endorsement may be bundled in transfer with active Coastal Lobster Permit or active Conch Pot or Black Sea Bass Pot endorsement.
Sink Gillnet	No	Endorsement is non-transferable.	Endorsement is non-transferable.
State Waters Groundfish	No, except with an active CAP.	For CAPs, must have landed or sold at least 1-pound of groundfish annually for four out of the past five years. For all other gears the permit is non-transferable.	Latent endorsements may not be bundled in a transfer with an active CAP.
Tautog	Yes	For all gears except hook and line, must have landed at least 1-pound of tautog annually for four out of the past five years. For hook and line, must have landed at least 40 tautog annually for four out of the past five years.	For hook and line, latent Tautog endorsement may be bundled in transfer with active Black Sea Bass or Fluke endorsement. For mobile gear, Tautog endorsement may be bundled in transfer with an active CAP endorsement.
* DMF's COVID policy allows 2020 to be removed from look back period in favor of using the year immediately prior in the time series. For instance, the current lookback period for a transfer would be 2018 – 2022, should the COVID policy be used then the look back period would be 2017 – 2019 and 2021 – 2022.			

Permitting Subcommittee Update

June 13, 2023

Marine Fisheries
Commonwealth of Massachusetts



Bundling Policy for Coastal Lobster Permits

Overview:

- Transfer regulations allow for the bundling of latent endorsements with the transfer of an active Coastal Lobster permit.
- DMF's existing bundling policy only bundles latent BSB and Scup Pot endorsements with active Coastal Lobster permit.

Proposal:

- Expand policy to allow bundling other latent gear (e.g., CAP) or species-specific endorsements (e.g., bsb, tautog) with active Coastal Lobster permit to keep fishing businesses whole

Key Considerations:

- Which endorsements?



June 13, 2023

Slide 2



Transfer of Latent Endorsements to Immediate Family

Proposal:

- Amend permit endorsement transfer rules to allow performance criteria to be waived for the immediate family transfer of certain limited entry endorsements.
 - Would match Coastal Lobster model transfer standards.
 - Encourages the continuation of the fishing family tradition.
 - Keeps small family-owned businesses functioning.

Key Consideration:

- Which endorsements?



June 13, 2023

Slide 3



Routine Review of Endorsement-Specific Activity Standards

Overview:

- DMF requires endorsements to be actively fished for four out of past five years to be transferable. Based on CLP model.
- May be appropriate for the lobster trap fishery, which is a primary, full-time commercial fishery, but may be onerous for more part-time, seasonal, or episodic fisheries.

Proposal:

- Develop a schedule to routinely review (e.g., once every three years) the transferability standards for limited entry endorsements.
 - Have DMF work analysis of fishery performance and transferability standards through the PSC.
 - PSC to provide DMF with advice on what changes to standards may be appropriate.
 - DMF's preference is to begin process in 2023 for 2024 for bsb, fluke, CAPs endorsements.

Key Considerations:

- How frequently should this review occur?
- How should we bin endorsements for annual review?
- What should the review schedule look like moving forward?



June 13, 2023

Slide 4



CLP Transfer Cleanup

322 CMR 7.03(7)(b). The permit holder's actively fished criteria for Coastal Lobster Transfer programs, established at 322 CMR 7.03(5) may be waived for **posthumous** transfers to immediate family.

- Clean up would bring regulation into phase with practice.
- DMF has historically waived actively fished criteria for any immediate family transfer, not just posthumous.
- Owner-operator requirement may be indefinitely waived for immediate family regardless of performance, effectively accommodating immediate family member to fish permit.
- Allowing transfer to immediate family prevents family member from having to annually obtain LOA until death of permit holder when it becomes transferable.
- Posthumous transfers can become complicated based on the clarity of the deceased's estate planning.



June 13, 2023

Slide 5



Managing Derelict Fishing Gear in Massachusetts

An issue brief from the Massachusetts Derelict Fishing Gear Task Force





Town of Rockport municipal officials use heavy equipment to remove large “gear ball” of lobster trap, gillnet, and rope fragments off the shoreline.



Derelict lobster trap filled with fish (Tautog) in Cape Cod Bay.

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Executive Summary

“Derelict” fishing gear, or “ghost gear”, is defined as abandoned, lost, or otherwise discarded fishing gear (ALDFG), and, as its name implies, refers to fishing gear that has been abandoned, lost, or discarded at sea and is no longer in the control of a fisher. ALDFG, which is made up of nets, traps, ropes, and buoys, can cause dangerous conditions in the water and on land. This gear can continue to “fish” after it is lost or abandoned leading to waste of marine resources. It can cause entanglements of large whales and sea turtles. When washed up on land this gear results in a mess of tangled rope and wire mesh fragments that not only create a visual nuisance but can pose a danger to unsuspecting beachgoers.

Most of this gear comes from the state’s fixed gear fisheries, which principally includes commercial and recreational trap fisheries for lobsters and commercial trap fisheries for whelk and certain finfish species, as well as a small-scale commercial gillnet fishery. These commercial trap fisheries represent a large portion of the Commonwealth’s fishing industry and have substantially grown and advanced over the past 50 years. Collectively these trap fisheries in Massachusetts are valued at over \$75 million dollars and support over 700 small owner-operator commercial fishing businesses and multiple shoreside fishing and vessel support businesses, include a substantial recreational fishing footprint, and provide fresh locally caught seafood to citizens of the region and beyond. Additionally, the state authorizes a recreational lobster fishery whereby each permit holder may fish up to 10 traps. While decreasing in scale over the past decade, this recreational trap fisher is still responsible for a sizeable quantity of trap gear set in Massachusetts waters. In 2022, DMF permitted 4,572 recreational lobster fishers, and when applying recent effort and gear loss trends, DMF estimates recreational fishers deployed approximately 18,500 traps and lost approximately 4,500 traps.

The scale of the ALDFG problem has increased over time as more traps have been deployed in these fisheries and as materials used to construct fishing gear have evolved. When the lobster industry began in the 1860s, the fishery was small in scale (25,000 traps) and the fishing gear was constructed entirely of biodegradable materials (wooden traps, jute rope, wooden buoys). During the 1970’s and 1980’s, advancements in plastics and copolymers lead to their widescale use in the construction of fishing gear. Wooden lobster traps were replaced with polyvinyl coated steel mesh traps and jute rope was replaced with nylon, polypropylene and polyethylene rope. These new materials are stronger, more durable, and persist in the environment for an indefinite period. By the 1990’s over 95% of traps and rope used in fixed gear fisheries were constructed entirely of synthetic materials. In 2021, more than 250,000 traps were set in Massachusetts state waters. The Massachusetts Division of Marine Fisheries (DMF) estimates that as much as 9% of this gear is lost or abandoned annually.

ALDFG presents a serious challenge to commercial fishers, waterfront property owners, municipalities, the Massachusetts Environmental Police (MEP), and DMF. Efforts to clean up ALDFG from the shorelines and coastal waters of the Commonwealth are greatly hampered by state law [M.G.L. c. 130, §§ [31](#) and [32](#)], which protects all fishing gear as private property. It does not differentiate between intact fishing gear and fishing gear debris. Additionally, the current law restricts what can be done with ALDFG, even limiting the removal of this gear from public and private lands. When the legislature enacted these laws in 1941, they were understandably trying to protect the property rights of fishers, who sometimes lose their fishing gear through natural events. However, the legislature could not have envisioned the very large increase in the scale of trap fisheries in Massachusetts, the amount of gear that is now discarded, lost, or abandoned, nor the changes in materials used to make fishing gear that now allow fishing gear to persist in the environment indefinitely. Accordingly, the Massachusetts Derelict Fishing Gear Task Force recommends that the Massachusetts legislature consider amending M.G.L. c. 130, §§[31](#) and [32](#) to

allow for efficient and timely removal of ALDFG from our shorelines and waters and to give DMF the statutory authority to regulate the identification, removal, and disposal of ALDFG.



Massachusetts Derelict Fishing Gear Task Force

In July of 2022, DMF Director Daniel McKiernan created the Massachusetts Derelict Fishing Gear Task Force (Task Force), whose purpose is to study the issue of abandoned, lost, or otherwise discarded fishing gear (ALDFG) in Massachusetts waters and to develop solutions for the removal of such gear. The Task Force is comprised of members from a broad cross section of stakeholders with experience in commercial fishing, fisheries policy and management, law enforcement, conservation, and derelict fishing gear research and retrieval. The members and their affiliations are as follows:

- *Bob Glenn (Chair), Deputy Director, Massachusetts Division of Marine Fisheries*
- *Jared Silva, Senior Policy Analyst, Massachusetts Division of Marine Fisheries*
- *David Chosid, Marine Fisheries Biologist, Massachusetts Division of Marine Fisheries*
- *Julia Kaplan, Environmental Analyst, Massachusetts Division of Marine Fisheries*
- *Tori LaBate, Assistant General Counsel, Massachusetts Department of Fish and Game*
- *Chris Baker, Major, Massachusetts Environmental Police*
- *Laura Ludwig, Manager of Marine Debris and Plastics Program, Provincetown Center for Coastal Studies*
- *Beth Casoni, Executive Director, Massachusetts Lobstermen's Association*
- *Raymond Kane, Outreach Coordinator for the Cape Cod Commercial Fishermen's Alliance and Chairman of the Massachusetts Marine Fisheries Advisory Commission.*
- *Arthur Sawyer, Commercial Fisherman/President, Massachusetts Lobstermen's Association and member of the Massachusetts Marine Fisheries Advisory Commission*

This whitepaper is the first deliverable of the Task Force. Its goal is to give legislators, stakeholders, and the general public an overview of the problem of ALDFG in Massachusetts waters and the laws that preclude DMF and others from cleaning it up, and to inform discussions about potential solutions. The Task Force views statutory changes as the first step in creating an effective derelict gear cleanup program and provides recommendations for statutory changes that allow DMF to regulate ALDFG removal and disposal activities. In addition, the Task Force will develop draft regulations that clearly distinguish between fishing gear and fishing gear debris, and will describe the marine fishing gear debris removal efforts which DMF seeks to authorize and implement.

Background

Commercial trap¹ fishing for lobsters began in Massachusetts in the 1860's, when fishermen used rowing dories to deploy wooden traps in coastal waters. These traps were attached to ropes with wooden buoys and were hauled by hand. Historically this fishery was small in scale. In 1888 there were fewer than 25,000 traps fishing in Massachusetts waters (Figure 1). This fishery grew substantially with the advent of combustion powered vessels. By the 1940's, fishers were deploying more than 100,000 traps and landing in excess of 3,000,000 pounds of lobsters. After 1970, the number of traps used in the lobster fishery rose dramatically reaching a high of 425,000 traps in 1990. Since the high in the 1990s, effort in the fishery has gradually declined. In 2021, 633 Massachusetts lobster fishers used 258,626 traps to land a total of 9,573,878 pounds of lobsters from state waters. The 2021 landings had an ex-vessel value² of \$70,489,275. Today this iconic and legacy fishery is the most valuable fishery prosecuted within Massachusetts state waters.

Massachusetts state waters also host two other important trap fisheries: the trap fishery channeled whelk fishery ("conch pot") and the fish trap fishery for scup and black sea bass ("fish pot"). In 2019, whelk pot fishers landed 993,128 pounds of channeled whelk using 11,894 pots with an ex-vessel value of \$3,697,699. In that same year, fish pot fishers landed 279,990 pounds of scup and 176,350 pounds of black sea bass using 4,577 traps with a combined ex-vessel value of \$785,530. While much smaller in scale, these fisheries are an important source of income for many commercial fishers in the Commonwealth.

Collectively, these trap fisheries support over 700 small owner-operated³ fishing businesses along with multiple shoreside fishing and vessel support businesses and provide fresh local caught seafood. However, despite all the positive benefits of these fisheries, gear loss and ALDFG remain as extremely challenging fishery management and enforcement issues. ALDFG may remain at sea, or in many cases, wash up on the coastline, and in both instances, create problems that need to be addressed.

Massachusetts also permits and regulates a recreational lobster fishery that allows the use of trap gear to take lobsters and certain edible crab species incidentally caught. Under state law, recreational lobster trap fishers may fish up to 10-traps at any one time⁴. However, not all recreational lobster fishers use traps, as hand harvest by diving is a common technique, and not all recreational fishers deploy their full 10-trap limit. In 2019, as part of its Technical Report Series, DMF published "Technical Report 69: A Characterization of Fishing Activity and Trap Loss in the Massachusetts Recreational American Lobster

¹ DMF regulations define traps as to mean, "any lobster trap, modified lobster trap, fish pot, conch pot, or any other contrivance, other than nets, that is placed on the ocean bottom and designed to catch finfish, whelks, lobsters, or crabs.

² Ex-vessel value refers to the dollar amount received by fishers at the point of primary sale to a seafood dealer authorized as a primary buyer. This value does not represent the total value of the harvested seafood to the seafood industry. The 2019 "Fisheries Economics of the United States" report produced by NOAA Fisheries calculates nationwide landings revenues for 2019 to be \$5,598,014 while the total sales (without imports) of the seafood industry to be \$54,884,906. < https://media.fisheries.noaa.gov/2022-07/FEUS-2019-final-v3_0.pdf >

³ Owner-operator means a commercial fishing business whereby the individual named on the commercial fishing permit is required to be onboard the vessel when commercial fishing is occurring. This prevents the corporate fishing fleet model and results in the fishery being comprised of small independent businesses.

⁴ G.L. c. 130, § 37. "A noncommercial lobster and crab permit shall authorize the holder and members of the holder's immediate family residing in the same residence as the holder to fish for, take or land by use of pots only lobsters and edible crabs for consumption, and not for sale, by himself and the members of his immediate family residing in the same residence as the holder; provided, however, that the holder and such other persons shall not use more than ten traps for such fishing at any one time..."

Fishery”⁵. This report investigated recreational trap fishing effort and characterized gear loss in this fishery using data compiled from 2000–2015 recreational lobster fishery permitting and annual catch report data and a 2015 recreational lobster permit holder survey.

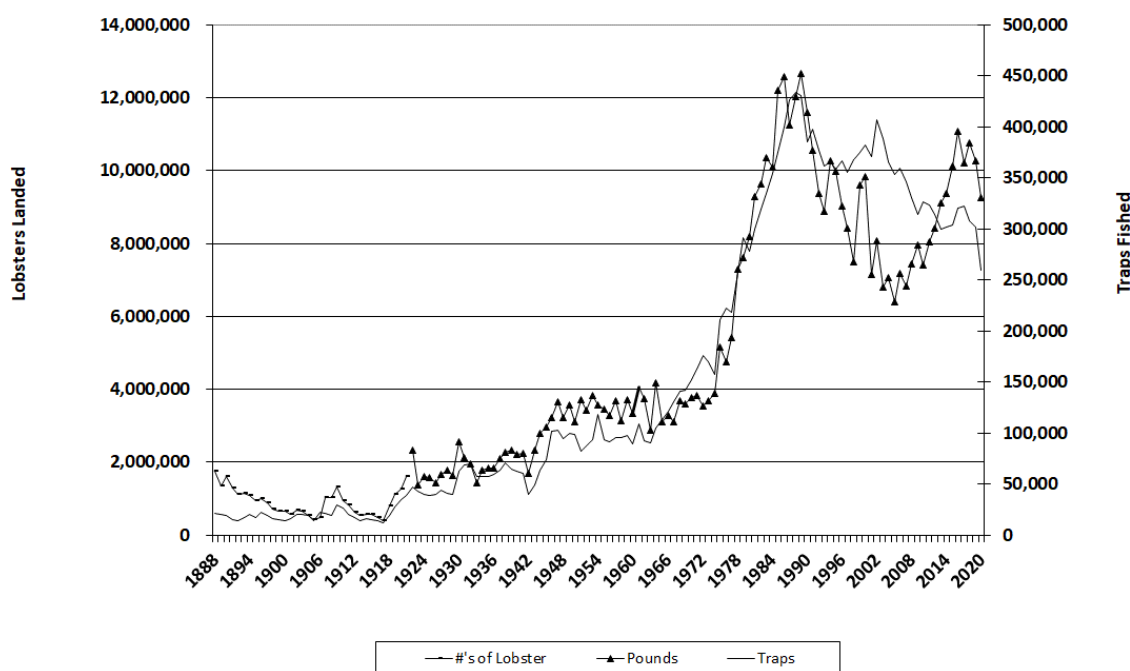


Figure 1. Lobster landings and effort in Massachusetts territorial waters, 1888 – 2020. Data source: 1888 to 1963 Annual Report of the Massachusetts Commissioners of Fish and Game. 1964 to 2020 - Massachusetts monthly harvester reports and federal VTRs with data as of September 2021.

Relevant here are the Technical Report’s findings regarding number of permit holders fishing traps, number of traps fished, and number of traps lost per year. For 2015, permitting and annual catch report data indicate 58% of permits issued were active. DMF also electronically surveyed all 2015 permit holders who had an e-mail on file (n=4,327). The survey response rate was 33% (n=1,429). Of the respondents 68% reported using traps, with 56% reporting fishing exclusively with traps and 12% using some combination of both traps and diving. Of the respondents fishing traps, 66% reported fishing fewer than 10 traps with seven traps being the mean. Lastly, 74% of respondents reported losing at least one trap per year, and it was calculated that each respondent lost on average 1.7 traps per year. In 2015, there were 3,991 active permits issued. Extrapolating from the above survey data, we can estimate that in 2015 Massachusetts had 2,714 recreational lobster trap fishers fishing approximately 19,000 traps and losing about 4,600 traps.

While the scale of the recreational lobster trap fishery has been declining since 2000, ALDFG from this sector remains an issue. In 2022, DMF issued 4,572 recreational lobster permits authorizing the use of traps. While we do not have current effort and gear loss data for 2022, we can extrapolate using the

⁵ DMF Technical Report #69. 2019. Characterization of Fishing Activity and Trap Loss in the Massachusetts Recreational American Lobster Fishery. < <https://www.mass.gov/doc/dmf-technical-report-69-2015-recreational-lobster-survey/download> >

2015 survey information on traps fished and traps lost per recreational fisher. Using this information, we roughly estimate that 2,652 recreational lobster fishers set approximately 18,500 traps and lost about 4,500 traps. This represents a sizeable amount of annual gear loss particularly given its cumulative impacts.

The issues caused by ALDFG are directly linked to the ultimate fate of the gear and how long it persists in the environment after it is abandoned, lost, or discarded. Whether ALDFG remains in the ocean or washes up on shore from wave action during storms, it may remain intact (capable of functioning as intended) and is still of value to the owner. However, more frequently this gear is damaged or destroyed so that it is no longer intact and could be accurately classified as marine debris or trash.

Historically, traps were made of wood, and the line used to haul traps were made of jute or other natural materials (Figure 2). While this gear would have been equally subject to loss and abandonment, it was made entirely of bio-degradable, non-synthetic materials. During the 1970's and 1980's, advancements in plastics and co-polymers lead to their widescale use in the construction of fishing gear. Wooden traps were replaced with polyvinyl coated steel mesh traps (Figure 3) and jute rope was replaced with polypropylene and polyethylene rope. These new synthetic materials are stronger, more durable, and persist in the environment for an indefinite period. By the 1990's, over 95% of traps and rope used in Massachusetts trap fisheries were constructed entirely of synthetic materials.

While we do not have any hard estimates of how long these materials persist or how long fishing gear constructed from these materials can remain intact in the marine environment, we do have some data that provide us with insight on the rough scale of their longevity. Through authority provided by DMF, the Provincetown Center for Coastal Studies (CCS) has conducted multiple derelict fishing gear retrieval projects over the last decade where grappling hooks are towed in specific areas along the sea floor of Cape Cod Bay to snag and retrieve derelict fishing gear. Through these efforts CCS have retrieved hundreds of derelict traps and just as many traps in good condition. Trap fishers are required to annually affix trap ID tags for the current fishing year, and each recovered trap is examined for the most recent trap tag. For traps with tags intact, the year in which the trap was lost can be inferred with high confidence. From this work we know that roughly 50% of lobster traps recovered remain intact and usable, and that these PVC-coated steel mesh ALDFG traps can persist for over two decades in the marine environment.



Figure 2. Example of a wooden lathe lobster trap commonly used in the Massachusetts lobster fishery in the 1970's and 1980's.



Figure 3. A modern derelict lobster trap on the sea floor off the coast of Plymouth, Massachusetts, constructed of polyvinyl coated steel mesh.

Categorizing ALDFG

ALDFG trap gear falls into two categories, buoyed and unbuoyed. Buoyed ALDFG refers to fishing gear in which the surface buoy and buoy line remain intact and are usually visible from the surface of the water. Unbuoyed ALDFG refers to fishing gear in which the buoy and buoy line are not intact and not detectable from the surface. While these two categories of ALDFG share many of the same environmental and handling issues, they also each have some unique challenges that are directly related to the presence or absence of the buoy line.

Unbuoyed ALDFG

The issues associated with unbuoyed ALDFG generally pertain to the persistence of fishing gear in the marine environment or on the shoreline. These include “ghost fishing,” ecosystem impacts, public nuisance and safety issues, removal and disposal issues, and commercial fishing gear conflicts.

Ghost Fishing

Ghost fishing occurs when ALDFG in the water continues to catch and kill lobsters, crabs, and finfish long after the gear was lost or abandoned. DMF regulations mandate certain gear modifications to address the issues posed by ghost fishing. This generally requires traps be rigged with “ghost panels” that are fastened to the trap with biodegradable materials allowing them to open and release captured animals after a period-of-time. However, these devices are not entirely effective and do not consistently open as intended.

In 2010, with funding from the National Fish and Wildlife Foundation, DMF conducted a two-year study focused on characterizing the scale of the ALDFG issue in Massachusetts and the potential impacts of “ghost fishing” in Massachusetts coastal waters. This study was conducted in two phases. In Phase 1, DMF divers monitored the fate of 40 intentionally abandoned lobster traps for two years. Divers visited each trap and recorded all the contents (marine life) and the overall condition and functionality of the trap every two weeks for the two-year period. In Phase 2, DMF sent out an extensive survey to all commercial lobster permit holders which asked fishers to characterize how many traps they lost annually, the manner in which the traps were lost, and their perceptions on derelict fishing gear and ghost fishing. DMF received a 59% (n = 520) survey response rate to this survey. The key findings of this study were:

- Lobster traps abandoned for the study continued to catch and kill lobsters, crabs, and fish for the entire two-year span of the project;
- Ghost panels (devices designed to biodegrade after a few months making the trap ineffective) on the traps never failed as intended;
- Each abandoned lobster trap killed an average of approximately 4 lobsters, 6 crabs, and 1 fish per-year;
- Fishers lose up to 9% of their traps annually;
- The primary claimed causes of gear loss in order of importance were storms, vessel traffic, and conflict with mobile fishing gear (draggers, scallopers);
- DMF nominally estimates that ALDFG results in roughly \$2,400,000 loss in the value of fishing gear and a \$600,000 loss gross revenue from lost catch per year (due to unintended mortalities of lobsters from ghost fishing); and
- Mortalities of lobsters, crabs, and finfish resulting from ghost fishing reduce the future productivity of marketable stocks due to loss of total reproductive capacity.

Ecosystem Impacts

ALDFG is understood to present an issue to the habitat and animals present in the marine environment in several ways. At sea, ALDFG can move along the ocean bottom in such a way as to snag on corals or shipwrecks, scour eelgrass beds and other sensitive habitat, or smother productive areas. Marine animals and birds can be entrapped or entangled in ALDFG. Because the ALDFG is primarily comprised of synthetic materials, it also generates plastic and microplastic debris which can be ingested by animals along the entire food chain. On land, the issues are similar, where ALDFG can impede or alter the growth of terrestrial plants and contribute microplastics to the composition of the terrain.

Public Nuisance and Public Safety

The portion of ALDFG that washes up on shore can create a real nuisance and a genuine safety concern to the general public, as well as a management issue for municipalities and property owners. This typically occurs after large storm events whereby severe wave action washes ALDFG ashore, littering beaches and other nearshore and intertidal areas with large amounts of ALDFG. The ALDFG that washes up on the beach typically includes various types of traps, ropes, buoys and nets. In many cases, the gear is severely damaged and consists of only fragments (Figure 4). ALDFG also poses a public safety issue if not collected from the shoreline. Wire mesh panels from traps corrode over time, sometimes leaving sharp rusty edges exposed or even buried in the sand (Figure 4). These trap fragments have been known to cause cuts and puncture wounds to unknowing beachgoers who accidentally step on them.



Figure 4. Derelict lobster traps and fishing gear debris washed up on the shore of Plymouth, MA. Inset photo: Fragment of a lobster trap washed up on the shore of Plymouth, MA.

Removal and Disposal

After particularly large storms, especially Nor'easters, the amount of ALDFG that washes up on shore can be substantial. This poses a real challenge to landowners and municipalities wishing to collect and dispose of the gear. Often, the large volume of gear and the inaccessibility of its location along the shoreline make collection very difficult physically and logistically. The logistics of transporting large volumes of ALDFG are usually complex and often require the use of heavy equipment and large trucks or trailers. Furthermore, many municipal landfills and transfer stations will not accept ALDFG, especially in large volumes. Once collected best practices to reuse or recycle ALDFG are often hindered by high costs, daunting efforts, complex transportation and coordination logistics, and contamination or deterioration levels preventing end use. Finding and retrieving unbuoyed ALDFG is difficult and very costly. Locating the gear often requires the use of special side-scan sonar technology; and removing it requires towing large heavy grappling hooks behind vessels to snag the gear. Once retrieved, logistical issues related to transport, storage, and disposal remain.

Commercial Fishing Gear Conflict

ALDFG remaining on the sea floor often creates gear conflict issues with active fishing gear. In these circumstances, commercial fishers unknowingly set their traps over or tow their mobile gear through ALDFG. This causes the active fishing gear to become entangled in the ALDFG, often causing severe damage and additional gear loss, and can create a serious safety risk to the vessel and crew when multiple sets of very heavy fishing gear become entangled while the vessel is underway. These types of gear interactions have led to injury, vessels capsizing, and loss of life.

Buoyed ALDFG

All the above-described issues related to unbuoyed ALDFG also apply to buoyed ALDFG, except that it can be easier to locate at sea because of the surface buoys. Even more alarming however, the presence of the buoy line creates a new suite of problems, such as entangling protected whales and sea turtles and creating navigational hazards to vessels.

Entanglement Risk to Protected Species

The coastal waters of the Commonwealth seasonally host up to 85% of the entire population of North Atlantic right whales (NARW). There are only approximately 340 of these large whales left in existence and they are listed under the Endangered Species Act as critically endangered. The primary causes of mortality of NARW are entanglement in fishing gear and ship strikes. For this reason, DMF closes the commercial trap fishing in state waters from east of Nantucket to the New Hampshire border from February 1 to May 15 annually; the commercial gillnet fishery throughout state waters from January 1 to May 15 annually; and the recreational lobster fishery to the use of buoyed trap gear from November 1 – May 15. These closures correspond with the time-period and area when and where NARW are common in our waters. Buoyed ALDFG that remains in our coastal waters poses an entanglement risk to NARW's and has the potential to erode the conservation value of our fisheries closures designed to protect them. In addition to NARW, our waters also seasonally host other species of large whales including humpback, minke, and finback whales, as well as several species of sea turtles including leatherback, loggerhead, and Kemps Ridley turtles, all of which are federally protected and are prone to entanglement in fixed fishing gear.

Navigation Hazard

Buoys attached to ALDFG that remain in the ocean for a long time become “biofouled,” (covered in algae and other marine organisms), the weight of which may cause the buoy to become partially submerged and thus very difficult for mariners to detect. This results in a hazard to navigation and can damage vessels that hit them, because these partially submerged buoys are very difficult to avoid, and the attached buoy line can become entangled in the vessel’s propellor. For smaller vessels this can also poses a significant safety issue when buoy line becomes heavily entangled in the propellor, especially in heavy seas.

Statement of the Problem

While the problems associated with ALDFG are myriad and well understood, Massachusetts is ill-equipped to effectively manage and resolve these challenges. This is due to state law at G.L. c. 130, §§31 and 32 affording broad property rights to fishing gear, including ALDFG at sea or onshore. In effect, state law generally makes it illegal to take, recover, and remove any buoyed or unbuoyed ALDFG that is left at sea, unless said ALDFG violates state laws or regulations, at which point it may be seized by the Massachusetts Environmental Police⁶. Additionally, the owner of any buoyed or unbuoyed ALDFG that is washed ashore is afforded 30-days to recover the gear without liability for trespass and 60-days before the rights to the ALDFG are ceded to the owner of the riparian shoreline.

These statutes are antiquated. They were enacted in 1941—a time when fishing gear was biodegradable and the wooden trap gear that washed ashore was recoverable—and have not been updated or otherwise modified since. However, in the interim fishing gear has evolved. Now, gear is mostly constructed of synthetic materials. These materials persist longer in the environment, so when this gear becomes ALDFG it continues to ghost fish and, proliferate on the ocean floor. Additionally, these synthetic materials which ALDFG are constructed of are more readily damaged beyond repair and frequently not recoverable and reusable, particularly when swept ashore. Lastly, these laws do not consider impacts buoyed ALDFG may have on protected species who may become entangled in it. Accordingly, the protections once designed to afford fishers property rights to recover and reuse lost gear, now prevent efforts to clean ALDFG from our marine and nearshore environments and threaten protected marine mammals and turtles.

⁶ G.L. c. 130, §9. The director, deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement and all environmental police officers and deputy environmental police officers or a member of the state police may, without a warrant, search any boat, vessel, fish car, bag, box, locker, package, crate, any building other than a dwelling house, any motor vehicle as defined in section one of chapter ninety, or other vehicle, or any other personal property in which he has reasonable cause to believe, and does believe, that fish taken, held, kept, possessed, transported or held for transportation or sale in violation of law, may be found, and may seize any such fish there found, and may seize any boat, vessel, fish car, bag, box, locker, package, crate, any motor vehicle as defined in section one of chapter ninety, or other vehicle, or any other personal property used in violation of the laws relative to marine fisheries and hold the same for forfeiture.

Recommended Statutory Amendment

DMF has been attempting to manage this issue for at least a decade now. In 2010, the agency received advice from its legal counsel that G.L. c. 130, §§31 and 32 afforded protections to fishing gear, but that it would be unreasonable to assume that unusable fishing gear would be afforded the same protections. Accordingly, to encourage ALDFG clean-up efforts, DMF advised groups involved in such endeavors to draw a distinction between fishing gear and marine debris. Doing so would at least allow for the removal of pieces of non-intact fishing gear from our waters and shores.

However, this was a stop-gap solution, as it did not address the full extent of the problems and challenges posed by the intersection of the state's antiquated laws with the proliferation of ALDFG. Building on the past decade of experience, DMF established this Derelict Gear Task Force to better define the ALDFG challenges in Massachusetts and to develop a more holistic and thorough approach to addressing them.

The Derelict Gear Task Force is recommending the Massachusetts Legislature amend G.L. c. 130, §31 to maintain property rights for fishing gear, but allow DMF to regulate the handling of ALDFG, and in doing so, rescind G.L. c. 130, §32. All regulations adopted by DMF would be subject to the review and approval of the Marine Fisheries Advisory Commission and the Department of Fish and Game, and subject to executive branch review and approval as established by executive order. This is consistent with the regulatory authority granted to DMF by the legislature at G.L. c. 130, §17A to govern the times, places, quantities, sizes, seasons, and methods of fishing⁷. In support of this, the Derelict Gear Task Force is also recommending the legislature amend G.L. c. 130, §1 to refine the statutory definitions for "closed season" and "open season" and adopt new definitions for "fishing gear" and "fishing gear debris." A complete redline text of these proposed statutory amendments is seen in Appendix 1.

Providing DMF with this regulatory authority to manage ALDFG is beneficial in several ways. The challenges related to ALDFG are not static and evolve over time with how fisheries are prosecuted and with changes in gear technology. By moving the management of handling ALDFG from statute to regulation, the Commonwealth can more readily respond to emerging ALDFG issues and challenges. DMF can typically amend its regulations within a six-month period and has the authority to immediately implement emergency regulations if necessary to preserve public health, safety, or the general welfare

⁷ G.L. c. 130, §17A. Upon petition signed by any interested party or upon his own motion, the director shall submit to the marine fisheries advisory commission proposals relating to the management of the marine fisheries. After public hearing, notice of which shall be published in a newspaper of general distribution in the areas affected, the commission shall in writing approve or disapprove such proposals. If any proposal is so approved, the director shall in accordance with such approval adopt, amend or repeal rules and regulations, subject to the approval of the commissioner, which shall govern the following activities: (1) the manner of taking fish; (2) the legal size limits of fish to be taken; (3) the seasons and hours during which fish may be taken; (4) the numbers or quantities of fish to be taken; (5) the opening and closing of areas within the coastal waters to the taking of any and all types of fish; provided that no area shall be so opened or closed without the consent of the selectmen of the town or the mayor and council of the city affected thereby. Upon request of the commission, the selectmen or mayor and council shall hold a public hearing upon the question and shall thereafter notify the commission in writing within forty-five days after such request has been received or consent will be deemed to have been granted.

of the Commonwealth⁸ or as necessary for the immediate management or control of marine fisheries⁹. This approach also recognizes there are nuances regarding the types of fishing gear deployed and the ALDFG challenges related to each type of gear and enables fishery managers to develop a detailed regulatory approach that considers these dynamics. Further, the regulatory approach will be fine-tuned by the Marine Fisheries Advisory Commission¹⁰, a public body whose members have expertise in marine fisheries and experience using a variety of different fishing gears. All such DMF regulations approved by the Marine Fisheries Advisory Commission, will also be subject to review and approval by the Commissioner of DFG and subject to review by the Healey-Driscoll Administration. The purpose of this regulatory process is to develop a comprehensive management approach that balances property rights with the need to efficiently handle and clean up ALDFG and can nimbly and timely respond to emerging issues. Accordingly, the Derelict Gear Task Force has provided additional recommendations on initial regulations.

Regulatory Framework

Once gear has been identified as ALDFG, it is important to distinguish whether the gear is intact. Intact gear may be fishable or salvageable, and therefore, may be of value to the original property owner, whereas gear that is not intact can be considered debris to be discarded, reused, or recycled. Accordingly, DMF's regulatory framework needs to clearly define the threshold between what constitutes intact fishing gear and by contrast what constitutes fishing gear debris. From here, standards for how to approach each type of ALDFG encountered can be created. The anticipated regulatory changes to define intact fishing gear and distinguish it from fishing gear debris are outlined in Appendix 2. DMF will need to develop additional regulations to manage the handling of fishing gear debris. These regulations have not yet been drafted but will consider the issues described in the paragraphs below.

Additionally, the Derelict Gear Task Force identified four categories of circumstances under which ALDFG may be encountered: (1) shore clean up; (2) directed at-sea gear removal; (3) incidental recovery (i.e., caught in other fishing gear); and (4) enforcement actions. Each category may encounter both intact ALDFG and fishing gear debris. Accordingly, DMF must create regulations that provide clear guidance regarding how the public may interact with both intact ALDFG and fishing gear debris under each of the first three circumstances; protocol for handling of gear encountered during enforcement is already adequately addressed. This guidance should include: (1) who may handle the gear; (2) when the gear may be handled; (3) collection methods; (4) from where the gear may be removed; (5) whether permitting and reporting is required; and (6) what post-removal options exist.

While the majority of ALDFG encountered in Massachusetts comes from trap gear or nets, the state's aquaculture industry is growing and aquaculture gear (e.g., cages, trays, buoys, racks, anchors) may

⁸ G.L. c. 30A, §2. If the agency finds that immediate adoption, amendment or repeal of a regulation is necessary for the preservation of public health, safety or general welfare, and that the observance of the requirements of notice and a public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend, or repeal the regulation as an emergency regulation.

⁹ G.L. c. 130, §17(11). Subject to the notice provisions of chapter thirty A, without hearing, with the approval of the commissioner, adopt regulations declared by him to be emergency regulations necessary for immediate management or control of marine fisheries. Such emergency regulations may be limited in time but shall not remain in effect for a period of longer than forty-five days.

¹⁰ G.L. c. 130, §1B. There shall be in the division of marine fisheries a commission to be known as the marine fisheries advisory commission hereinafter called the commission, which shall consist of nine members, qualified in the field of marine fisheries by training and experience...

become dislodged and moved off the licensed site, in effect becoming ALDFG. When this occurs, it is not uncommon for the ALDFG to contain shellfish product that was purchased and reared by the aquaculturist that is of substantial commercial value. This situation is in clear contrast to the ALDFG that is more commonly encountered and is typically void of product and of limited value to the original owner. Given this, DMF should consider developing a set of ALDFG rules specific to shellfish aquaculture gear.

Future Considerations

Future actions for managing ALDFG in MA waters should focus on improving our understanding of the gears' continuing impacts to the ecosystem and to the public, conflicts within and between commercial fisheries, quantity estimates, changes in gear technologies, constructions, and designs, and the challenges and solutions in prevention and clean-up efforts. Our suggested changes to Massachusetts state law provide a pathway for achieving our goals, specifically for prevention and cleanup operations, by easing the burden for managing ALDFG. In doing so, the other issues are also addressed. For instance, by removing ALDFG in an effective manner, we reduce the risk to marine mammal entanglements.

Adoption of the proposed statutory amendments will allow for DMF to establish a marine debris prevention and retrieval program to more effectively and efficiently respond to the ALDFG-related issues. Stakeholders who are likely to be affected by gear prevention/retrieval operations include fishers, gear designers and manufacturers, fleet and port operators, recycling/disposal organizations, fisheries managers and regulators, enforcement bodies, seafood companies and eco-labelers, NGOs, and private research institutions. The latter two groups have devoted extensive time and resources to cleanup operations which will be alleviated by adjustments of the marine debris laws and regulations.

Prevention is the first line of defense against accumulation of ALDFG. Establishing a permitting and violation fee structure for owner-identifiable ALDFG, possible after changes to the General law, can help incentivize the responsible use of fishing gear and reduce loss. Reclamation of ALDFG is often costly and these associated costs to the Commonwealth could be offset with fees intended to reimburse for recovery efforts (much like towing and storing a non-compliant vehicle) and administrative time. Additionally, a fine could be considered towards those who purposely leave gear in the closed fishing area and disregard regulations. These incomes can be reapplied towards a marine debris retrieval program. Regardless, some funding and staff time must be directed towards maintaining a dedicated program. New outreach efforts would also inform commercial and recreational fishing gear users about the reasons for gear loss which can then aid in preventing loss as well as improve the identification and recovery of gear.

As we continue to run a marine debris prevention and retrieval program, we expect that stakeholders will see more of the associated benefits which will manifest in increased program involvement and recovery operations, especially from commercial trap fishers. Their uptake in new technologies and embracing marine debris identification, reporting, and recovery methods are highly valuable to these programs. Just in the two years that MA has performed buoyed trap recoveries during our seasonal closures, we have seen a dramatic reduction in ALDFG between the years. Long-term benefits of gear removal may include protections for endangered and protected species, improved stock abundance (through reduction in unintended ghost gear fishing mortality), improvements in ALDFG collection methods, new collaborations with stewards of the environment and fisheries stakeholders, new opportunities for eco-labeling (with better fishing practices and environments), and reductions in debris

safety hazards and eyesores. This program can also serve as a template for other regional authorities, adding to the benefits.

Gear reuse and recycling programs are currently difficult to identify and logistically navigate. The various people, groups, and organizations that process marine debris have costly, time-consuming, and specific storage, transportation, and processing requirements. The continuation of a marine debris prevention and retrieval program will build more cooperative relationships with these groups, help reinforce the need for their services, and identify the most efficient and cost-effective processes to achieving our common goals.

Appendix 1. Redline Text of Proposed Statutory Amendments

G.L. c. 130 § 1

"Angling", fishing with hand line or rod, with naturally or artificially baited hook.

"Canned lobster meat or crab meat", lobster meat or crab meat preserved by heat processing, freezing, or refrigeration, and packed in a container impervious to contamination and so sealed that once opened it cannot be re-sealed and re-used for its original purpose.

"Clam", a marine mollusk of the species *Mya arenaria* commonly called the soft-shell clam.

~~"Close season", the time during which fish cannot lawfully be taken.~~

"Close season" or "Closed season" the time during which fish cannot lawfully be taken or a time or area when and where the use of fishing gear is prohibited.

"Coastal waters", all waters of the commonwealth within the rise and fall of the tide and the marine limits of the jurisdiction of the commonwealth, but not waters within or above any fishway or dam nor waters above any jurisdictional boundary legally established pursuant to section five of chapter one hundred and thirty in rivers and streams flowing into the sea.

"Commissioner", the commissioner of the department of fish and game.

"Dealer", any person who commercially handles fish.

"Department", the department of fish and game of the executive office of energy and environmental affairs.

"Director", the director of the division of marine fisheries.

"Division", the division of marine fisheries.

"Fish", any animal life inhabiting the ocean or its connecting waters including any crustacean or marine fish, whether free swimming or free moving, and any shellfish or sea worms, whether or not imbedded in the soil. All provisions of the chapter relative to fish shall, so far as apt, apply also to lobster meat and crab meat after the same has been taken from the shell.

The verb, "to fish", in all of its moods and tenses, to take or to attempt to take fish by any method or means, whether or not such method or means results in their capture.

"Fish car", a box or other contrivance in coastal waters, whether floating or sunken, used for keeping fish alive.

"Fishing gear", a trap, net, fish car, or other contrivance that is: intact; functions as it is intended to take, hold, or capture fish; and is in the water during the open season.

"Fishing gear debris", a trap, net, fish car, or other contrivance that is: not intact; does not function as it is intended to take, hold, or capture fish; or is in the water during a closed season.

"Lobster", the common American lobster, of the species *Homarus americanus*.

"Marine fisheries", all fisheries in coastal waters.

"Open season", the time during which fish may lawfully be taken **or a time or area where the use of a particular fishing gear is allowed.**

"Quahaug", a marine mollusk of the species *Venus mercenaria* commonly called the hard-shell clam.

"Recreational saltwater fishing", the non-commercial taking or attempted taking of finfish for personal or family use; provided, however, that the finfish are not sold, traded or bartered.

"Registered under the laws of the state", any vessel from a Massachusetts port which is licensed to operate for commercial fishing purposes under the authority of this chapter, or any vessel from a Massachusetts port which is operated for commercial fishing purposes by any person licensed under the authority of this chapter.

"Retail dealer", any person not a wholesale dealer who distributes fish commercially.

"Scallop", a marine mollusk of the species *Aequipecten irradians*, commonly known as the cape scallop or bay scallop.

"Sea scallop", a marine mollusk of the species *Pecten magellanicus*, commonly known as deep water scallop.

"Seed clam", a soft-shell clam of a size less than the minimum prescribed in section sixty-nine and useable for planting purposes only.

"Seed quahaug", a quahaug of a size less than the minimum prescribed in section sixty-nine and useable for planting purposes only.

"Seed scallop", an immature scallop without the annual growth line as described in section seventy.

"Shark", any species of the subclass *Elasmobranchii*; provided, however, that the term "shark" shall not include smooth hounds, spiny dogfish or any species in the order *Batoidea*.

"Shark fin", the raw, dried or otherwise processed detached fin, or the raw, dried or otherwise processed detached tail, of a shark.

"Shellfish", clams, conchs, limpets, mussels, oysters, periwinkles, quahaugs, razor clams or razor fish, scallops, sea clams, sea quahaugs, sea scallops and winkles.

"Short lobster", any lobster measuring less than prescribed in section forty-four.

"Territorial waters", the same as coastal waters.

"Truckman", any person other than a common carrier, using a truck or other vehicle in distributing fish.

"Wholesale dealer", any person who distributes fish commercially in bulk or for resale by a dealer, or who operates branch stores for the retail sale of fish.

A person who knowingly counsels, aids or assists in a violation of any provision of this chapter or of any rule or regulation made thereunder or knowingly shares in any of the proceeds of said violation by receiving or possessing fish, shall be deemed to have incurred the penalties imposed thereby upon the person guilty of such violation.

Whenever the taking of fish is authorized, reference is had to taking by lawful means and in a lawful manner.

Any reference to the taking or having in possession of a fish shall include the taking or having in possession of any part or portion thereof.

This chapter and regulations made under the authority thereof shall apply to all marine fisheries and fish within the jurisdiction of the commonwealth and to all vessels registered under the laws of the commonwealth. This provision shall not be construed to limit the authority of the director to protect anadromous fish by providing for their passage from the coastal waters to spawning grounds in streams and ponds in inland waters and to regulate fisheries contained therein for the taking of such anadromous fish.

G.L. c. 130 § 31

No person shall, without the consent of the owner, take, use, destroy, injure or molest ~~a weir, pound net, fish trap, seine, set net or lobster or crab pot or other fishing gear, or a fish car or other contrivance used for the purpose of storing fish, including any such fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, or take fish therefrom.~~ fishing gear. Notwithstanding the foregoing, the director, with the approval of the Marine Fisheries Advisory Commission shall promulgate regulations that authorize or permit the removal of fishing gear debris from the waters under the jurisdiction of the Commonwealth and the adjacent coastal shoreline. Fishing gear debris collected under said authority or permission shall not be subject to chapter 134 of the general laws.

G.L. c. 130 § 32

~~The owner of any fishing gear mentioned in section thirty-one which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within thirty days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. In the event such fishing gear shall not be so recovered within such period or recovered by other legal means within sixty days it shall enure to the riparian owner of such shore, beach or flat in the manner provided in chapter one hundred and thirty-four.~~

Appendix 2. Anticipated Regulatory Changes to Define Intact Fishing Gear and Fishing Gear Debris

Defining “intact” commercial fishing gear

(1) For a commercial trap to constitute intact fishing gear, it shall have at least three of the following elements:

- (a) Buoy that is marked as set forth by 4.13.
- (b) Buoy line that complies with marking and modification requirements set forth by 12.00.
- (c) Current years’ trap tag associated with a valid current years’ fishing permit set forth by 6.31.
- (d) Trap gear configuration requirements set forth by 6.00.

Defining “intact” recreational fishing gear

(2) For a recreational trap to constitute intact fishing gear, it shall have at least three of the following elements:

- (a) Buoy that is marked as set forth by 4.13.
- (b) Buoy line that complies with marking and modification requirements set forth by 12.00.
- (c) A synthetic plate or wooden lath is present inside of the trap bearing an alpha-numerical sequence containing: the letter “N”; a valid recreational lobster and crab trap permit number; “-”; and a single digit from 0-9 indicating the sequential trap number in a series up to 10 as set forth by 4.13.
- (d) Trap gear configuration requirements set forth by 6.00.
- (e) Exception for buoyless trap gear fished from the shoreline: to constitute as intact fishing gear, it shall have to comply with (c) and (d).

If a trap does not constitute intact fishing gear, it shall be fishing gear debris.

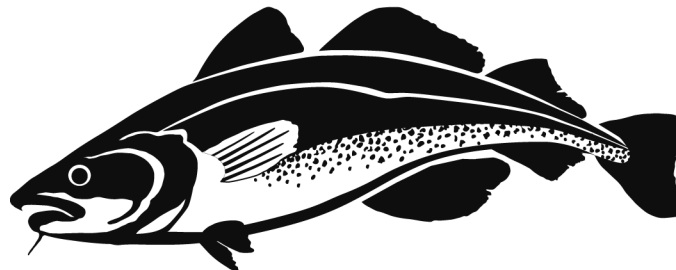
Commercial fishers work with DMF and MEP staff to remove abandoned lobster gear in the Massachusetts Restricted Area Closure.



Managing Derelict Fishing Gear in Massachusetts

June 13, 2023

Marine Fisheries
Commonwealth of Massachusetts



Derelict Fishing Gear – “ALDFG”

- ALDFG – Abandoned, Lost, or Otherwise Discarded Fishing Gear
- Composed of traps, pots, nets, ropes and buoys
- In MA primarily comprised of lobster traps and rope from our commercial and recreational fisheries
- Causes issues both on the land and in water
- Scale of the issue has increased in recent decades as fisheries have grown and as materials used to construct fishing gear
- Efforts to manage ALDFG in MA are hampered by current law



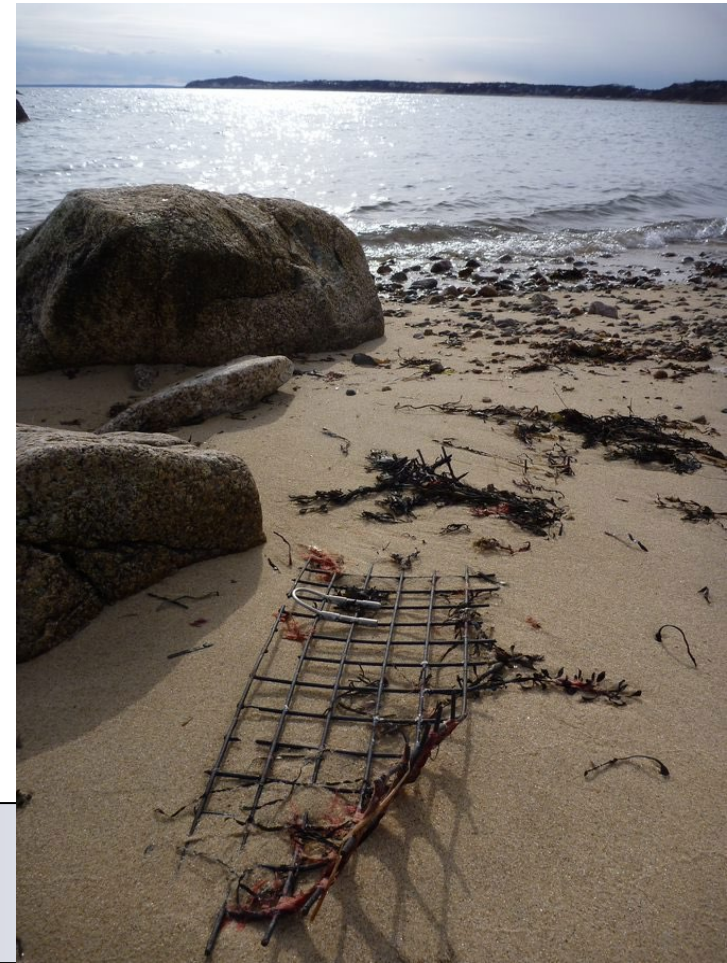
Massachusetts Derelict Gear Task Force

- Formed in July of 2022
- Purpose: Study the issue of ALDFG in Massachusetts waters and to develop solutions for the removal of such gear
- Comprised of members from a broad cross section of stakeholders with experience in commercial fishing, fisheries policy and management, law enforcement, conservation, and derelict fishing gear research and retrieval
- Members:
 - **Bob Glenn** (Chair), Deputy Director, Massachusetts Division of Marine Fisheries
 - **Jared Silva**, Senior Policy Analyst, Massachusetts Division of Marine Fisheries
 - **David Chosid**, Marine Fisheries Biologist, Massachusetts Division of Marine Fisheries
 - **Julia Kaplan**, Environmental Analyst, Massachusetts Division of Marine Fisheries
 - **Tori LaBate**, Assistant General Counsel, Massachusetts Department of Fish and Game
 - **Chris Baker**, Major, Massachusetts Environmental Police
 - **Laura Ludwig**, Manager of Marine Debris and Plastics Program, Provincetown Center for Coastal Studies
 - **Beth Casoni**, Executive Director, Massachusetts Lobstermen's Association
 - **Raymond Kane**, Outreach Coordinator for the Cape Cod Commercial Fishermen's Alliance and Chairman of the Massachusetts Marine Fisheries Advisory Commission.
 - **Arthur Sawyer**, Commercial Fisherman/President, Massachusetts Lobstermen's Association and member of the Massachusetts Marine Fisheries Advisory Commission

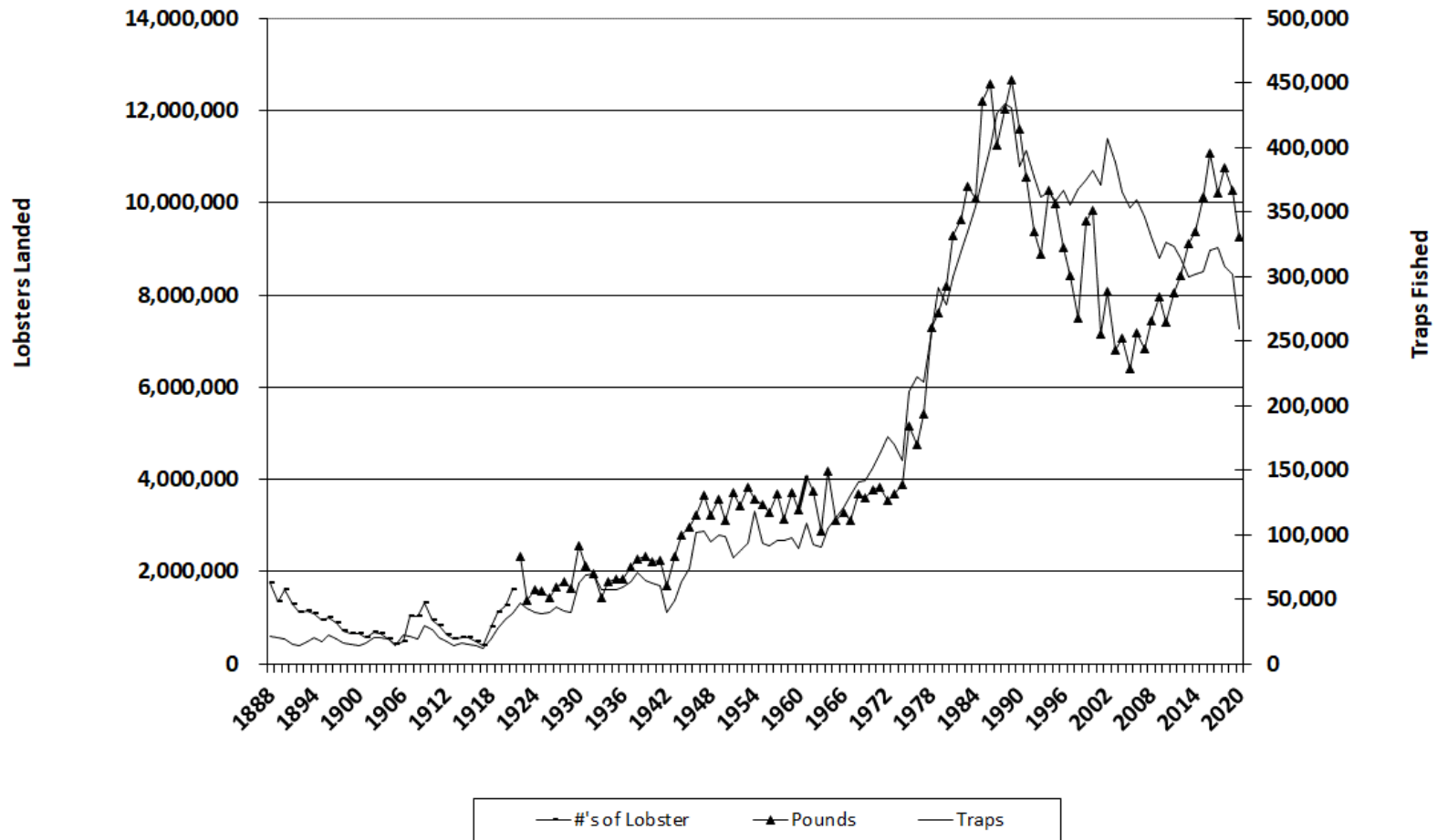


Why has ALDFG Become Such an Issue?

- Scale of trap/pot fisheries in MA have increased
- Advancements in material used to construct gear
 - More durable
 - Persist in the environment



Why has ALDFG Become Such an Issue?



June 13, 2023

Division of Marine Fisheries

Slide 5



Why has ALDFG Become Such an Issue?

- Scale of trap/pot fisheries in 2019
 - Commercial Lobster = ~ 250,000
 - Commercial Whelk = ~ 12,000
 - Commercial Fish Pot = ~ 4,500
 - Recreation Lobster = ~ 18,500*
- DMF survey work indicates fishers lose between 7% and 10% of their gear annually
- ALDFG compounds as more gear is lost annually and gear previously lost persists indefinitely



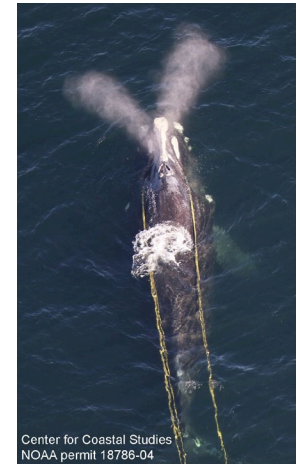
Why has ALDFG Become Such an Issue?

- Advancements in plastics and co-polymers have led to widescale use in gear construction
- Historically.....
 - Traps were made of wood
 - Rope was made of jute
 - These materials were biodegradable
- Modern Fishery
 - Traps are made of polyvinyl coated steel mesh
 - Rope of made of polyethylene and polypropylene
 - Materials not biodegradable
- Empirical evidence suggests these material can persist in the marine environment for greater than a decade



Impacts of ALDFG to Marine Environment

- Ghost fishing – occurs when abandoned traps continue to catch and kill lobsters, crabs, and fish
 - Can impact stock size and reproductive capacity
 - Can negatively affect landings and net revenue
- Ecosystem Impacts
 - Can damage sensitive habitats such as eel grass and corals
 - Generates microplastic debris as it breaks down in the ocean
- Entanglement Risk to Protected Species
 - Buoyed ALDFG can entangle whales and sea turtles
 - Dilutes effectiveness of risk reduction measures the industry undertakes to protect NARW's
 - Requires DMF to run costly and labor-intensive gear retrieval program



Impacts of ALDFG to Marine Environment

- Navigation Hazard/ Gear Conflict
 - Buoyed ALDFG poses a navigation hazards to boaters who get ropes caught in their propeller.
 - Un-buoyed ALDFG cause gear conflict issues with mobile gear fishers who inadvertently tow their nets/dredge into ALDFG on the ocean floor
 - Both things can cause a safety risk to the mariner
 - Both things can cause damage to vessels and gear



Impacts of ALDFG on Shore

- Public Nuisance/Public Safety
 - Large amounts of ALDFG wash up on shore
 - Occurs especially after large storms
 - Most of the gear that washes up is severely damaged
 - Litter and “eye-soar” issue
 - Management issue for municipalities and property owners
 - Creates a safety issue for unknowing beachgoers who step on fragments of corroding wire mesh panels



Other Issues with ALDFG

- Removal/Disposal

- Under current MA law ALDFG (even damaged and non-functional) are considered personal property
- Technically cannot be disposed of without notifying the owners and giving them 60 days to claim it.
- Costly and logistically difficult to remove and transport
 - Large quantities often require heavy equipment and large trucks to transport
 - Often wash up in remote and logistically difficult areas to access
 - Gear lost on the sea floor require special sonar equipment and grappling gear to retrieve
- Difficult to dispose/re-purpose
 - Many municipal landfills will not except ALDFG
 - Damage and deterioration often prevent salvage and re-purposing



Statement of the Problem

- Issues that ALDFG cause are numerous and well understood
- There is strong interest in addressing the problem
 - DMF/MEP have been working on this for decades
 - Municipalities
 - Conservation Groups
 - Commercial Fishermen
- Current state law prevents the efficient management of ALDFG



M.G.L. c. c. 130, §§31 and 32

Section 31: Destruction or injury to weir, pound net or fish trap

Section 31. No person shall, without the consent of the owner, take, use, destroy, injure or molest a weir, pound net, fish trap, seine, set net or lobster or crab pot or other fishing gear, or a fish car or other contrivance used for the purpose of storing fish, including any such fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, or take fish therefrom.

Section 32: Fishing gear swept ashore by natural causes; recovery

Section 32. The owner of any fishing gear mentioned in section thirty-one which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within thirty days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. In the event such fishing gear shall not be so recovered within such period or recovered by other legal means within sixty days it shall enure to the riparian owner of such shore, beach or flat in the manner provided in chapter one hundred and thirty-four



Statement of the Problem

- Current laws greatly limits ability to clean up ALDFG
 - Can only be done under authority/supervision of MEP who have authority to inspect and seize fishing gear under M.G.L. c. 130 §9
- Statutes are antiquated
 - Enacted in 1941 – fishery was much smaller, and materials used were biodegradable
 - Do not differentiate between “intact fishing gear” and “fishing gear debris”
 - Do not consider the impacts of ghost fishing and proliferation
 - Do not consider the impacts that buoyed ALDFG may have on protected species



Recommendations

- Develop a comprehensive management strategy that balances property rights with the need to efficiently handle and clean up ALDFG
- Legislative solution
 - Amend M.G.L. c.130 §31 to maintain property rights for fishing gear, but allow DMF to regulate handling of ALDFG
 - Rescind M.G.L. c.130 §32
 - Amend M.G.L. c.130 §1 to refine the statutory definitions for “closed season” and “open season” and adopt new definitions for “fishing gear” and “fishing gear debris.”



Proposed Statutory Changes

- G.L. c. 130 § 31
- No person shall, without the consent of the owner, take, use, destroy, injure or molest ~~a weir, pound net, fish trap, seine, set net or lobster or crab pot or other fishing gear, or a fish car or other contrivance used for the purpose of storing fish, including any such fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, or take fish therefrom.~~ fishing gear.

Notwithstanding, the Division of Marine Fisheries, with the approval of the Marine Fisheries Advisory Commission and the Department of Fish and Game, shall promulgate regulations that may authorize or permit the removal of fishing gear debris from the waters under the jurisdiction of the Commonwealth and the adjacent coastal shoreline. Fishing gear debris collected under the Division authority shall not be subject to the G.L. c. 134.



Proposed Statutory Changes

- G.L. c. 130 § 32

- ~~• The owner of any fishing gear mentioned in section thirty one which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within thirty days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. In the event such fishing gear shall not be so recovered within such period or recovered by other legal means within sixty days it shall enure to the riparian owner of such shore, beach or flat in the manner provided in chapter one hundred and thirty four.~~



Definitions Are Key...

- Needed Statutory Changes to G.L. c. 130 § 1
- Distinguishing Fish Gear from Fishing Gear Debris
 - “Fishing gear”, a trap, net, fish car, or other contrivance that is: **intact**; functions as it is intended to take, hold, or capture fish; and is maintained in the water during the **open season**.
 - “Fishing gear” has value to owner
 - “Fishing gear debris”, a trap, net, fish car, or other contrivance that is: **not intact**; does not function as it is intended to take, hold, or capture fish; or is maintained in the water during a **closed season**.
 - “Fishing gear debris” has no value to the owner



Definitions Are Key...

- G.L. c. 130 § 1
- Refine definition of Closed Season
 - ~~"Close season", the time during which fish cannot lawfully be taken.~~
 - "Close season" or "Closed season" the time during which fish cannot lawfully be taken or a time or area when and where the use of fishing gear is prohibited.
- Adopt a definition for "Open Season"
 - "Open Season", the time during which fish may lawfully be taken or a time or area where the use of a particular fishing gear is allowed.



Regulatory Framework

- Defining “intact” commercial fishing gear
 - (1) For a commercial trap to constitute intact fishing gear, it shall have at least three of the following elements:
 - (a) Buoy that is marked as set forth by 4.13.
 - (b) Buoy line that complies with marking and modification requirements set forth by 12.00.
 - (c) Current years’ trap tag associated with a valid current years’ fishing permit set forth by 6.31.
 - (d) Trap gear configuration requirements set forth by 6.00.
- “Intact” definition ensures
 - Owner is identifiable
 - Trap has all the elements that make it functional
 - Buoy line is identifiable to the fishery



Regulatory Framework

- DMF will need to develop regulations that provide clear guidance on how public may interact with intact fishing gear and fishing gear debris
 - (1) who may handle the gear
 - (2) when the gear may be handled
 - (3) collection methods;
 - (4) from where the gear may be removed
 - (5) whether permitting and reporting is required
 - (6) what post-removal options exist
- Circumstances under which ALDFG is encountered
 - (1) shore clean up
 - (2) directed at-sea gear removal
 - (3) incidental recovery (i.e., caught in other fishing gear)
 - (4) enforcement actions

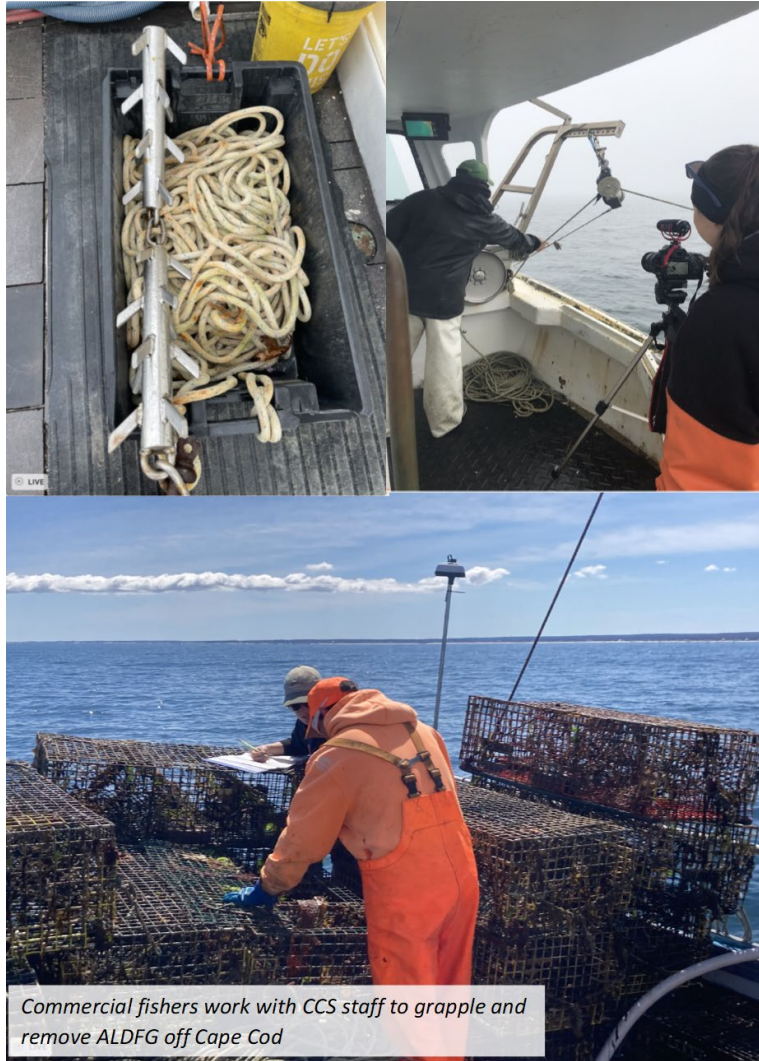


Benefits to DMF regulating ALDFG

- Challenges related to ALDFG are not static and evolve
- Fisheries change with advances in technology and methods
- DMF can respond to these changes through its regulatory process within 6 months
- Regulatory approach will be fine tuned by the MFAC
- Regulations are subject to review and approval by the Commissioner and Governor



Questions



June 13, 2023

Division of Marine Fisheries

Slide 23





The Commonwealth of Massachusetts

Division of Marine Fisheries

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REBECCA L. TEPPER
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THOMAS K. O'SHEA
Commissioner

DANIEL J. MCKIERNAN
Director

May 26, 2023

Mr. Michael Pentony, Regional Administrator
NOAA Fisheries, Greater Atlantic Region
55 Great Republic Drive
Gloucester, MA 01930

RE: NOAA-NMFS-2023-0041 (Amendment 23 to the Summer Flounder, Scup and Black Sea Bass FMP)

Dear Mr. Pentony,

The Massachusetts Division of Marine Fisheries (DMF) fully supports the National Marine Fisheries Service's (NMFS) rationale, as provided in 88 FR 28456, for disapproving the addition of the commercial black sea bass state allocations into the federal fishery management plan (FMP) as part of Amendment 23 to the Summer Flounder, Scup, and Black Sea Bass FMP. NMFS' main arguments, as we understand them, can be summarized as follows:

1. An unnecessary increase in administrative burden and inefficiencies—with no clear direct benefit to the government, the resource, or the fisheries—given that the allocations already reside in and are successfully managed under the interstate fishery management plan; and
2. Inequity in state representation among the Mid-Atlantic Fishery Management Council (Council) and Atlantic States Marine Fisheries Commission (ASMFC), providing the states on the Council a disproportionate role in the decision-making process relative to the contentious issue of allocations for all states in the management unit.

DMF provides the following comments relative to NMFS' rationale, some of which also responds to comments submitted by the Mid-Atlantic Fishery Management Council in a letter dated May 18, 2023.

Administrative Burden & Inefficiencies

As indicated in the proposed rule, the Commission has been successfully managing the black sea bass state-by-state commercial quotas for 20 years, with NMFS monitoring and tracking landings against the coastwide quota only. DMF agrees that adding the state quotas to NMFS' operations is unwarranted and unbeneficial with regards to both quota monitoring and quota transfers.

With regards to quota monitoring, NMFS' existing systems may mitigate the administrative burden, as the Council's letter argues, but they do not eliminate the need for federal staff time to be applied to the task. Meanwhile, the states will still need to monitor quota use to declare a state fishery closure, as federal closures do not apply to all harvesters and dealers. Moreover, the process for aligning state and federal quota closures is not seamless, as DMF has personally experienced with species such as bluefish and summer flounder. Landings data and projections oftentimes differ between state and federal monitoring, as does the time requirement for DMF and NMFS to close a fishery. DMF's

frequent and direct outreach to dealers as quotas near full utilization generally allows for more accurate landings tallies and projections, which DMF can respond to nimbly. DMF's ability to close a fishery within 24-hours is not matched by NMFS. This has at times resulted in misaligned closure dates affecting state and federal permit holders differently. Overall, this adds unnecessary burden and complexity to a well-functioning system.

At present, state quota transfers are processed efficiently through the ASMFC without a superfluous federal process. While the Council letter questions NMFS' concerns about the additional time and resources needed, DMF defers to the agency responsible for completing the process to understand the true burden. During the Council and Commission's debate on this topic in December 2020, NMFS foretold that the added obligation of processing every quota transfer, including publication in the Federal Register, would not only hinder the speed at which transfers become effective, but would be impactful to the agency workload in general, potentially delaying more important work—a point one might expect the Council to heed in light of not infrequent concerns about NMFS processing timelines. While the record created by publishing in the Federal Register has benefits for transparency, it should be noted that ASMFC now catalogs a record of all quota transfers on its public-facing website. ASMFC would undoubtedly still monitor these transfers, meaning that switching to the more onerous federal process alleviates little workload from ASMFC. The Council's comment letter focuses on the reduced flexibility to states from the proposed rule's limitation on late season and post-season transfers (which we agree should have minimal impact), but seems to overlook the reduced flexibility that may come with a longer timeline for transfers becoming effective mid-season, and how that would pair with a less agile federal closure system as well.

Inequity of Representation

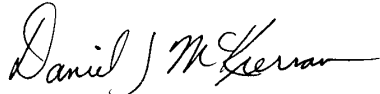
DMF agrees with NMFS that equity of representation is vitally important to the particular issue of state-by-state allocations. The ASMFC, where every coastal state with an interest in a species is represented, is the more appropriate venue for determining state allocations. Black sea bass specifically has been a prominent example in recent discussions (and occasional congressional bills) concerning fisheries management governance structure, including recent climate change scenario planning supported by the Council. This forum led to thoughtful dialogue for consideration of a coastwide fisheries council or more truly joint management of species across Councils to provide greater equity and flexibility as stocks shift. Moving the black sea bass allocations into the Mid-Atlantic Council management plan at this time, thereby uprooting the northern states' equal footing inherent in ASMFC management, seems antithetical to such deliberations. The mid-Atlantic states feel no similar repercussions from maintaining the allocations solely in the interstate plan; they are well represented by their delegates to the ASMFC. As the Council letter points out, this is the first time the allocations have been revised in the ASMFC plan since their original implementation in 2003, demonstrating that the ASMFC member states do not take the matter lightly. While distinct, the ASMFC processes are equally transparent, robust, and deliberative as the Council's.

The Council letter asserts that the New England states do not suffer from an inequity in representation in black sea bass management due to their involvement on the ASMFC Management Board and the special voting procedures taken on joint actions. As one of the states in question and with authority on the matter, DMF unequivocally disagrees—these voting procedures are not equivalent to full representation. For example, the Council letter remarks that disapproval of the allocation aspect of the amendment would be contrary to the recommendations of both the Council and the Board. This narrative does not provide the full context of both bodies' votes. It bears emphasizing that, after an initial motion was made to add the allocations into the federal FMP (notably made and seconded by participants of both bodies), a substitute motion to not add them was

offered (made and seconded by northern state and NMFS representatives). However, the Council voted first and because the majority of Council members from New York to North Carolina voted against the substitute, the motion failed without the Commission membership from New Hampshire through North Carolina being able to affirm their position. Only after the substitute failed by the Council's sole decision and another option wasn't available, did the main motion receive a passing vote from the Commission (and on a very slim margin). Both the Council and Commission votes showed the expected geographical divide, with the northern states wanting equal representation on allocation decisions by way of not adopting the allocations into the federal FMP.

Thank you for considering these comments in your final decision to come.

Regards,

A handwritten signature in black ink, reading "Daniel J. McKiernan". The signature is fluid and cursive, with the first name "Daniel" and last name "McKiernan" clearly legible.

Daniel J. McKiernan, Director
Massachusetts Division of Marine Fisheries