



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

9:00 AM

August 19, 2021

Held Virtually Via Zoom

Webinar Link: <https://bit.ly/2VLDvpG>

Dial In: 1-301-715-8592

Webinar ID: 850 6868 8014

Webinar Passcode: 924857

1. Introductions and Announcements (9:00 – 9:10)
 - a. Review and Approval of the August 19, 2021 Business Meeting Agenda
 - b. Review and Approval of the June 3, 2021 Draft Business Meeting Minutes
2. Comments (9:10 – 9:30)
 - a. Chairman
 - b. Commissioner
 - c. Law Enforcement
 - d. Director
3. 2021 Quota Managed Species Updates (9:30 – 10:00)
4. In-Season Adjustments (10:00 – 10:30)
 - a. Action on Commercial Black Sea Bass Adjustments
 - b. Review of Authorization for Horseshoe Crab Trip Limit Increase for Trawlers
5. Items for Future Public Hearing (10:30 – 11:00)
 - a. Adjusting the Timing of Inshore Squid Fishery
 - b. Setting of Federal Winter Period Scup Limits
6. Discussion Items (11:00 – 12:00)
 - a. Incidental Take Permit Application Update
 - b. CARES Act Relief Update
 - c. Updates on August ASMFC Meeting and Joint ASMFC/MAFMC Meeting
 - d. NEFMC Meeting Updates
 - e. Shellfish Program Updates
 - i. PSP Closures
 - ii. Shellfish Advisory Panel Codified in State Law
 - iii. SMAST Contract for Hydrographic Modeling
 - iv. MSI Strategic Plan Final Report
 - f. Review of MFAC Authorities in Fisheries Management
7. Other Business (12:00 – 12:15)
 - a. Status of Sub-Committees
 - b. Commission Member Comments
 - c. Public Comment
8. Adjourn (12:15)

Future Meeting Dates

**9AM
September 23, 2021
TBD**

**9AM
October 28, 2021
TBD**

**9AM
December 2, 2021
TBD**

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.

MARINE FISHERIES ADVISORY COMMISSION

June 3, 2021

Held Virtually via Zoom

In attendance:

Marine Fisheries Advisory Commission: Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Bill Doyle, Clerk; Arthur “Sooky” Sawyer; Kalil Boghdan; Bill Amaru; Lou Williams; and Shelley Edmundson.

Division of Marine Fisheries: Daniel McKiernan, Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Story Reed; Jared Silva; Nichola Meserve; Melanie Griffin; Kelly Whitmore; Jeff Kennedy; Bob Glenn; Scott Schaffer; Maren Budrow; Maggie Nazareus; Stephanie Cunningham; and Anna Webb

Department of Fish and Game: Ron Amidon, Commissioner

Massachusetts Environmental Police: Ltc. Moran; Capt. Kevin Clayton; and Lt. Matt Bass

Members of the Public: Beth Casoni; Eunki Seonwoo; and Eric Lorentzen

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the June 3, 2021 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF JUNE 3, 2021 BUSINESS MEETING AGENDA

There were no amendments to the June 3, 2021 MFAC business meeting agenda.

Chairman Kane asked for a motion to approve the draft agenda. Kalil Boghdan made a motion to approve the draft agenda. The motion was seconded by Sooky Sawyer. The June 3, 2021 MFAC business meeting agenda was approved by unanimous consent.

REVIEW AND APPROVAL OF APRIL 15, 2021 DRAFT BUSINESS MEETING MINUTES

There were no amendments to the April 15, 2021 draft MFAC business meeting minutes.

Chairman Kane asked for a motion to approve the draft April 15, 2021 meeting minutes. Bill Amaru made motion to approve the April business meeting minutes. Shelley Edmundson seconded the motion. The motion was approved by unanimous consent.

CHAIRMAN'S COMMENTS

Chairman Kane thanked MFAC members for their participation and attendance. He was hopeful the MFAC could begin hosting in person meetings again in the near future.

LAW ENFORCEMENT COMMENTS

Capt. Kevin Clayton handled the comments for the Massachusetts Environmental Police (MEP). He highlighted some recent issues regarding fluke, scup, and sea bass, and river herring.

DIRECTOR'S COMMENTS

Director McKiernan stated the May 13 aerial survey of Cape Cod Bay and Massachusetts Bay by the Provincetown Center for Coastal Studies (CCS) showed the seasonal aggregation of right whales in the area had migrated out. Subsequently, the trap gear closure was lifted and the lobster fishery opened on May 14. The trial regarding Massachusetts fixed gear fisheries and the Endangered Species Act (ESA) was scheduled to begin on June 9th. The trial was scheduled to occur over 12 business days.

The Director moved on to discuss NOAA's Biological Opinion on 10 Fishery Management Plans. With regards to right whales, the document maps out the need for routine review of mortalities, and if entanglements continue to occur, more risk reduction may be required. To this point, the Director emphasized the importance of the recommended buoy line marking rules the MFAC would be taking action on at this meeting. These marking rules will provide regulators with an enhanced ability to determine the origins of entangling gear and establish more surgical risk reduction strategies.

Director McKiernan then moved on to discuss proposed wind lease area on Coxe's Ledge. Calculating the fishing effort and forecasting the effects on fishermen from the development is difficult, largely due to the lack of adequate spatial data for certain sectors (e.g., commercial lobster and for-hire). Dan stated his interested in improving spatial data collection for these sectors and DMF was surveying for-hire fishermen to determine how many trips they take in this area during recent seasons.

The Director then discussed the Massachusetts Shellfish Initiative (MSI). The MSI Strategic Plan was completed in early May and members of the MSI participated in a press conference regarding the release of the report. As recommended in the Strategic Plan, the Shellfish Advisory Panel will be codified in statute and will be required to meet twice a year.

The Port Profile Project, which was completed in early May in conjunction with UMass Boston and the Urban Harbors Institute, was available on DMF's website. Dan thought this document will help municipalities address commercial fishing infrastructure needs.

The Director then welcomed questions from the MFAC.

Ray Kane and Director McKiernan discussed the CCS aerial surveys for right whales around Cape Cod.

Mike Pierdinock, Kalil Boghdan, and Director McKiernan further discussed offshore wind energy development off Martha's Vineyard and Nantucket. Mike P. was disappointed by the extent to which the Bureau of Energy Management addressed concerns from the fishing industry. He also raised issue with how wind arrays may impede navigation by interfering with radar. Mike P. was encouraging fishermen to contact Orsted, as they were providing simulations of navigating wind arrays.

ACTION ITEMS

Buoy Line Marking Rules for Commercial Lobster and Crab Traps

In April 2020, Judge Talwani ordered the Commonwealth to obtain an Incidental Take Permit (ITP) under the ESA to cover the permitting and regulating of buoy lines in fixed gear fisheries due to the risk of such lines entangling endangered turtles and whales. To address this, DMF conducted rule-making in late 2020 and early 2021 to address the risk posed by these buoy lines in anticipation of applying for the ITP. DMF was now pursuing a second round of rule-making towards this goal.

The proposed rules established new and enhanced buoy line marking regulations. The purpose is to better delineate lobster traps fished in state waters fishery from gear fished in other jurisdictions. Should entanglements continue to occur, the origin of the gear could be more readily determined.

Dan noted that Massachusetts has aggressively managed fixed gear interactions with protected whales since the late-1990s. He argued that the entanglements that are continuing to occur are likely from other jurisdictions and being detected in Massachusetts waters, as our waters are well observed. Dan explained that enhanced buoy line marking could help demonstrate this argument and exonerate the MA state-waters fishery if entanglements occur in the future.

Bob Glenn discussed the importance of the need for MA to be able to distinguish the fishery from all other fisheries to allow for Massachusetts lobster trap fishery be listed separately on NOAA's annual List of Fisheries promulgated under the Marine Mammal Protection Act. Last year, DMF provided comments to NMFS suggesting that based on our conservative program to protect right whales, MA should be listed separately. In NOAA's response, it was noted the characteristics of MA fishing gear did not differentiate it enough from other jurisdictions to warrant a separate listing. Bob was optimistic the new rules would accomplish this goal. Bob explained this rule would not

go into effect until 2022. However, it was critical for it to be on the books this summer for NOAA to consider it in their annual development of the List of Fisheries.

Sooky Sawyer and Bob Glenn discussed the use of tracers to meet buoy line marking requirements. Bob indicated that tracers may be used in the body of the buoy line, but solid marks must be used in the surface system. Bob and his staff were eager to work with industry to gain input on methods to comply with these new requirements. There was then additional discussion between Bob Glenn, Jared Silva, Sooky Sawyer, and Lou Williams to clarify how weak inserts could double as a buoy line marks.

Ray Kane asked if DMF was giving away weak rope to industry members. Bob stated that DMF was still doing this and was holding events in June to provide coils of rope to seasonal lobster fishermen and commercial fishermen could obtain rope at these events.

Bill Amaru asked about NOAA's use of underwater cameras to inspect buoy line systems. Bob Glenn stated he is aware of this technique, but noted the process is labor intensive and visibility presents a problem.

Mike Pierdinock was happy to see that DMF is developing these measures to differentiate the state's lobster fishery from those in other jurisdictions.

Chairman Kane asked for a motion to adopt the DMF's recommendation on the buoy line marking rules for commercial lobster and crab traps. Mike Pierdinock made motion to approve the recommendation as provided by the Director. Shelley Edmundson seconded the motion. A roll call vote was taken, and the motion was passed unanimously 8-0.

DISCUSSION ITEMS

Incidental Take Permit Application Update

Bob Glenn provided a brief update on DMF's ITP application. DMF added two additional staff members to work on this project. Scott Schaffer was brought into the statistics program to provide fisheries specific data for the ITP application, and Taylor Stoni was brought in to serve as an ITP permit specialist. These new hires will be critical for DMF's timely completion of the ITP application.

CARES Act Relief Update

Dan McKiernan provided a brief update regarding the second round of CARES relief. He compared and contrasted this second program to the first program. The most notable difference was that the second program will use additional qualification timeframes, which may result in qualifying more people. Additionally, DMF was setting aside a portion of the funding to be potentially allocated to a sector that may have been disproportionately affected. Unlike the first program, applications for this second

program will be sent out all at once, resulting in everyone getting paid at once. Dan was confident the payments would be made in the early fall.

Ray Kane sought clarification on the ASMFC's September 30th deadline to distribute funding. Dan stated this deadline was when the money needs to be turned over from NOAA Fisheries to the ASMFC. The ASMFC will be allowed to make payments to fishermen after this date.

Kalil Boghdan, Kevin Clayton, and Director McKiernan discussed funding for Native American tribes.

Report on ASMFC and Council Meetings

Nichola Meserve reported on recent ASMFC meetings. The ASMFC last met in early May. An issue of primary focus was the ongoing development of Striped Bass Amendment 7. Issues from the scoping document that were selected for continued development include management triggers, conservation equivalency, and recreational release mortality, plus a new item of measures to protect the 2015 year class. Items removed from further considerations include: goals and objectives, BRPs, stock rebuilding schedule, regional management, recreational accountability, and coastal commercial quota allocation.

Nichola then discussed the recently approved commercial black sea bass quota reallocation addendum. NY had brought forward an appeal for not also receiving an initial 2% increase for stock expansion into LIS similar to CT. This was supported by the Policy Board, which remanded the issue back to the species management board for corrective action in August. Because of the joint management of this species, the MAFMC would also be discussing this issue in June to consider withdrawing the submittal of its complementary amendment to NOAA Fisheries. The Bluefish Board would also be meeting jointly with MAFMC in June to take final action on the bluefish allocation and rebuilding amendment.

Nichola noted that the MAFMC meeting would also include a one-hour presentation about the 2020 MRIP estimation methodology that accounted for limited intercept and head boat sampling due to the pandemic. On the subject of Covid, she added that the summer meeting for ASMFC is virtual but the hope is to resume to in person meetings in October (in New Jersey), while the MAFMC was attempting a hybrid virtual/in-person meeting in August (in Philadelphia).

Mike Pierdinock asked about the striped bass measures to protect the 2015 year class. Nichola stated that the specifics were still under development but some configuration of moving size limits was expected. Mike commented on the increased abundance of black sea bass throughout the northeast, not just NY. Nichola reminded him that 25% of the coastwide quota would now be allocated based on regional biomass given the stock's northerly skewed distribution, but NY's appeal sought to address stock

expansion into LIS specifically. Mike asked if the lack of MRIP data would impact the setting of measures, such as necessitating status quo. Nichola indicated that NOAA Fisheries' objective was to develop recreational catch estimates that would be used to inform the setting of measures as usual.

Kalil Boghdan asked if ASMFC foresees any red flags regarding the striped bass fishery. Nichola stated that the goal of Amendment 7 is to prevent the further decline of striped bass. Kalil asked about the timeline of the amendment. Nichola stated it is expected to be implemented by 2023. Kalil emphasized a need for efficiency and speed regarding the amendment.

Dan McKiernan provided a brief update from the lobster management board. Development of the MSE was postponed until the August meeting to prioritize work on Draft Addendum XXVII. A subcommittee was formed to help guide development of Draft Addendum XXVII: trigger mechanism for measures to improve biological resiliency of GOM/GBK stock. The plan is to approve for public comment in August. There was also a technical working group formed regarding electronic vessel tracking.

Mike Pierdinock provided a photo of a proposed wind farm for the commission that displayed the cable that runs from inshore to offshore.

Bill Amaru asked whether or not the fleet should be made aware they are going to be required to have vessel monitoring in the future. Dan stated he cannot speak to that, but would personally advise lobstermen to begin using vessel tracking and added that it would be confidential. NMFS would like to see ASMFC create an addendum to lobster management plan where this can be codified.

Bill Amaru expressed there needs to be a way to implement a VMS program that can benefit the fishery members as well as the data collection given that there is a possibility that VMS does not work properly 100%. Story Reed spoke to his pilot program that is being conducted with lobster fishermen. The longer the pilot program has been running, the more options have become available.

Mike Pierdinock stated the for-hire fleet was concerned over the cost, but added VMS may not be necessary but rather eVTRS are easier and more cost effective.

Melanie Griffin gave an update on NEFMC April meeting and what to expect from the June Meeting. There were no final actions at the April meeting. The June council meeting will be remote, but in person for the remainder of the year. Melanie stated that there was a lot of discussions regarding climate change which included strategies and an action plan. Melanie gave a brief overview of the climate strategies which included the National Climate Science Strategy, Northeast Regional Action Plan, and Scenario Planning by Northeast Region Coordinating Council (NRCC). Melanie then gave an overview of what is to come at the June Council meeting. NEFMC will finalize research

priorities, EBFM workshop plans and comments on SE eVTR and HMS Amendment 13. There will be ongoing development specifications/other priorities regarding groundfish, scallops, herring and skates. Melanie welcomed questions from the commission.

Mike asked Melanie to forward him the information regarding the information to comment on the eVTRs as well as the webinar information for the end of the month.

Allowing Menhaden Seining on Fridays in Boston Harbor

Director McKiernan provided a brief background on seining in Boston Harbor. He then notified the MFAC that DMF amended the purse seine inshore net permit conditions to allow Friday fishing in Boston Harbor. The Director noted he received written support for this action from the Massachusetts Striped Bass Association. However, some members of the recreational fishery have voiced their concerns and frustrations to DMF.

Mike Pierdinock asked about the current menhaden trip limit. Jared Silva stated the current trip limit was 125,000 pounds. However, the vessel that typically fishes in Boston Harbor fishes at about a 25,000-pound capacity. Mike P. then asked about the quota utilization this year compared to years past. Story Reed stated DMF did not have this data on hand but would provide a quota managed species update at the August meeting.

Mike P. then asked if DMF could rescind this allowance. Dan stated he had the authority to rescind the authorization. However, his preference was to let the program run its course then evaluate it moving forward. He also did not want to encourage some individuals to provoke user group conflicts in order to have the authorization pulled. He noted the Boston Harbor seiner was well liked on the waterfront and worked to build relationships with the recreational fishing community in the area. Mike P. agreed with Dan's assessment of the Boston Harbor seiner, but he was worried about boats from other ports showing up to take advantage of the Friday opening.

Ray Kane asked if there was a way to run this opening as a single-year pilot program. Dan stated he would consider this and would discuss future management with the MFAC over the winter.

Kalil Boghdan emphasized that this is a complicated issue. He expressed concern over the opening of the harbor over one petitioner. He was not comfortable with DMF's decision to allow seining on Fridays.

Bill Amaru commended Dan for standing up for what he believes is best for the fishery. Bill understands that this is complex issue. He supported the Director's action, but requested Dan be willing to rescind the authorization should user group conflicts become untenable.

Bill Doyle expressed concern that this action was taken without the approval of the MFAC. He also asked that DMF brief the MFAC on what their authorities are and under what circumstances DMF can work unilaterally.

Lt. Col. Moran asked a clarifying question regarding the closure. He was anticipating receiving some complaints and wanted to ensure that his office was delivering the correct message.

Renewing Period II Summer Flounder Pilot Program

Jared Silva gave a brief background on the pilot program which allows draggers to fish two consecutive days and obtain two trip limits. Jared stated DMF has renewed the program and the tags and LOAs will be distributed next week.

Ray Kane asked if there were any known violations of this pilot program. Jared stated there are no known compliance issues and this program is supported by industry.

Shellfish Program Updates

Jeff Kennedy provided an update on DMF's shellfish program and the ongoing shellfish growing area reclassification work.

Bill Amaru and Jeff Kennedy discussed PSP closures in the Nauset estuary. Jeff recalled that Nauset is unique and the area has been subject to PSP closures in all but two years since 1972. This year's closure was extensive but toxicity was coming down and he anticipated the closures would last a couple more weeks.

OTHER BUSINESS

Status of Sub-Committees

Jared Silva gave an overview of upcoming sub-committee meetings. The sub-committees include state-waters groundfish (expected to convene this Fall for rule changes for 2022); commercial striped bass (expects sub-committee to meet this fall); law enforcement (met last November and Jared expects the meeting will be held the same time this year); and permitting.

MFAC Meeting Dates and Format for Remainder of 2021

Jared Silva discussed how the open meeting law is being adjusted due to the state of emergency being lifted. MFAC will meet virtually via Zoom in August. Jared expected that the first in person meeting will be in September. Jared anticipates that virtual models for public meetings will still be allowed, but he does not know if there will be additional requirements. He opined that there could be technical difficulties with a hybrid model. The MFAC meeting schedule for the remainder of the year is as follows: August 19, Sept 23, October 28, and December 2.

Commission Member Comments

Mike Pierdinock discussed upcoming deadlines for public comments regarding certain fisheries.

Bill Amaru wished everyone a safe and productive Summer.

Ray Kane thanked commission members for their engagement and attendance.

PUBLIC COMMENTS

Eric Lorentzen stated he is the Boston Harbor seiner who petitioned to have the closure on purse seining in Boston harbor lifted on Fridays. He welcomed any questions from the commission. He expressed concern over other operations coming into the harbor.

Beth Casoni asked if there will be an advisory or memo sent to the commercial industry regarding the second round of CARES relief. Director McKiernan stated that DMF will update the webpage in addition to sending an advisory once the spend plan has been approved.

ADJOURNMENT

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

MEETING DOCUMENTS

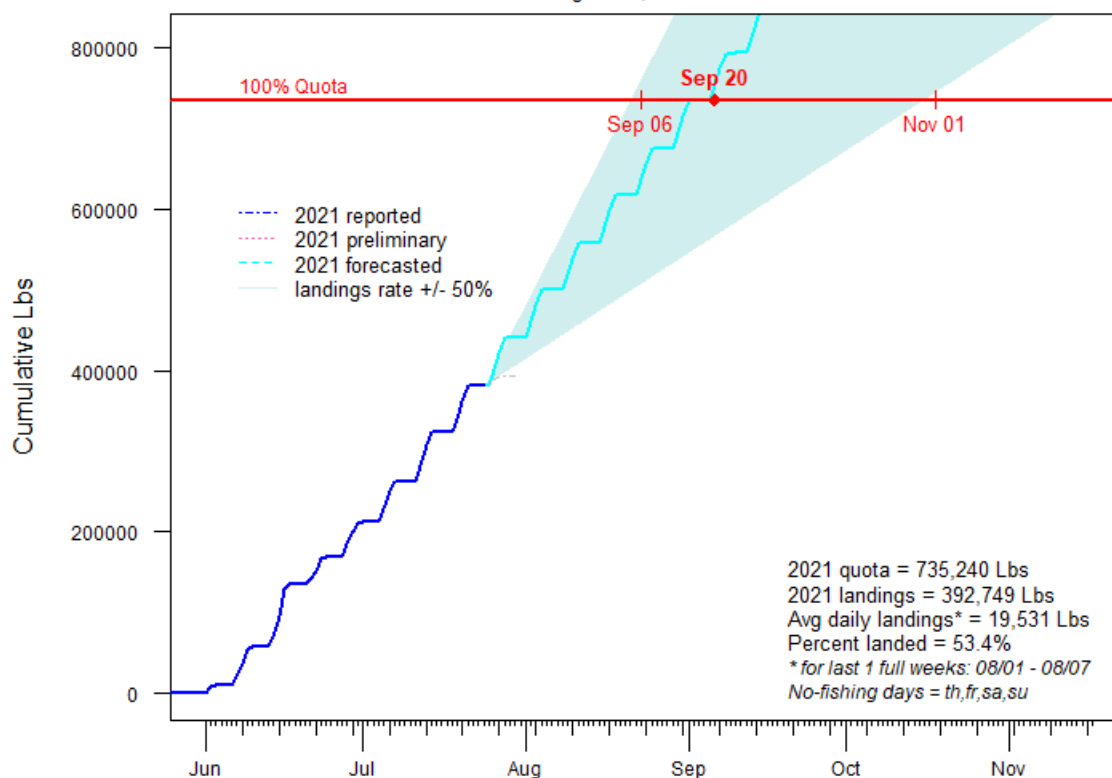
- June MFAC Business Meeting Final Agenda
- April Meeting Minutes
- Buoy Line Marking Recommendation Memo
- Inshore Net Permit Memo
- Fluke Pilot Program Memo

UPCOMING MEETINGS

August 19, 2021 Via Zoom	September 23, 2021 TBD
October 28, 2021 TBD	December 2, 2021 TBD

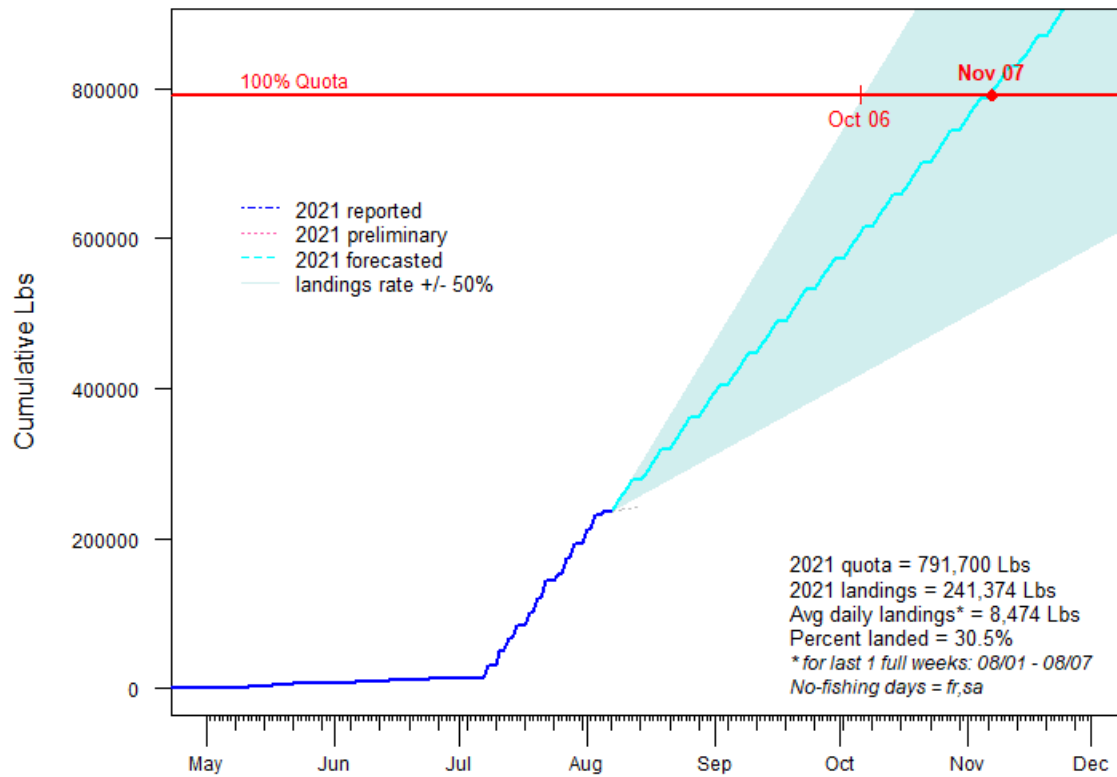
2021 BASS, STRIPED Quota Monitoring

as of August 13, 2021 12:03 PM



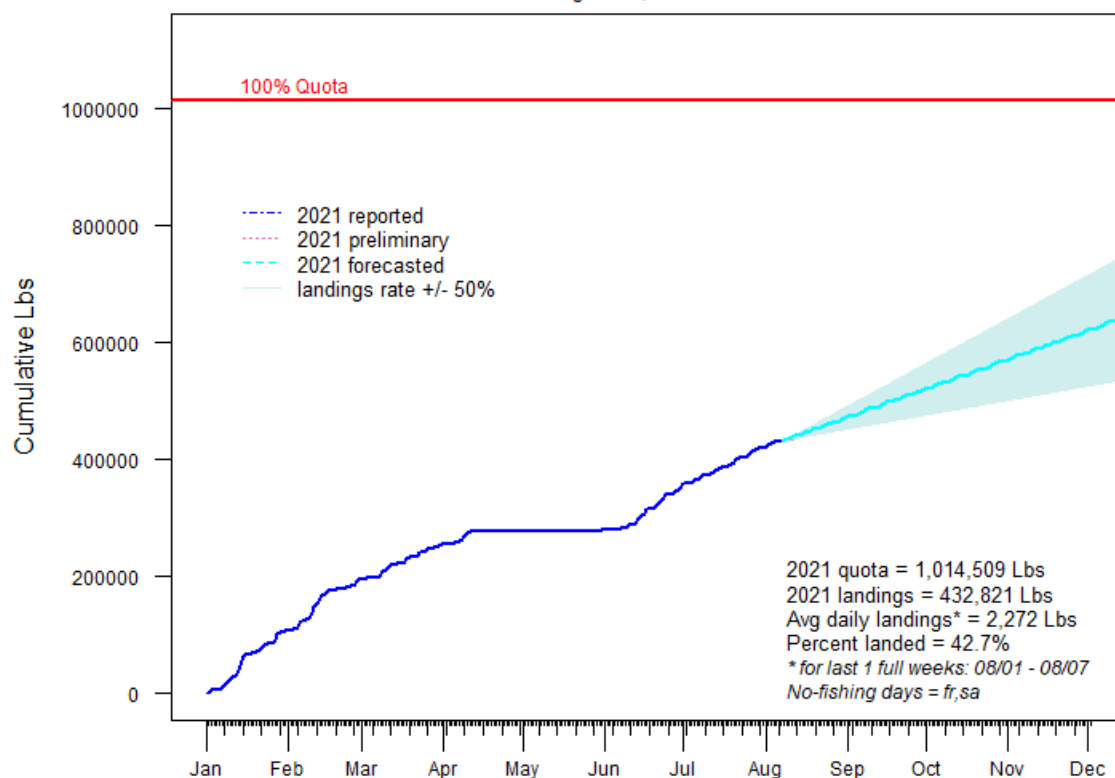
2021 BASS, BLACK SEA Quota Monitoring

as of August 13, 2021 12:00 PM



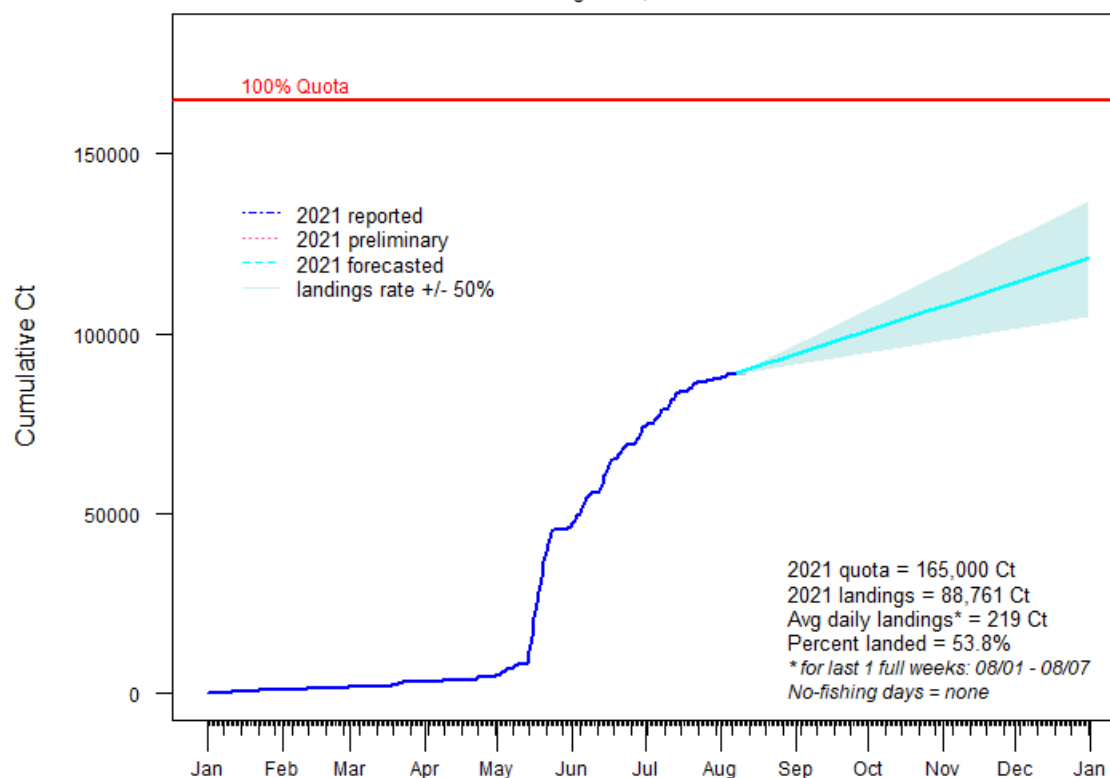
2021 FLOUNDER, SUMMER Quota Monitoring

as of August 13, 2021 11:12 AM



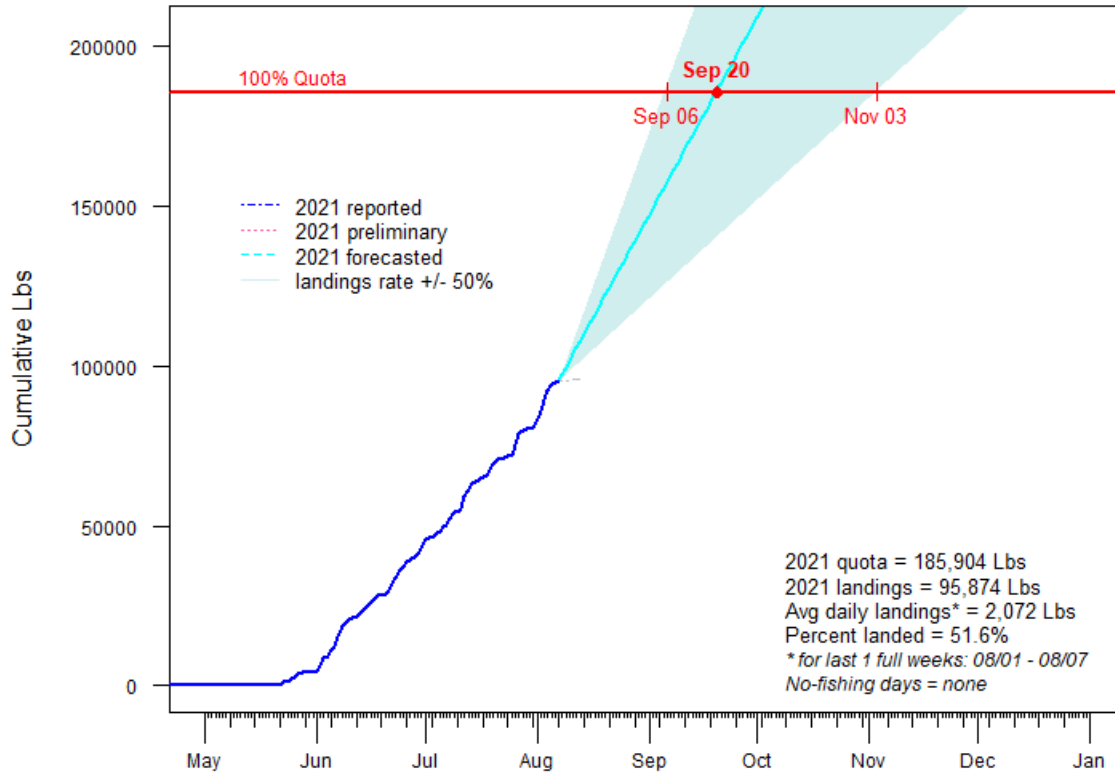
2021 CRAB, HORSESHOE Quota Monitoring

as of August 13, 2021 11:50 AM



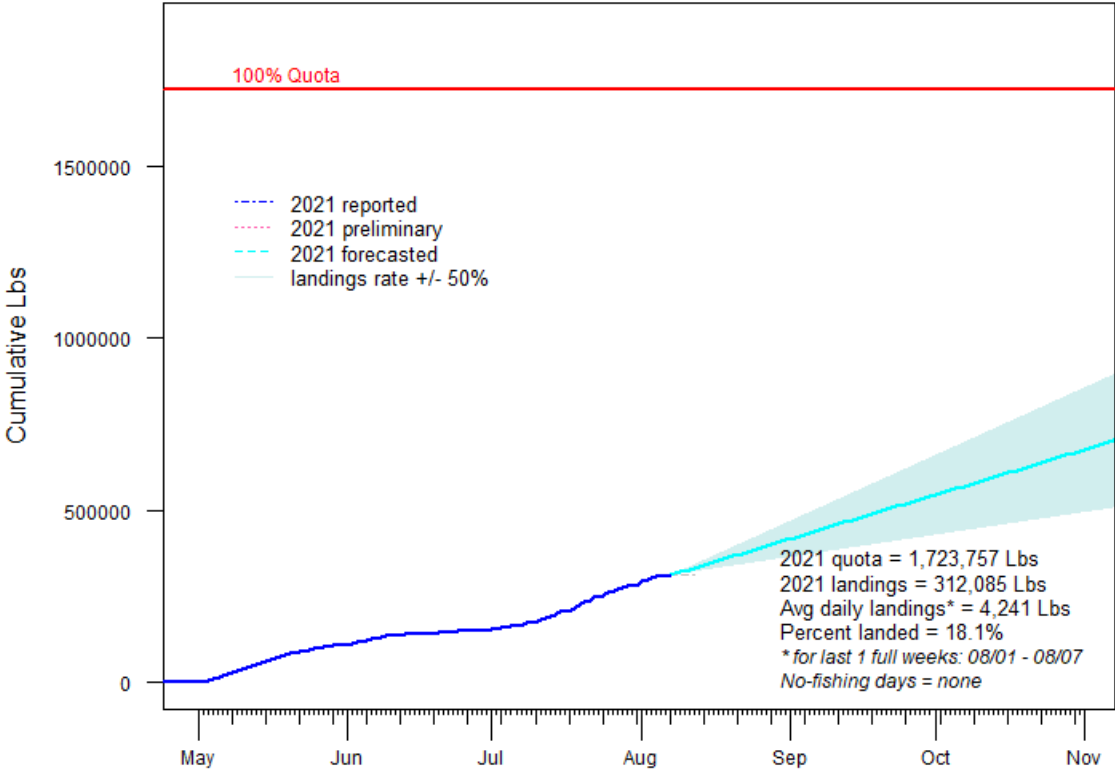
2021 BLUEFISH Quota Monitoring

as of August 13, 2021 11:09 AM



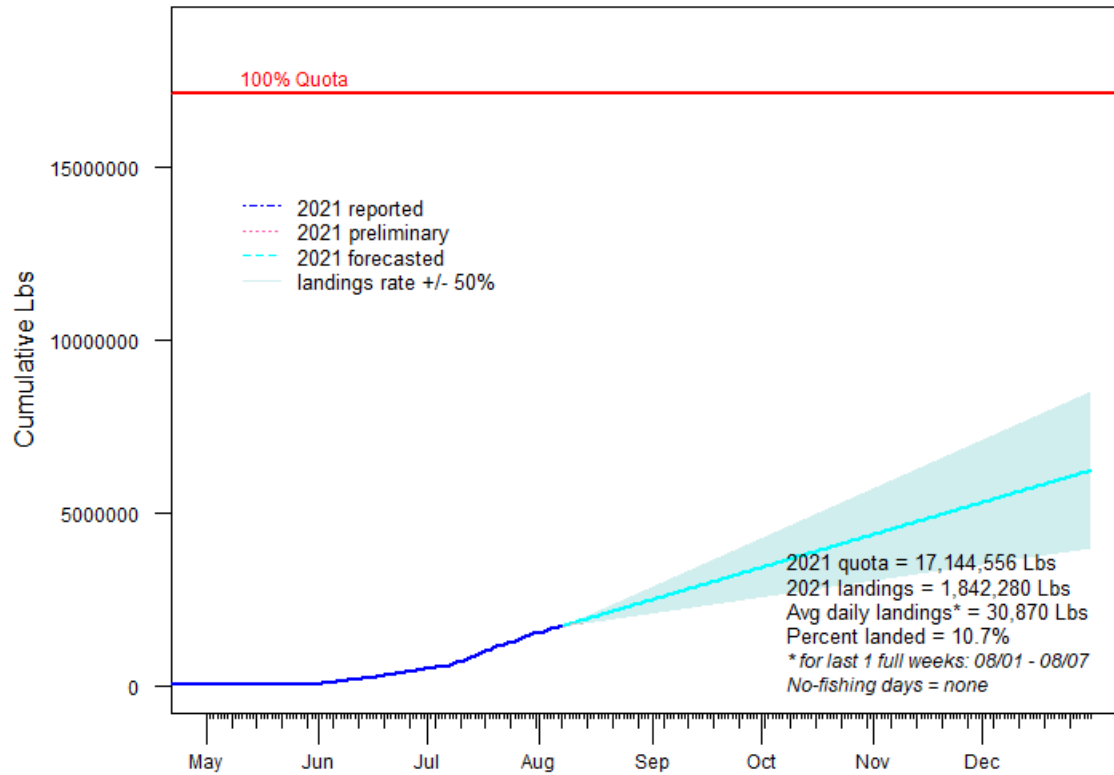
2021 SCUP Quota Monitoring

as of August 13, 2021 11:16 AM



2021 SHARK, DOGFISH, SPINY Quota Monitoring

as of August 13, 2021 12:07 PM





The Commonwealth of Massachusetts

Division of Marine Fisheries

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CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor


KATHLEEN A. THEOHARIDES
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: July 30, 2021

SUBJECT: **Immediate Increase to Horseshoe Crab Limits for Trawlers to Meet Biomedical Demands**

Action

Effective Sunday, August 1, DMF will increase the horseshoe crab possession and landing limit for trawlers to 400 crabs per trip. This increases the limited entry trip limit from 300 crabs to 400 crabs and the open entry limit from 75 crabs to 400 crabs. To implement this adjustment as expediently as possible, I am making this change through a Letter of Authorization (LOA). LOAs are being issued today to all 15 Coastal Access Permit holders who have SAFIS dealer records indicating they sold horseshoe crabs during the current management and reporting period (i.e., June 10, 2021 – July 24, 2021) for the south Cape's large mesh mixed species trawl fishery.

Under normal circumstances, I would propose making this change via an in-season adjustment to quota managed fishery limits. This process requires a two-week comment period and approval by the MFAC. Therefore, such changes could not then be implemented until after the next MFAC business meeting on August 19, 2021. However, I have determined it is in the best interest of the Commonwealth of Massachusetts to take a more expedient action and immediately issue LOAs to active trawlers to increase their horseshoe crab trip limits. This action is being taken in response to a low supply of crabs currently available to the biomedical industry. Given the ongoing pandemic, meeting biomedical demand for these crabs for LAL production is critical. The rationale for this decision is provided in greater detail below.

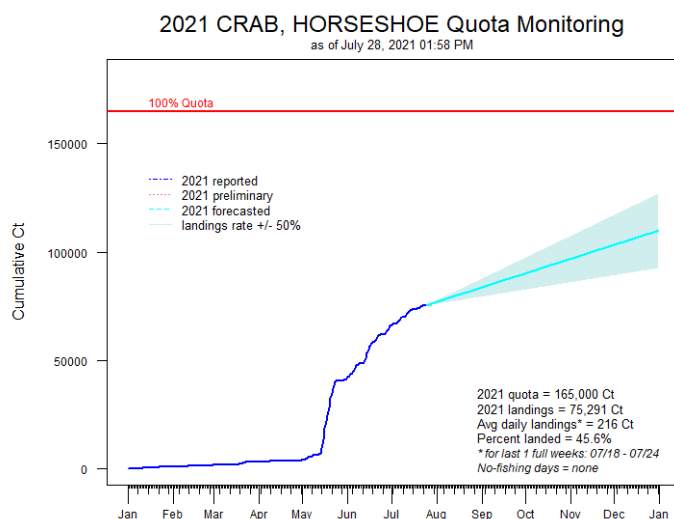
Rationale

The Falmouth-based biomedical firm — The Associates of Cape Cod — extract horseshoe crab blood to produce limulus amebocyte lysate (LAL). LAL is then used to detect the presence of bacterial endotoxins in medical equipment. The firm obtains crabs through two discrete sources: biomedical harvesters and bait dealers. Biomedical harvesters catch horseshoe crabs, provide them directly to the firm for bleeding, bled crabs are marked to prevent recapture, and then are returned to the embayment from which they were caught. Bait dealers, who obtain crabs from hand harvesters and trawlers, allow the biomedical firm to borrow the crabs for LAL extraction prior to sale as bait.

All crabs—other than those caught by biomedical harvesters and returned to the water—count against the state’s horseshoe crab quota, including those borrowed from bait dealers by the biomedical firm. Massachusetts has an annual horseshoe crab quota of 165,000 crabs. This quota is approximately 50% of what the state is allocated to take under the ASMFC’s Horseshoe Crab FMP. However, about 20-years ago, DMF and the MFAC unilaterally imposed a more restrictive quota to promote horseshoe crab conservation.

During the summertime mixed species trawl fishery in Nantucket and Vineyard Sounds, fishermen will fish with large mesh for summer flounder, and commonly catch other species such as horseshoe crabs, whelks, scup, and black sea bass. The horseshoe crabs retained by these fishermen are sold into the bait market and count against the state’s horseshoe crab quota. While some minimal hand harvest may occur, the trawl fishery has been the primary source of horseshoe crabs during the summertime period.

Fig 1. 2021 Quota Monitoring for Horseshoe Crabs through July 24, 2021



The weekly quota managed fishery report (Fig 1) produced by DMF’s Statistics Project for this past week (July 18 – July 24) shows a flattening in horseshoe crab landings. Moreover, the utilization of the quota is below where it was in 2020¹. For the past week average daily landings are only 216 crabs and the fishery has taken 45.6% of its annual quota. These low landings are likely driven by two factors—a decrease in overall effort in the summertime inshore trawl fishery in the Sounds (more on this below) and recent regulatory changes limiting the quantity of crabs fishermen without a horseshoe crab endorsement may retain².

Low levels of trawl landings are creating a shortage of crabs available on the bait market. This supply shortage coincides with a period of high seasonal demand from the biomedical industry. While the biomedical firm is receiving some crabs from biomedical harvesters, the number of crabs they receive from biomedical harvesters are insufficient to meet overall demand, and they

¹ As of July 25, 2020, MA landed 86,998 crabs, which is 11,707 more crabs than have been landed this year. On August 21, 2020, DMF increased the possession and landing limit for trawlers who do not hold a limited entry horseshoe crab endorsement from 75 crabs to 300 crabs through a Letter of Authorization. Ultimately, the 165,000 crab quota was not taken, as MA fishermen landed only 163,295 crabs.

² Prior to 2020, trawlers participating in the summertime mixed species trawl fishery south of Cape Cod who did not hold a horseshoe crab endorsement were eligible to receive an LOA from DMF allowing them to take 300 crabs per trip, consistent with the limit for those trawlers who held a limited entry horseshoe crab endorsement. In 2019, Massachusetts achieved (and exceeded) its horseshoe crab quota for the first time ever. This resulted in the state closing the horseshoe crab fishery on August 31 and forcing the regulatory discarding of crabs throughout the remainder of the season. In response, DMF eliminated the LOA program and instead adopted an open entry limit of 75 crabs. In retrospect, this open entry limit was likely set at too nominal of a level and should be reconsidered.

are reliant on the bait market to make up the difference. Moreover, DMF is hearing from commercial fishermen that poor summer flounder catch in the Sounds and low horseshoe crab limits are making the inshore trawl fishery unprofitable. Accordingly, I am concerned we may see fishermen make economic decisions to leave this fishery over the next month to pursue other opportunities and this will exacerbate existing horseshoe crab supply issues affecting both the biomedical firm and the conch pot bait market.

By increasing the horseshoe crab trip limit to 400 crabs, we will be increasing access to the available horseshoe crab quota for the 15 vessels who have taken horseshoe crabs in the mixed trawl fishery this year. This will enhance the quantity of crabs available to the bait market and thereby provide crabs for the biomedical firm to bleed for LAL production. Additionally, the added income provided through this increase in horseshoe crab landings may help to keep these active vessels working in this trawl fishery.

Other Considerations

Over the past few seasons, we have seen a substantial decrease in effort in the summertime mixed species trawl fishery south of Cape Cod. It is my understanding that there are a number of factors conspiring to cause this attrition (e.g., poor inshore summer flounder fishing conditions, high costs for dockage, the greying of the fleet, profitability of other fisheries). I intend to look into this issue more this fall and winter and will hold meetings with fleet and analyze fishery performance overtime. The rules governing this fishery were developed and tweaked over the past 30-years. Considering the ongoing challenges facing the summertime inshore trawl fishery, it is time to reimagine how we permit and manage this fishery to ensure fishermen are able to profitably pursue available quota and supply fish to markets.

Attached

Sample Letter of Authorization



The Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114
p: (617) 626-1520 | f: (617) 626-1509
www.mass.gov/marinefisheries



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor


KATHLEEN A. THEOHARIDES
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: August 13, 2021

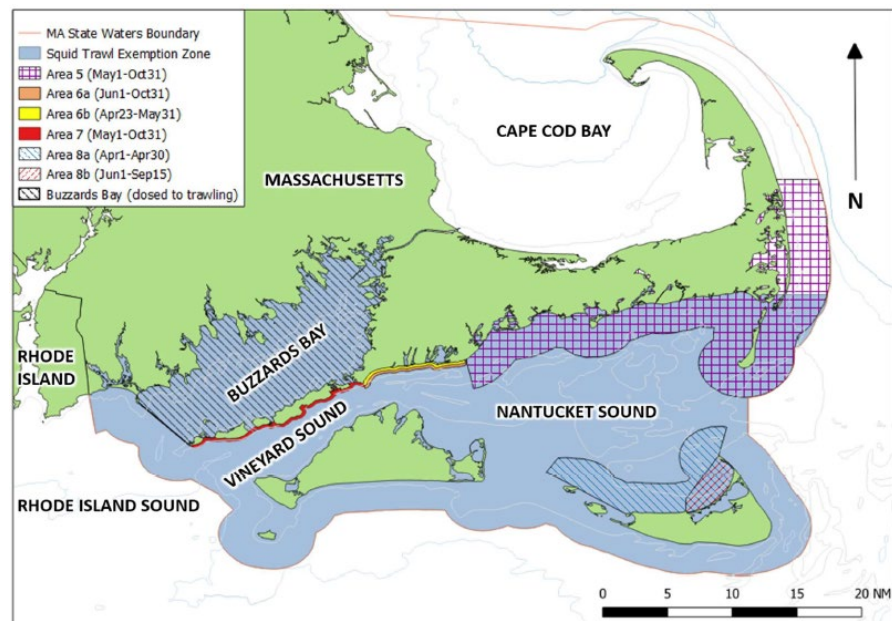
SUBJECT: Proposal to Adjust the Timing of the Inshore Small Mesh Trawl Squid Season

Proposal

I recommend going to public hearing this coming fall or winter with a proposal that would adjust the timing of the inshore small mesh trawl squid season. At present, regulations at 322 CMR 4.06(5)(a) allow this fishing activity to occur within the seasonal Small Mesh Squid Trawl Exempted Area (Fig 1) from April 23 – June 9 and the Director may extend the season beyond June 9 via permit condition. My proposed adjustment would extend the season by an additional six-days — through June 15—and strike the language about the Director extending the fishery.

Figure 1.

Small Mesh Squid Trawl Exempted Area and Mobile Gear Closures



Source: MA DMF

Background

The current timing of the inshore small mesh trawl squid fishery dates back to the early 1990s. At that time, the closure date was frequently amended, moving it between earlier and later dates in June. These changes sought to find a balance between providing commercial fishermen with access to the resource while abundant in state waters; preventing large catches of small squid and juvenile scup, black sea bass, or summer flounder; and addressing concerns from other

stakeholder groups, namely recreational fishermen. Note that in the early to mid-1990s the interstate and federal Summer Flounder, Scup, and Black Sea Bass management plans were being developed to rebuild these species.

Eventually, a small mesh trawl season of April 23 to June 9 was codified in 322 CMR, and DMF was granted the authority to extend the season if sea sampling data demonstrated the catch of squid was predominately large tubes and there was little bycatch of small squid or juvenile scup, black sea bass, and summer flounder¹. This approach was developed based on sea sampling work that I conducted with former Director Pierce, as well as feedback from stakeholders.

By the early 2010s, the state's observer program deferred much of the sampling to the more robust federal observer program. As a result, DMF became reliant on federal observer data to determine if it was appropriate to extend the squid fishery. This was problematic because federal observer data is typically not available until at least 90 days after trip completion. However, the federal observer program expedited sampling data to DMF, allowing for analysis of trips occurring within a week. Despite this cooperation, DMF was unable to review near-real time data; found it difficult to determine why some bycatch was being discarded (e.g., size restrictions, lack of permits to retain certain species, other regulatory constraints, marketability); and there were only a small number of observed tows that DMF could determine occurred exclusively in state-waters and could be used in our analysis.

In 2018, this regulation was modified to more broadly allow the Director to extend the fishery via permit condition. This eliminated the requirement that such a decision be supported by evidence that an extension would not result in large catches of small squid and juvenile scup, black sea bass, and summer flounder. Instead, staff would call various fishermen and dealers to get a sense of what was being caught and landed, and then try to verify this anecdotal data against the most recent federal observer reports (if available).

Since 2015, DMF extended the fishery beyond June 9 on three occasions. In 2015, the fishery was extended through June 18, and in 2016 and 2019, it was extended through June 16. In 2017, 2018, 2020, and 2021 the fishery closed as scheduled on June 10. This past year provides an interesting scenario, as a nor'easter blew through around Memorial Day and fishing conditions waned during the first week of June. Accordingly, I determined that based on reports of sparse local abundance, we would not extend the fishery beyond June 9 and this announcement was made on June 7. However, immediately following this announcement we received multiple reports that another run of large squid had made their way into the Sound. Had this occurred a day or two before, my decision likely would have been different.

Rationale

Annually, as we approach June 9 closure date, DMF receives frequent calls from constituents advocating a certain position on a potential seasonal extension. Based on the information available to us, we try to make the best decision we can on whether or not to extend the season. This decision has become more and more difficult to make, as we have become more reliant on

¹ The regulation at 322 CMR 4.06(4)(c)(1)(d) read, "the Director may extend the seasonal small mesh squid fishery if it is determined that continued fishing with small mesh will not result in large catches of small squid less than five inches mantle length, or juvenile scup, black sea bass, or summer flounder."

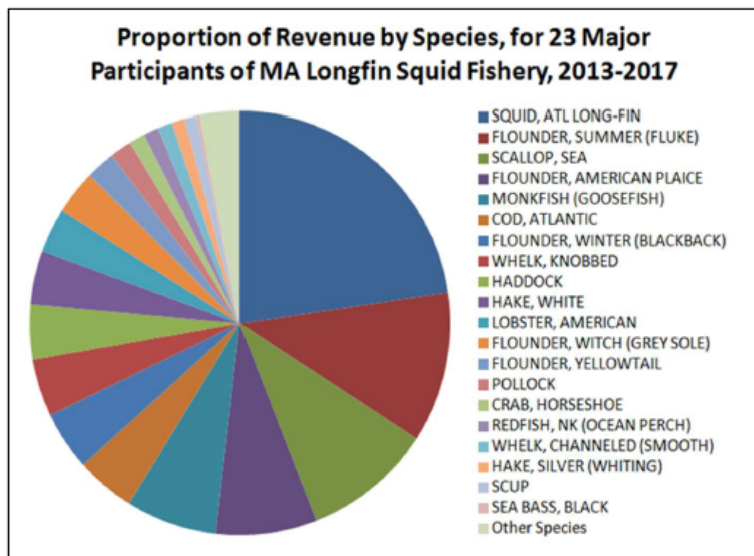
federal observer data and anecdotal reports. Considerable staff resources (both at DMF and the federal observer program) are allocated to acquiring, keypunching, analyzing and preparing the sampling data, as well as communicating with the fishing industry leading up to the closure. It is certainly an imperfect system, and it frequently foments consternation and frustration among whatever user group feels negatively impacted by our ultimate decision.

From an administrative perspective—based on my experience as Director grappling with this closure date—I prefer moving forward with a more streamlined approach to managing this fishery. First and perhaps most importantly, I think a firm end date would provide greater certainty to all stakeholders. *Commercial fishermen and dealers would be able to better structure their operations knowing the fishery firmly ends on a certain date. In addition, recreational fishermen would be assured the fishery would end on a certain date, providing for fewer user-group conflicts and leaving forage in the water for target predator species.*

Expanding the season by an additional six days would also benefit the trawl fishery without substantially departing from how we currently manage the fishery. The performance of the inshore squid fishery is subject to interannual variability, and this is likely dependent upon squid that survive the offshore wintertime fishery. In years when there is a strong run of squid later in the season, DMF typically extends the fishery; when the run is not as strong, the fishery typically tapers off early as fishermen move on to target other species. This change would effectively allow for this to continue to occur without the added administrative action of having to extend the fishery.

Providing this economic opportunity to the trawl fishery is important. In 2020, DMF biologists Brad Schondelmeier and Bill Hoffman, produced the report titled, “Characterization of the Massachusetts Spring Longfin Squid Fishery” or “Squid Report”. The report concluded, “the longfin squid fishery represents an important fishing opportunity and source of income for vessels” based on the fact that during the period of 2013 – 2017, “longfin squid sales accounted for 22.7% of total annual revenue (\$30,011,000 over 5 years) for ‘Massachusetts squid boats’”. For these vessels that consistently participated in the squid fishery and landed their catches in MA ports, it is the single most important species by value on an annual basis (Fig 2). Therefore, providing opportunity for these fishermen to take advantage of the squid resource while it is in our waters helps to ensure their profitability over the calendar year. This is particularly important for those

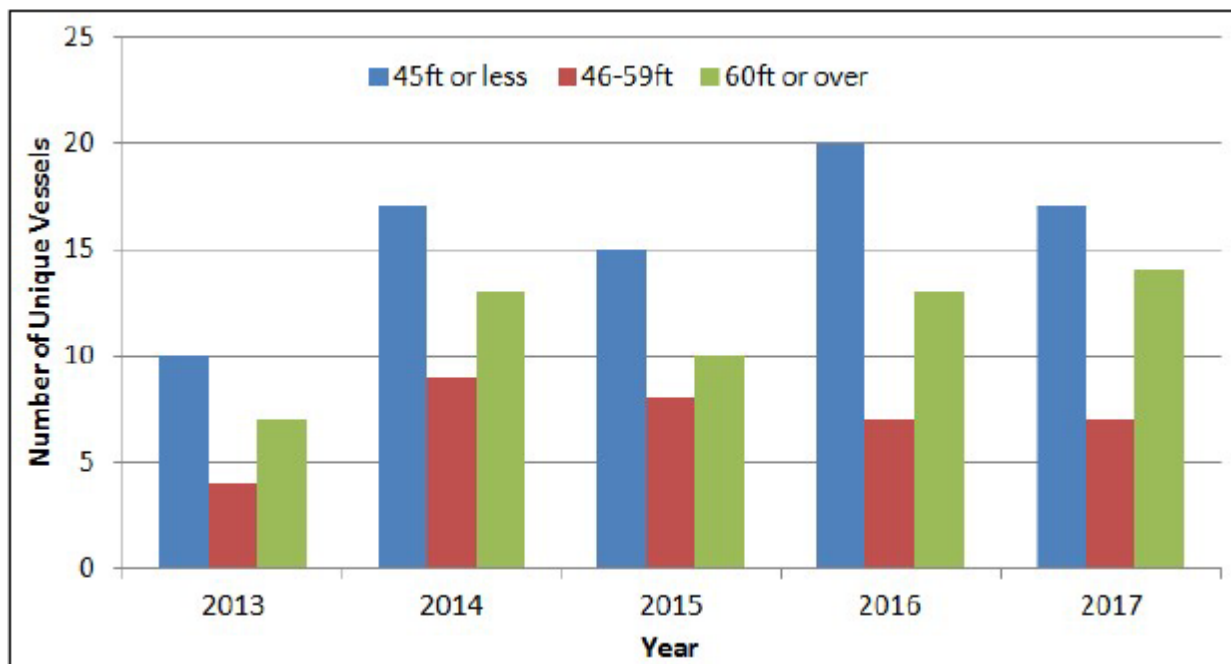
Figure 2.
Proportion of Revenue by Species for 23 Major
Participants of MA Longfin Squid Fishery, 2013 – 2017.



Source: Unpublished NMFS Dealer Data

smaller sized trawlers who are the most active participants in the Nantucket Sound squid trawl fishery (Fig 3).

Figure 3.
Number of Unique Vessels Landing Squid from Trips in Federal Statistical Area 538
(Nantucket Sound) by Vessel Length Class



Source: Unpublished NMFS and MA DMF Dealer and VTR Data

Anticipated Concerns

Based on prior experience managing the squid fishery, I expect this proposal will be met with some concerns regarding bycatch and discards, localized forage depletion, and egg mop disturbance. However, I do not view this modest proposal as having a meaningful impact on these items. This proposal will only allow for a small increase in fishing access in both space and time. If current rules are to persist, in years when the squid run is good in June it can be anticipated that DMF will extend the squid fishery though at least June 15 based on prior actions. Therefore, the only real change in management would be the extension of the squid fishery in years when the squid run is not strong in June and effort during these years will likely be constrained by resource availability and fishery economics. Therefore, I do not think this proposal will meaningfully impact bycatch and discards or egg mop disruption caused by the overall inshore small mesh trawl fishery for squid. This is also supported by the findings of DMF's 2020 Squid Report.

Bycatch Concerns

The 2020 DMF report concludes, "bycatch in the overall small-mesh otter trawl fishery is near the median when measured against other fisheries and gear types. This is not surprising, nor concerning, considering the use of small-mesh nets." The Squid Report further demonstrates the

most commonly caught bycatch species are scup (14.3% of total catch), followed then by black sea bass (2.1% of total catch) and summer flounder (1.1% of total catch) (Figure 4).

Figure 4.
Aggregated Catch Rates and Proportions for Top 20 Finfish and Other Species of Interest

Species	Kept lbs	Discard lbs	Total lbs	% Discard	% Finfish Catch	% Total Catch
SCUP	23,881	136,933	160,814	85.1%	49.5%	14.3%
SEA BASS, BLACK	1,354	22,091	23,445	94.2%	7.2%	2.1%
BUTTERFISH	6,330	15,376	21,706	70.8%	6.7%	1.9%
SKATE, LITTLE	0	20,679	20,679	100.0%	6.4%	1.8%
SEA ROBIN, NORTHERN	24	19,129	19,152	99.9%	5.9%	1.7%
SKATE, WINTER	1,162	17,705	18,867	93.8%	5.8%	1.7%
FLOUNDER, SUMMER (FLUKE)	3,007	9,325	12,331	75.6%	3.8%	1.1%
MACKEREL, ATLANTIC	1,988	7,811	9,798	79.7%	3.0%	0.9%
DOGFISH, SMOOTH	189	6,483	6,672	97.2%	2.1%	0.6%
FLOUNDER, WINTER	105	4,457	4,561	97.7%	1.4%	0.4%
FLOUNDER, WINDOWPANE	250	3,354	3,604	93.1%	1.1%	0.3%
ALEWIFE	100	3,249	3,349	97.0%	1.0%	0.3%
SKATE, LITTLE/WINTER, NK	0	2,250	2,250	100.0%	0.7%	0.2%
BLUEFISH	2,053	131	2,184	6.0%	0.7%	0.2%
HERRING, NK	0	2,145	2,145	100.0%	0.7%	0.2%
HAKE, SILVER (WHITING)	145	1,636	1,781	91.9%	0.5%	0.2%
TAUTOG (BLACKFISH)	195	1,496	1,690	88.5%	0.5%	0.1%
BASS, STRIPED	0	1,479	1,479	100.0%	0.5%	0.1%
FLOUNDER, FOURSPOT	0	1,399	1,399	100.0%	0.4%	0.1%
SKATE, NK	0	1,050	1,050	100.0%	0.3%	0.1%
SEA ROBIN, STRIPED	64	872	936	93.2%	0.3%	0.1%
SEA ROBIN, NK	122	700	822	85.2%	0.3%	0.1%
HERRING, ATLANTIC	135	652	787	82.9%	0.2%	0.1%
HERRING, BLUEBACK	0	468	468	100.0%	0.1%	0.0%
SHAD, AMERICAN	0	444	444	100.0%	0.1%	0.0%
MENHADEN, ATLANTIC	4	244	248	98.6%	0.1%	0.0%
MONKFISH	99	97	196	49.4%	0.1%	0.0%
WEAKFISH	0	34	34	100.0%	0.0%	0.0%
COD, ATLANTIC	4	13	17	79.3%	0.0%	0.0%
Other Finfish Species	149	1,814	1,963	92.43%	0.60%	0.17%
Finfish Total	41,357	283,516	324,873	87.3%	100.0%	28.8%

Source: Unpublished NEFOP Data

Scup is the predominant species being incidentally caught and discarded in this fishery. The 2021 management track stock assessment for scup shows the stock is not overfished and overfishing is not occurring. Moreover, spawning stock biomass was estimated at 389 million pounds in 2019, which is about two times the biomass target of 198 million pounds. Adding an additional six-days of fishing opportunities within the Small Mesh Squid Trawl Exempted Area should not contribute significantly to overall bycatch or bycatch mortality rates of these species.

It is noteworthy that moving the inshore squid season to June 15 would align it with the April 15 – June 15 season when small mesh trawlers are allowed to land up to 2,000 pounds of scup according to the interstate and federal management plans. This seasonal trip limit was implemented in 2019 to reduce the regulatory discarding of scup in the squid trawl fishery. This synchronization would eliminate any confusion as to where scup retention with small mesh may occur. This should result in enhanced enforcement, compliance, and data collection.

Historically, there has also been some concern about the bycatch and discard of other species, such as river herring and striped bass. With regards to river herring, the 2020 report concluded that while small mesh fisheries are likely contributing to the delayed rebuilding of populations, it is difficult to conclude to what extent this is being influenced by the squid trawl fishery. Bycatch of river herring represents .34% of total catch (Fig 4), which is an order of magnitude lower than other small mesh fisheries in the region (e.g., herring, mackerel, whiting). As for striped bass, they only make up a nominal amount of bycatch by weight (0.1%) in this fishery and are lively when returned to the water quickly.

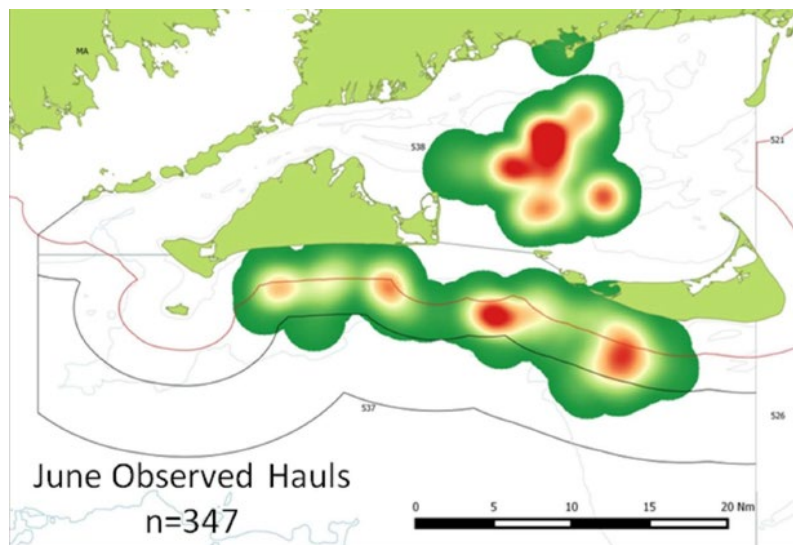
Forage and Striped Bass

Concerns have also been raised that the squid fishery is influencing access to the striped bass resource by depleting forage availability and bycatch mortality. The Squid Report did not find support for these conclusions. A 2003 study by DMF demonstrates striped bass inhabiting Nantucket Sound have a diverse diet (Nelson et al., 2003). Crustaceans (50% by weight) and bony fish (40% by weight) were the primary prey items, while unidentified cephalopods (e.g., squid) only comprised 3.3% of stomach contents by weight. where as.

Egg Mop Disruption

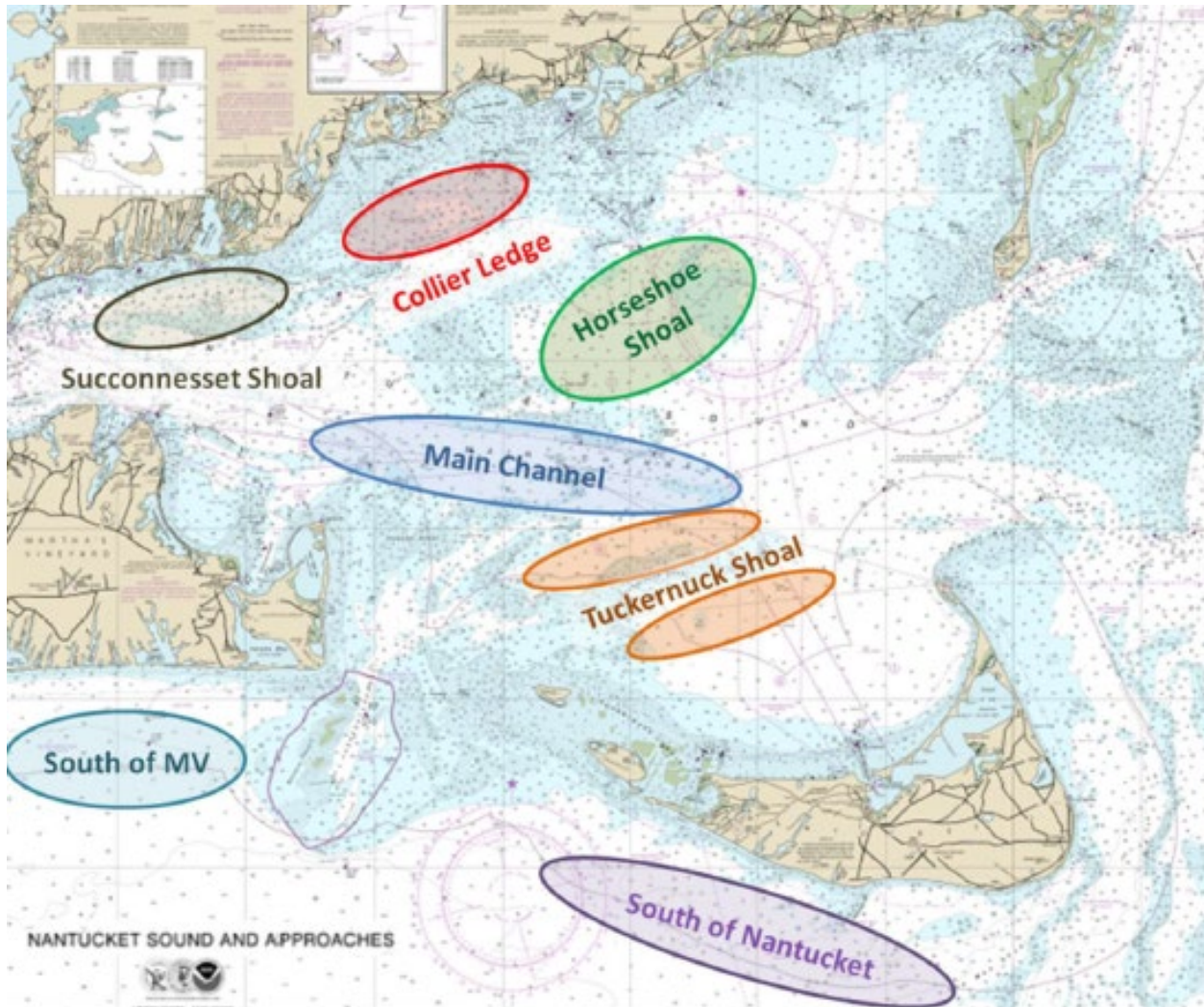
Another commonly voiced concern regarding the inshore squid fishery is the disruption of egg mops by trawlers. The Squid Report shows that nearly all observed squid trawling effort in state waters during June is centralized in two discrete areas: South of the Islands between Squibnocket (Martha's Vineyard) and Madequecham Beach (Nantucket) along the state/federal line and in Nantucket Sound between Horseshoe Shoal and Tuckernuck Shoals (Figs. 5 and 6). Fishing effort is not as intense in other areas in response to several factors, including regulatory closures (e.g., Buzzards Bay, inshore Cape Cod) and untowable bottom (e.g., shoals and fixed gear). This provides substantial spatial refuge where egg mops remain undisturbed on the bottom.

Figure 5.
June Heat Map of Starting Points of Observed Hauls



Source: Unpublished NEFOP Data

Figure 6.
Common Names for Fishing Grounds within Small Mesh Squid Trawl Exempted Area



Source: MA DMF

Proposed Regulatory Language and 322 CMR 4.06 and 6.39

4.06: Use of Mobile Gear

(4) Trawl Net Mesh Minimum Size.

- (a) Trawl Net Mesh Measurement. Minimum mesh size is measured by the inside stretch of the net mesh. The net mesh is measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least ten meshes

from the lacings beginning at the after-end and running parallel to the long axis. Upon request, the Director may approve in writing the use of other mesh size gauges or methods.

(b) Minimum Trawl Net Mesh Size. Except as authorized at 322 CMR 4.08(2)(c), all vessels fishing with trawl gear within the waters under the jurisdiction of the Commonwealth shall only possess and fish with nets that have a minimum mesh size opening that measures at least 6½ inches throughout the cod-end and six inches throughout the remainder of net.

(c) Exempted Small Mesh Fisheries. To authorize commercial trawl fishermen to seasonally target valuable finfish species that cannot be caught in commercially viable quantities without the use of small mesh trawls, the following exemptions are authorized. While fishing in an exempted small mesh trawl fishery, a vessel shall not also possess nets that conform with the minimum mesh size at 322 CMR 4.08(2)(b)

1. Seasonal Small Mesh Squid Fishery. From April 23rd through **June 15th June 9th**, lawfully permitted vessels may fish small mesh trawls within the small mesh squid exempted area.

a. Vessels participating in this fishery must hold a CAP further endorsed for squid, issued in accordance with M.G.L. c. 130, § 80 and 322 CMR

7.01(4)(a): *Regulated Fishery.*

b. The seasonal mobile gear closures at 322 CMR 4.06(2)(h) and (i) apply.

c. No vessel that is in possession of small mesh trawls within the small mesh squid exempted area may possess, retain and land more than 100 pounds of winter flounder, yellowtail flounder, summer flounder or windowpane flounder, in any combination.

~~d. Fishery Extension. The Director may extend the seasonal small mesh squid fishery if it is determined that continued fishing with small mesh will not result in large catches of small squid less than five inches mantle length, or juvenile scup, black sea bass or summer flounder.~~

2. Seasonal Whiting Small Mesh Raised Footrope Trawl Fishery.

a. Area 5. From September 1st through September 30th, lawfully permitted vessels may fish with a small mesh raised footrope trawl, as defined at 322 CMR 8.06(2): *White Perch*, within Area 5, defined at 322 CMR 4.06(1).

i. Vessels participating in this fishery must hold a CAP further endorsed for whiting and North Shore mobile gear, issued in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(4)(a): *Regulated Fishery.*

ii. Vessels participating in this fishery must comply with the Area 5 restrictions set forth at 322 CMR 4.06(2)(a)1.d.

b. Upper Cape Cod. From September 1st through November 20th, lawfully permitted vessels may fish with a small mesh raised footrope trawl in the Upper Cape Cod Whiting Area defined in 322 CMR 8.06(1)(a): *Area.*

i. Vessels participating in this fishery must hold a CAP further endorsed for whiting, issued in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(4)(a).

ii. Vessels participating in this fishery must comply with 322 CMR 8.06: *Minimum Size and Possession Limits.*

c. Raised Footrope Trawl Specifications. The raised footrope trawls fished by vessels under these exemptions must comply with the trawl and sweep specifications set forth at 322 CMR 8.14(2): *Trawl Specifications*.

(d) Net Modifications.

1. No fishing vessel may use any means, device, or material, including but not limited to ropes, lines, chafing gear, liners, net strengtheners, or double nets, if it obstructs the meshes of the net or otherwise diminishes the size of meshes of the net described in 322 CMR 4.08(2).
2. All netting in trawl nets not made on a braiding machine, whether of braided or twisted twine, whether machine made or hand-made, shall use only one knot, the weavers knot or sheet bend or a knot by another name, which in only a weavers knot.
3. The ends of the twine, called the bars, that exit the knot are constructed so their lay does not cross or twist.
4. One splitting strap and one bull rope (if present) consisting of line or rope no more than two inches in diameter, may be used if such splitting strap and/or bull rope does not obstruct the meshes of the net or otherwise diminish the size of meshes of the net.
5. Canvas, netting, or other material may be attached to the underside of the cod end to reduce wear and prevent damage provided that no more than 25% of the meshes are obstructed.

6.39: Longfin Squid (*Dorytheuthis pealeii*) ~~Loligo Squid~~ Management

(1) Season. It is unlawful for any commercial fisherman to land or possess ~~Loligo~~ longfin squid using small-mesh otter trawls **except as authorized at 322 CMR 4.06(4)(c)(1) during the April 23 through June 15 seasonal small mesh squid fishery within the small mesh squid exempted area, as defined at 322 CMR 4.06(1).** ~~as specified in 322 CMR 8.07: Mesh-Size Restrictions from June 16th June 10th through April 22nd, unless the period when trawlers are allowed to use small-mesh nets to fish for squid is amended by the Director.~~

(2) Possession Limits. It is unlawful for commercial fishermen using mobile gear to land or possess greater than 2,500 pounds of ~~Loligo~~ longfin squid per vessel per 24-hour day when:

- (a) NOAA Fisheries has announced that the federal incidental trip limit is in effect;
- (b) the Director has filed a notice with the *Massachusetts Register*; and
- (c) the Director has sent notice *via* the Division's email listserve and posted notice on the Division's website.

(3) Commercial Fishery Limit Adjustments. The director may adjust ~~Loligo~~ longfin squid commercial fishery landing/possession limits to correspond to limits established by NOAA Fisheries.



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Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director 
DATE: August 13, 2021
SUBJECT: Proposal Affecting Winter I and Winter II Scup Limits

Background

The annual commercial coastwide scup quota is divided into three seasonal quota management periods (Table 1). The Summer period is subject to the state-by-state quotas allocated under the interstate fishery management plan and subject to each state's quota management regulations. During the Winter I and Winter II periods—when harvest occurs predominantly in offshore waters—the fishery is managed at the federal level with a coastwide trip limit. Historically, DMF has sought to match the federal trip limit for Winter I and Winter II periods to allow vessels fishing offshore to possess and land lawfully harvested scup in our ports.

In recent years, this has been accomplished through a declaratory process, which requires—among other things—a two-week public comment period and approval of the MFAC. DMF begins this process when NOAA Fisheries announces the federal Winter I trip limit in November or December and the Winter II trip limit in August or September. At times, these announcements do not come with enough advance notice to set the state waters limit prior to the start of the period, given the MFAC's monthly meeting schedule.

Table 1. Commercial Scup Seasonal Quota Management

Period	% of Coastwide Quota	Trip Limits
Winter I (January 1–April 30)	45.11%	Coastwide: 50,000 lb
Summer (May 1–September 30)	38.95%	State-by-state quotas and trip limits
Winter II (October 1–December 31)	15.94% plus underage from Winter I	Coastwide: 12,000 lb plus 1,500 lb per 500,000 lb rolled over

Proposal

DMF's current process for mirroring the federal rules (as described above) is fairly intensive, often behind schedule, and of limited value given that most if not all expected harvest occurs by federal permit holders already beholden to the federally-established limits. Accordingly, it is my preference to streamline the administration of the federal Winter period trip limits through the

establishment of regulations that will not require use of the declaratory process. To do this, I am moving to go to public hearing this fall with the proposal enumerated below.

1. For state-only permit holders and dually (state and federal) federal permit holders fishing in state waters:
 - a. Establish a 1,500-pound harvest and retention limit for the period of October 1–April 14. This would effectively extend the state’s summer period directed fishery limits throughout the winter period. Given the limited abundance of scup in our waters during the Winter periods, the low ex-vessel value for this species, and regulations that limit scup catch (e.g., night closure for mobile gear, minimum net mesh size), it is unlikely that harvesters will take advantage of this trip limit.
 - b. Establish a 2,000-pound harvest and retention limit for the period of April 15–April 30. This would allow harvesters to retain scup in state waters consistent with state and federal rules governing small mesh fisheries, effectively allowing these vessels to retain potential scup bycatch in the inshore squid trawl fishery, should there be an early run.
2. For Federal permit holders:
 - a. Adopt a regulation that would allow them to possess and land scup Massachusetts in excess of the state limit (described above) throughout October 1–April 30, provided the fish were caught in federal waters in accordance with federal regulations. This is a similar approach to how DMF addresses the possession and landing of non-conforming groundfish and sea scallop catch taken in federal waters by federal permit holders.

This approach would establish suitable limits for state waters while continuing to allow federal permit holders to possess and land scup in Massachusetts in accordance with the federal limits during the Winter I and Winter II fisheries without requiring DMF and the MFAC go through the process of setting these limits each season. This will effectively reduce administrative burden without altering how the fishery currently operates.

Given the timeline for rule making, it is doubtful that a final regulation—if approved by the MFAC—would be implemented prior to January 1, 2022. Therefore, I anticipate we will continue to use the existing declaratory process to set the 2021 Winter II limits and 2022 Winter I limits. Then we would transition to using this new approach for the 2022 Winter II limits.

Proposed Regulatory Language at 322 CMR 6.27

6.27: Scup Fishery Management

(3) Commercial Fishery Management.

- (a) Permit Requirements. A regulated fishery permit endorsement, issued by the Director pursuant to 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, is required to sell scup, or to fish for, retain, possess or land scup in accordance with scup commercial fishery regulations at 322 CMR 6.27(2).
- (b) Minimum Size. It is unlawful for any commercial fisherman or dealer to possess scup less than nine inches in total length.

(c) Winter I and Winter II Fishery. ~~The Winter I fishery occurs during the period of January 1st through April 30th. This is a federal commercial scup management period. Federal limits are set pursuant to 50 CFR 648.122 and 648.123. The Director shall establish state possession and landing limits through Declaration, in accordance with the procedure set forth at 322 CMR 6.41(2)(d).~~

1. During the period of October 1 – April 14, it shall be unlawful for any commercial fisherman to retain, possess or land more than 1,500 pounds of scup within the waters under the jurisdiction of the Commonwealth during any calendar day or any trip, whichever period of time is longer.

2. During the period of April 15 – April 30, it shall be unlawful for any commercial fisherman to retain, possess or land more than 2,000 pounds of scup within the waters under the jurisdiction of the Commonwealth during any calendar day or any trip, whichever period of time is longer.

3. Exemption for Federal Permit Holders. Vessels with federal permits allowing the taking of scup from federal waters may possess and land more than the state regulated limits set forth at 322 CMR 6.27(3)(c)(1) and (2), provided said scup were lawfully taken from federal waters. It shall remain unlawful for any vessel with federal permits allowing the taking of scup to retain or possess scup in excess of the possession limits

state regulated limits set forth at 322 CMR 6.27(3)(c)(1) and (2) while fishing in the waters under the jurisdiction of the Commonwealth. If a vessel with federal permits is possessing scup in accordance with this section, the vessel shall transit directly through state-waters and make no stops except to land fish in a Massachusetts port unless otherwise directed by the Massachusetts Environmental Police or the United States Coast Guard; all fishing gear shall be out of the water and properly stowed on the vessel; and the vessel, crew, gear, and catch shall be in compliance with all applicable federal regulations.

(d) Summertime Fishery. The summertime fishery occurs during the period of May 1st through September 30th and is subject to the commercial scup quota. The commercial scup quota is managed through gear type specific trip limits, seasons and fishing days.

1. Weirs. During this period, commercial fishermen, permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* to operate a fish weir, shall not be subject to daily possession limits or closed commercial fishing days for scup caught in fish weirs. The weir fishery shall close when the aggregate landings among all permitted weir fishermen reach 300,000 pounds of scup.

2. Trawlers. During this period, commercial fishermen, permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* to fish for scup with trawl gear may fish for, possess and land scup seven days per week. Trawlers shall not land more than 10,000 pounds of scup per calendar week or possess more than 10,000 pounds of scup at any one time. The calendar week shall begin on Sunday at 12:01 A.M. and end on the following Saturday at 11:59 P.M.

3. All Other Gear Types. Commercial fishermen, permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* to fish for scup with any other gear type including, but not limited to, hook and line and scup pots, are subject to the following seasonal limits:

- a. May 1st through May 31st. During this period, these commercial fishermen may fish for, possess and land scup Sundays through Thursdays and shall not possess or land more than 800 pounds of scup per calendar day or per fishing trip, whichever period is longer. The possession and landing of scup is prohibited on Fridays and Saturdays.
- b. June 1st through June 30th. During this period, these commercial fishermen may fish for, possess and land scup on Sundays, Tuesdays and Wednesdays and shall not possess or land more than 400 pounds of scup per calendar day or per fishing trip. The possession and landing of scup is prohibited on Mondays, Thursdays, Fridays and Saturdays.
- c. July 1st through September 30th. During this period, these commercial fishermen may fish for, possess and land scup seven days per week and shall not possess or land more than 1,500 pounds of scup per calendar day or per fishing trip.

4. Quota Closure. It shall be unlawful for commercial fishermen to land or possess scup once the Director has determined that 100% of the annual commercial scup quota has been reached. The quota closure will be enacted and announced in accordance with the procedure set forth at 322 CMR 6.41(2)(c).

~~(e) Winter II Fishery. The Winter II fishery occurs during the period of October 1st through December 31st. This is a federal commercial scup management period. Federal limits are set pursuant to 50 CFR 648.122 and 648.123. The Director shall establish state possession and landing limits through Declaration, in accordance with the procedure set forth at 322 CMR 6.41(2)(d).~~

(f) Trip Limit Restrictions on Trawl Vessels. Notwithstanding the state waters trawl mesh minimum size restrictions at 322 CMR 4.06: *Use of Mobile Gear*, vessels using trawls shall not possess more than 1,000 pounds of scup from October 1st through April 14th, more than 2,000 pounds of scup from April 15th through June 15th, nor more than 200 pounds of scup from June 16th through September 30th, unless fishing with nets that have a minimum mesh size of five inches diamond applied throughout the cod end of the net for at least 75 continuous meshes forward of the terminus of the net and all other nets are stowed and not available for immediate use.



Atlantic States Marine Fisheries Commission

2021 Spring Meeting Webinar Summary

Sustainable and Cooperative Management of Atlantic Coastal Fisheries

2021 Spring Meeting Webinar
May 3-6, 2021

Toni Kerns, ISFMP, or
Tina Berger, Communications
For more information, please contact
the identified individual at
703.842.0740

Meeting Summaries, Press Releases and Motions

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AMERICAN LOBSTER MANAGEMENT BOARD (MAY 3, 2021)

Meeting Summary

The American Lobster Management Board met to consider three items: Technical Committee (TC) recommendations on pursuing a management strategy evaluation (MSE) for the lobster fishery, an update on the development of Draft Addendum XXVII on Gulf of Maine/Georges Bank (GOM/GBK) resiliency, and electronic vessel tracking for the lobster fishery.

The Board reviewed recommendations from the TC on an MSE for the lobster fishery. The TC recommended the Board pursue a two-phase MSE focused on the GOM/GBK stock, with the goal of providing short-term management guidance at the stock-wide scale while concurrently building the framework to expand the MSE to provide long-term, spatially-explicit management advice. While MSE has the potential to support a management framework for the Southern New England (SNE) stock, the TC recommended that the SNE stock should remain the lower priority due to the relatively small size and mixed-crustacean nature of the fishery, as well as the need for reactive tools to address current stock conditions as opposed to proactive tools like MSE. As next steps, the TC recommended a formal process to develop management goals and objectives for the future of the lobster fishery, and forming a steering committee for additional scoping and work plan development. The Board expressed interest in pursuing an MSE, however, it agreed to postpone development of an MSE until the August meeting in order to prioritize work on Draft Addendum XXVII.

Staff updated the Board on the development of the Draft Addendum XXVII, which aims to proactively increase biological resiliency of the GOM/GBK stock. Per the Board's direction, the Plan Development Team (PDT) presented draft management options and considerations for developing a trigger mechanism that would automatically require the implementation of management measures to improve the biological resiliency of the GOM/GBK stock if the trigger is reached. The TC also provided guidance on indices of abundance that could be used to develop triggers, how triggers could be defined, and the types of management measures that would be expected to increase resiliency of the stock. After reviewing the PDT and TC recommendations, the Board provided direction on the goals and objectives for the development of draft management options. Specifically, it indicated the addendum should prioritize resiliency over standardization of measures across management areas, include relatively conservative trigger levels to maintain the current abundance regime, and consider a tiered approach with multiple trigger levels. The Board agreed to form a subcommittee to provide further guidance on the document's development, and will consider Draft Addendum XXVII for public comment in August 2021.

Next, the Board discussed electronic vessel tracking in the lobster fishery. The Board received presentations from state partners on recent work to test additional tracking devices, integrate cell-based tracking with ACCSP's SAFIS eTRIPS mobile trip reporting application, and to create trip viewers within SAFIS eTRIPS online. This work expanded upon the Commission's 2020 pilot project to continue laying the foundation for timely implementation of electronic tracking in the fishery. As in previous discussions on this topic, the Board emphasized the urgent need for high-resolution spatial and temporal data to characterize effort in the federal lobster and Jonah crab fleet in order to address a number of challenges facing the fisheries. These data are critical for informing Atlantic right whale risk reduction models and marine spatial planning discussions, as well as improving offshore enforcement. Therefore, the Board agreed to create a technical work group including representatives from NOAA Fisheries, state and federal law enforcement, and members of the Board to develop objectives, technological solutions, and system

characteristics for vessel tracking devices in the federal lobster and Jonah crab fisheries. The work group will provide a report and recommended next steps to the Board at the August 2021 meeting.

For more information, please contact Caitlin Starks, Fishery Management Plan Coordinator, at cstarks@asmfc.org or 703.842.0740.

Motions

Move to postpone the development of a management strategy evaluation until the August 2021 meeting.

Motion made by Mr. Keliher and seconded by Mr. Cimino. Motion is approved by unanimous consent.

Main Motion

Move to initiate an addendum to develop objectives for collecting high resolution spatial data, identify technological solutions, and develop system requirements.

Motion made by Ms. Murphy and seconded by Ms. Patterson. Motion withdrawn.

Motion to Substitute

Move to substitute to recommend to the Policy Board that a letter be written to NOAA Fisheries recommending the prioritization of federal rulemaking to require the use of cellular-based or satellite-based vessel tracking devices in the federal lobster and Jonah crab fishery. Include in the letter the Lobster Board's willingness to establish a technical workgroup to support NOAA's efforts on vessel tracking.

Motion made by Mr. Keliher and seconded by Mr. Borden. Motion withdrawn.

ATLANTIC COASTAL COOPERATIVE STATISTICS PROGRAM (ACCSP) COORDINATING COUNCIL (MAY 4, 2021)

Meeting Summary

The ACCSP Coordinating Council met to review and take action on the FY2022 ACCSP Funding Decision Document and Request for Proposals package. The Council was provided an overview of changes to the ACCSP Funding Decision Document and draft FY2022 RFP. Clarifications were made indicating that the proposals listed in Appendix A have the opportunity to submit proposals for one additional year of funding with a justification of need statement. All proposals will be evaluated and ranked on merit according to the schedule in the RFP.

The Council was also provided an ACCSP Program update that included metrics on the ACCSP Committee newsletter, a summary of activities involving information systems and software development, recreational data, the One Stop Reporting project, the Data Warehouse, and FY21 funding and staffing. The Council had informative discussion on upcoming Atlantic Recreational Priorities and future changes to the MRIP catch estimate presentations. Comments on those items should be emailed to the Geoff White, ACCSP Director, at geoff.white@accsp.org.

Motions

Move to approve the FY22 Funding Decision Document and RFP as presented and modified to the ACCSP Coordinating Council.

Motion made by Ms. Fegley and seconded by Dr. McNamee. Motion stands approved.

AMERICAN EEL MANAGEMENT BOARD (MAY 4, 2021)

Meeting Summary

The American Eel Management Board met to review recent yellow eel landings as part of annual monitoring the coastwide cap (cap) established in 2018 to limit coastwide yellow eel landings to 916,473 pounds. If landings exceed the cap by 10% for two consecutive years, management action is initiated to reduce harvest. To prevent the cap from being exceeded, Addendum V outlines a process for the Board to review preliminary landings and convene a workgroup if the cap is exceeded by 5% or more in one year to determine how voluntary action can be taken based on the magnitude of the overage and the trend in landings. Preliminary 2020 landings are 225,122 pounds, the lowest in the time series since the Fishery Management Plan was initiated in 1998. In fact, landings have been on a consistent decline since 2016 and, in 2020, all states saw their landings decline from the previous year. Maryland which annually comprises more than 60% of the coastwide total from 2016-2020, saw a 60% decline from 2019 to 2020.

The Advisory Panel (AP) met and provided feedback that the decline in landings is primarily market demand; demand for wild-caught eels from the U.S. for European food markets has decreased in recent years due to increased aquaculture in Europe. Additionally, demand for domestic bait decreased from 2019 to 2020 due in part to COVID-19 restrictions. A smaller proportion of landings traditionally goes to the domestic bait market, and the AP indicated that it does not anticipate landings to increase significantly from current levels in the near future.

The Board also received a progress update on the current benchmark stock assessment scheduled to be completed in 2022. The Stock Assessment Subcommittee (SAS) was formed last year and a Data Workshop was held in November 2020. While there were several new data sets that were submitted, such as fishery-independent surveys, there were not many new types of data available that would support different modeling approaches than the 2012 assessment. The SAS has met several times to explore modeling approaches and develop indices of abundance. Given the species unique life history, range, and data limitations, the SAS has encountered challenges in applying the available data to analytical models to develop reference points and stock status. The SAS will meet with the Commission's Assessment Science Committee later in May to discuss the challenges of this assessment and will update the Board again at the Annual Meeting in October.

Last, Phil Edwards (RI) was elected Vice-Chair of the American Eel Board. For more information, please contact Kirby Rootes-Murdy, Senior Fishery Management Plan Coordinator, at krootes-murdy@asmfc.org or 703.842.0740.

Motions

Move to elect Phil Edwards as Vice-Chair of the American Eel Management Board.

Motion made by Mr. Reid and seconded by Ms. Patterson. Motion passes.

DISCUSSION SESSION ON PRESIDENT BIDEN'S EXECUTIVE ORDER: TACKLING THE CLIMATE CRISIS AT HOME AND ABROAD (MAY 4, 2021)

Meeting Summary

Sam Rauch, NOAA's Deputy Assistant Administrator for Regulatory Programs, met with the Commission to present the Administration's Executive Order on Tackling the Climate Crisis at Home and Abroad.

Specifically, the Executive Order directs NOAA to collect recommendations on how to make fisheries, including aquaculture, and protected resources more resilient to climate change, including changes in management and conservation measures, and improvements in science, monitoring, and cooperating research. The effects of climate change on marine fishery resources and coastal communities are important issues to the Commission and the states, and there was general agreement that the Commission would work with its federal partners to develop strategies to respond to climate change impacts on fisheries.

For more information, please contact Bob Beal, Executive Director, at rbeal@asmfc.org or 703.842.0740.

Motions

No motions made.

ATLANTIC MENHADEN MANAGEMENT BOARD (MAY 4, 2021)

Meeting Summary

The Atlantic Menhaden Board met to review the Fishery Management Plan (FMP) Review for the 2020 fishing year and consider making changes to current allocations. In 2020, total commercial landings decreased by 12% from 2019 with non-incidentals catch landings (directed landings that count towards the total allowable catch or TAC) estimated at 177,830 mt, 82% of the 2020 TAC of 216,000 mt. Landings from incidental catch and small-scale fisheries, which are not accounted for under the TAC, increased in 2020 to approximately 6,330 mt, the highest level since the provision was implemented in 2013. Additionally, the Plan Review Team (PRT) highlighted recommendations for the Board's consideration regarding (1) the current 10-fish biological sample requirement to categorize the impact of the commercial gear types on the menhaden population, (2) required catch and effort data from North Carolina's pound net fishery to develop a catch per unit effort index, and (3) whether jurisdictions that harvest under the incidental catch provision prior to their quota being met are consistent with the incidental catch and small scale fishery measures in Amendment 3. In considering the FMP Review, the Board provided guidance to the PRT that biological sampling and catch and effort data from pound net fisheries should be evaluated during the next benchmark stock assessment and that the incidental catch and small scale fisheries provision in the FMP should be addressed in the next management document. The Board approved the FMP Review, state compliance, and de *minimis* requests from Pennsylvania, South Carolina, Georgia, and Florida.

The Board also considered revisiting the current commercial quota allocations. Landings data through 2020, as well as relinquished quota and quota transfers were presented to highlight trends in the distribution of landings along the Atlantic coast in recent years (for details see [memorandum 21-50](#); pdf pg. 35). In addition to commercial quota allocations, the Board discussed whether other provisions of the FMP, such as the incidental catch and small scale fisheries provision and Episodic Event Set-Aside Program, should also be re-evaluated through a new management document given recent changes in fish availability and use. After reviewing the data and extensive discussion, the Board formed a work group to develop allocation options to better align jurisdictions' commercial quotas with current landings and availability of the resource while providing access to the fishery to all jurisdictions. Additionally, the work group will review the incidental catch and small scale fisheries measures and consider how to reduce the need for quota transfers. The work group will provide a report to the Board at the Commission's Summer Meeting with the intent of the Board initiating an addendum at that time.

Due to the meeting running late, the Board postponed a review of data needs for a spatially-explicit model for menhaden until the Summer Meeting. For more information, please contact Kirby Rootes-Murdy, Senior Fishery Management Plan Coordinator, at krootes-murdy@asmfc.org or 703.842.0740.

Motions

Move to approve the FMP Review for the 2020 fishing year, state compliance reports, and *de minimis* requests from Pennsylvania, South Carolina, Georgia, and Florida.

Motion made by Mr. Hasbrouck and seconded by Dr. Rhodes. Motion accepted unanimously.

Main Motion

Move to initiate an Addendum to consider changes to the allocation of the commercial TAC. The goals of this action are to better align jurisdictions' commercial quotas with current landings and fish availability while providing a level of access to the fishery by all Atlantic coast jurisdictions, and reduce the need for quota transfers. In addition to status quo, explore and analyze:

- **Changes to the allocation timeframe, including options based on more recent years of landings data (e.g., average or best over the last 3 or 4 years) and an option with 50% based on these more recent years of landings data and 50% based on the status quo 2009-2011 landings basis.**
- **Also consider in these new timeframes option(s) to reduce the fixed minimum (e.g. 0.25%) in addition to the status quo of 0.5% fixed min.**
- **Changes to the episodic set aside up to 5%.**

Motion made by Ms. Ware and seconded by Mr. White. Motion substituted.

Motion to Substitute

Move to substitute to initiate an addendum to reconsider menhaden allocation. The Board will create a work group to develop allocation options for review at the August 2021 Board meeting for discussion. The PDT will develop options to review the incidental catch including gear type eligibility.

Motion made by Mr. Cimino and seconded by Ms. Fegley. Motion carries (Roll Call: In Favor – RI, CT, PA, NJ, DE, VA, PRFC, NC; Opposed – ME, NH, MA, NY, SC, GA; Abstentions – NOAA Fisheries, USFWS).

Main Motion as Substituted

Move to initiate an addendum to reconsider menhaden allocation. The Board will create a work group to develop allocation options for review at the August 2021 Board meeting for discussion. The PDT will develop options to review the incidental catch including gear type eligibility.

Motion to Substitute

Move to substitute to create a workgroup to develop allocation options to better align jurisdictions' commercial quotas with current landings and fish availability while providing a level of access to the fishery by all Atlantic coast jurisdictions, to review the incidental catch provisions including gear type eligibility, and reduce the need for quota transfers. The work group will report back to the Board at the August 2021 meeting and the Board will initiate an addendum at that time.

Motion made by Mr. Cimino and seconded by Mr. Abbott. Motion carries (15 in favor, 2 abstentions).

Main Motion as Substituted

Move to create a workgroup to develop allocation options to better align jurisdictions' commercial quotas with current landings and fish availability while providing a level of access to the fishery by all

Atlantic coast jurisdictions, to review the incidental catch provisions including gear type eligibility, and reduce the need for quota transfers. The work group will report back to the Board at the August 2021 meeting and the Board will initiate an addendum at that time.

Motion passes with 2 abstentions.

EXECUTIVE COMMITTEE (MAY 5, 2021)

Meeting Summary

The Executive Committee (EC) met to discuss several issues, including the proposed FY22 Budget, the revised Statement of Investment Policy Guidelines, an Update on the Allocation Subcommittee, the second round of CARES assistance, and an annual meetings update. The following action items resulted from the Committee's discussions:

- FY22 Budget – The Budget was reviewed by the Administrative Oversight Committee (AOC) and forwarded to the EC with a recommendation for approval. The motion to approve passed unanimously.
- Statement of Investment Policy Guidelines (IPG) – The IPG was reviewed by the AOC and forwarded to the EC with a recommendation for approval. The Committee discussed the revised IPG and received questions about the intent of the IPG. The Chair suggested the AOC further discuss the IPG and report back to the EC at the Summer Meeting. With the possibility of further revisions to the IPG, the Vice-Chair proposed tabling the motion to approve until the Summer Meeting.
- Update on Allocation Work Group (AWG) – Mr. Beal provided a brief overview of the Allocation Work Group. Eleven members have been appointed and the first AWG meeting will be held on May 13th. It is anticipated there will be several additional meetings of the AWG to work through the issues raised during previous EC meetings.
- Mr. Beal provided a brief overview of the second round of CARES assistance, technically known as the Consolidated Appropriations Act of 2021, or The ACT. Clarification was provided by NOAA Staff Karen Abrams and Dan Namur regarding the September 30, 2021 date. According to The ACT, the funds must be obligated by this date, and Congress prefers the funds are disbursed by this date, but the funds will not revert if not spent by the states by 9/30/21. NOAA will provide a list of projects, other than direct payments to individuals or businesses, that can be undertaken with The ACT funds, but the list will not be exhaustive, so states are encouraged to develop their spend plans as they deem appropriate.
- Mrs. Leach provided an update on future Annual Meetings, with plans to hold the 80th Annual Meeting in Long Branch, NJ October 18-21, 2021. Future Annual Meetings will be conducted in North Carolina (2022), Maryland (2023), and Delaware (2024).

For more information, please contact Laura Leach, Director of Finance and Administration, at lleach@asmfc.org or 703.842.0740.

Motions

On behalf of the Administrative Oversight Committee, move to approve FY 2022 Budget.

Motion made by Mr. Woodward. Motion carries.

SHAD & RIVER HERRING MANAGEMENT BOARD (MAY 5, 2021)

Meeting Summary

The Shad and River Herring Management Board met to consider Technical Committee (TC) progress on recent Board tasks, as well as six American shad habitat plan updates.

The TC Chair presented updates on three tasks assigned by the Board. First, the Board approved a Technical Guidance Document for Implementation of Amendments 2 and 3 to the Shad and River Herring Fishery Management Plan (FMP). The document provides guidance to states and jurisdictions related to the FMP provisions for developing and evaluating sustainable fishery management plans (SFMPs) and alternative management plans, such as appropriate time series for sustainability metrics, management responses to falling below sustainability thresholds, clarification on the use of SFMPs versus alternative management plans, and interjurisdictional management guidance. The TC Chair also updated the Board on the TC's progress on the Board task to develop methods to evaluate bycatch in mixed-stock fisheries in state waters; the TC has collected data from all states and jurisdictions pertaining to mixed-stock fisheries and bycatch, and will meet later this month to discuss potential methods and recommendations.

The Board considered TC recommendations to address fish passage performance for American shad. Results of the 2020 benchmark stock assessment for American shad indicated that barriers to fish passage completely or partly block nearly 40% of the total historical habitat and significantly limit the recovery of American shad stocks along the coast. Therefore, the TC recommended that dam removal and the use of fish passage performance criteria be prioritized by state and federal agencies with fish passage prescription authority. The Board recognized improving fish passage is already a priority for the U.S. Fish and Wildlife Service and NOAA Fisheries, and agreed to recommend the Commission send letters to the agencies to support their activities to review dam passage. Additionally, the Board tasked the TC with prioritizing systems for shad recovery and developing an inventory of available data that would support development of fish passage criteria.

The Board also considered updates to the American shad habitat plans for Massachusetts, Rhode Island, Connecticut, Delaware River, South Carolina, and Florida. Amendment 3 to the FMP requires habitat plans for American shad for all states and jurisdictions, and updates were requested on a five year schedule to include recent information and restoration programs. The Board approved the presented shad habitat plans and will review remaining updates at its next meeting.

For more information, please contact Caitlin Starks, Fishery Management Plan Coordinator, at cstarks@asmfc.org or 703.842.0740.

Motions

Move to approve the Technical Guidance Document for Implementation of Amendments 2 and 3 to the Shad and River Herring Fishery Management Plan

Motion made by Mr. Clark and seconded by Dr. Rhodes. Motion approved by unanimous consent.

Move to recommend to the ISFMP Policy Board that the Commission write a letter to NOAA Fisheries and USFWS supporting their activities in dam passage review to provide increased opportunities for population recovery for American shad:

- **Dam/barrier removals as the preferred approach to restore fish species habitat access for population restoration and for habitat restoration benefits. When dam removal is not an option,**
- **The development and use of fish passage performance standards in river systems based on available data, fish passage modeling tools, and fish passage expertise is recommended. If the required information to develop performance standards are not available, support their development for such purposes and applications.**

Motion made by Dr. Colden and seconded by Ms. Patterson. Motion approved by consent with abstentions from NOAA Fisheries and USFWS.

Move to task the Technical Committee with prioritizing systems for shad recovery and developing an inventory of available data that would support development of fish passage criteria.

Motion made by Mr. Appelman and seconded by Mr. Millard. Motion approved by unanimous consent.

Move to approve the Shad Habitat Plan Updates from MA, RI, CT, Delaware River, SC and FL as presented today.

Motion made by Dr. Armstrong and seconded by Ms. Fegley. Motion approved by unanimous consent.

ATLANTIC STRIPED BASS MANAGEMENT BOARD (MAY 5, 2021)

Press Release

ASMFC Atlantic Striped Bass Board Continues to Move Forward on the Development of Draft Amendment 7

The Commission's Atlantic Striped Bass Management Board met to review public comments and Advisory Panel (AP) recommendations on the Public Information Document for Draft Amendment 7 to the Interstate Fishery Management Plan (FMP), and provide guidance on which issues to include in the Draft Amendment. The purpose of the amendment is to update the management program in order to reflect current fishery needs and priorities given the status and understanding of the resource and fishery has changed considerably since implementation of Amendment 6 in 2003. The Board intends for the amendment to build upon the Addendum VI (2019) action to end overfishing and initiate rebuilding.

Prior to the Board's deliberations, Commission Chair Patrick Keliher provided opening remarks urging the Board to take action to address the downward trend of the Commission's flagship species. He stated, "While we are not at the point we were in 1984, the downward trend of this stock is evident in the assessment. For many of the Commission's species, we are no longer in a position to hold hope that things will revert to what they have previously been if we just hold static. The change is happening too fast and action needs to be taken." He further requested the Board to consider "what is best for this species, and also what is best for the future of the Commission."

After its review of the AP report, input received at the 11 virtual public hearings (targeting stakeholders from Maine to Virginia), and the more than 3,000 submitted comments, the Board

approved the following issues for development in Draft Amendment 7: recreational release mortality, conservation equivalency, management triggers, and measures to protect the 2015 year class. These issues were identified during the public comment period as critically important to help rebuild the stock and update the management program. In its deliberations, the Board emphasized the need to take focused and meaningful actions to address the declining stock and allow for the expedient development and implementation of the amendment.

While the coastal commercial quota allocation issue will not be included for further consideration in the Draft Amendment, the Board requested staff from the Commission and the State of Delaware prepare background information, options, and timelines for possible inclusion in a separate management document. The remaining issues that will not be developed as part of the amendment will remain unchanged from current management measures. However, they can be included in the adaptive management section of Draft Amendment 7 and addressed in a separate management document following approval of the final amendment.

As the next step in the amendment process, the Plan Development Team (PDT) will develop options for the four issues approved by the Board for inclusion in Draft Amendment 7. The Board will meet again during the Commission's Summer Meeting in August to review the PDT's progress on the Draft Amendment and recommend any further changes to the document. Based on progress made on the Draft Amendment, the Board's next opportunity to meet and consider possible approval of the document for public comment will be in October during the Commission's Annual Meeting.

For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at efranke@asmfc.org or 703.842.0740.

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PR21-10

Meeting Summary

The Atlantic Striped Bass Management Board met to consider accepting the North Carolina Albemarle Sound-Roanoke River Stock Assessment Report and Peer Review Report for management use; receive the public comment summary and Advisory Panel report on the Draft Amendment 7 Public Information Document (PID) and consider providing guidance to the Plan Development Team on which issues to include in Draft Amendment 7 (for more details see above press release); and consider a nomination to the Striped Bass Advisory Panel.

Under Addendum IV of the Atlantic Striped Bass Fishery Management Plan, the Albemarle Sound-Roanoke River (A-R) striped bass stock is managed by the State of North Carolina using reference points from the latest A-R stock assessment which is reviewed by the Striped Bass Technical Committee and approved for management use by the Board. The Board reviewed the 2020 A-R stock assessment and peer review report and also received an update from the North Carolina Division of Marine Fisheries (NCDMF) on North Carolina's management response to the assessment results. The A-R stock is managed using reference points for female spawning stock biomass (SSB) and fishing mortality (F). The A-R assessment estimated female SSB in 2017 (terminal year) was 78,576 pounds, which is below the SSB threshold of 267,390 pounds. The assessment estimated F in 2017 was 0.27, which is above the F threshold of 0.18. These results show that the stock is overfished and overfishing is occurring. An independent, external peer review panel approved the 2020 A-R assessment for

management use for at least the next five years. Based on the assessment results, the total allowable landings (TAL) was lowered for Albemarle Sound and Roanoke River management areas for 2021 and 2022 in order to reduce *F* to the target level. The new TAL is 51,216 pounds, which is a 57% reduction from 2017 landings.

The Board received a report from the Striped Bass Technical Committee (TC) on their review of the 2020 A-R stock assessment. The TC recommended the Board approve the 2020 A-R striped bass stock assessment for management use. The TC provided recommendations to NCDMF to consider for future A-R stock assessments, including continuing to explore factors impacting recruitment. The Board accepted the 2020 Albemarle Sound-Roanoke River Stock Assessment and Peer Review Report for management use.

There was one new nomination to the Atlantic Striped Bass Advisory Panel. The Board approved Jon Worthington representing North Carolina to the Striped Bass Advisory Panel.

For more information, please contact Emilie Franke efranke@asmfc.org, Fishery Management Plan Coordinator at 703.842.0740.

Motions

Move to accept the 2020 Albemarle Sound-Roanoke River Striped Bass Stock Assessment and Peer Review Report for management use.

Motion made by Mr. Batsavage and seconded by Mr. Hasbrouck. Motion stands approved by unanimous consent.

Move to remove issue 1 from the PID and maintain existing goals and objectives.

Motion made by Mr. White and seconded by Mr. Clark. Motion carries (10 in favor, 6 opposed).

Move to remove issue 2, biological reference points, from consideration for Draft Amendment 7.

Motion made by Mr. Sikorski and seconded by Ms. Ware. Motion passes (10 in favor, 6 opposed).

Move to maintain issue 7, recreational release mortality in the development of Amendment 7.

Motion made by Mr. Gary and seconded by Mr. Cimino. Motion carries (16 in favor).

Main Motion

Move to remove issue 4, the rebuilding schedule, from further consideration in Amendment 7.

Motion made by Dr. Davis and seconded by Mr. McMurray. Motion amended.

Motion to Amend

Move to amend to include the following text: add options for measures to protect the 2015 year class in the development of Draft Amendment 7.

Motion made by Ms. Ware and seconded by Mr. Sikorski. Motion passes (9 in favor, 4 opposed, 2 abstentions).

Main Motion as Amended

Move to remove issue 4, the rebuilding schedule, from further consideration in Amendment 7 and add options for measures to protect the 2015 year class in the development of Draft Amendment 7.
Motion carries (12 in favor, 1 opposed, 2 abstentions).

Move that issue 5, regional management, be removed from consideration in Draft Amendment 7.
Motion made by Mr. McMurray and seconded by Mr. Armstrong. Motion stands approved by consensus.

Move to include issue 6, conservation equivalency in Amendment 7.
Motion made by Mr. White and seconded by Ms. Ware. Motion is approved by consensus with 1 objection.

Move to include issue 9, coastal commercial quota allocation in Draft Amendment 7.
Motion made by Mr. Clark and seconded by Dr. Davis. Motion fails for lack of a majority (6 in favor, 6 opposed, 2 abstentions, 1 null).

Main Motion

Move that the female SSB and fishing mortality triggers be removed from consideration from Draft Amendment 7 and to task the Technical Committee with developing options for a more effective standard for recruitment based triggers.
Motion made by Mr. McMurray and seconded by Mr. Miller. Motion substituted.

Motion to Substitute

Move to substitute to keep management triggers in Amendment 7 for analysis and consideration by the Board.
Motion made by Mr. Luisi and seconded by Mr. Armstrong. Motion passes (13 in favor, 2 opposed).

Main Motion as Substituted

Move to keep management triggers in Amendment 7 for analysis and consideration by the Board.
Motion passes by consensus.

Motion to remove issue 8, recreational accountability from further consideration in Amendment 7.
Motion made by Mr. Armstrong and seconded by Mr. White. Motion passes (10 in favor, 5 opposed).

Move to approve Jon Worthington, representing North Carolina, to the Striped Bass Advisory Panel.
Motion made by Mr. Gilmore and seconded by Mr. Gorham. Motion stands approved without objection.

INTERSTATE FISHERIES MANAGEMENT PROGRAM (ISFMP) POLICY BOARD (MAY 6, 2021)

Meeting Summary

The ISFMP Policy Board met to consider an appeal of Addendum XXXIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) from the State of New York; discuss *de minimis* qualification and measures within Commission FMPs; discuss the East Coast Climate Change Scenario Planning Initiative; review the process for considering plan review team (PRT) recommendations in

annual FMP reviews; review an update on the Mid-Atlantic Fishery Management Council's (MAFMC) Research Steering Committee's evaluation to restart the research set-aside (RSA) program; review an update on the SEAMAP program; and consider a request from the Shad and River Herring Management Board.

The Commission Chair Pat Keliher presented the Executive Committee Report to the Board (see Executive Committee meeting summary earlier in this document).

The Board considered an appeal of Addendum XXXIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) from the State of New York under criterion one: the decision was not consistent with the statement of the problem. The Chair noted the decision before the Board was to determine if the appeal is justified under criterion one and if so what remedy should be forwarded to the Summer Flounder, Scup and Black Sea Bass Board.

Staff presented an overview of the Commission's [appeal process](#) and [Addendum XXXIII](#). The Addendum addressed significant changes in the distribution of black sea bass that have occurred since the original allocations were implemented under Amendment 13 in 2003 while accounting for the historical dependence of the states on the black sea bass fishery. The Addendum changes Connecticut's baseline allocation from 1% to 3% of the coastwide quota to address its disproportionately low allocation compared to the increased availability of black sea bass in state waters of Long Island Sound. The Board determined the other options in the Addendum would not increase Connecticut's allocation enough to address a directed fishery, therefore, the state's baseline quota was increased. State allocations are then calculated by allocating 75% of the coastwide quota according to the new baseline allocations (historical allocations modified to account for Connecticut's increase to 3%) and 25% to three regions based on the most recent regional biomass distribution information from the stock assessment. The three regions are: 1) Maine-New York, 2) New Jersey, and 3) Delaware-North Carolina. The regional allocations will be distributed among states within a region in proportion to their baseline allocations, except Maine and New Hampshire will each receive 1% of the northern region quota. Because the allocations are based in part on the regional biomass distribution from the stock assessment, they will be adjusted if a new assessment indicates a change to the biomass distribution. In the appeal, New York argued its baseline quota should have been increased similarly to that of Connecticut because it too had experienced a significant disparity between allocation and abundance/availability of black sea bass in Long Island Sound. During the years used for the historical allocation, adult black sea bass were rare in Long Island Sound and there was a minimal fishery by both states. Also, during this same time period, New York's fishery was primarily in the waters of the Atlantic Ocean. The state presented data to show a dramatic increase in the black sea bass abundance beginning in 2010 in Long Island Sound. New York argued it was this new abundance of fish that justified the baseline increase to Connecticut's quota. If both states share Long Island Sound, New York argued its baseline should also have been increased.

Members of the Policy Board acknowledged with the approval of the Addendum, the Summer Flounder, Scup and Black Sea Bass Board made significant progress in its approach to allocation by moving to regional allocation based on current distribution of the species, allowing for increased equity and directly incorporating science into the process. Board members recognized states made difficult decisions for the sake of the greater good and to advance allocation decisions. Members of the Policy Board stated New York presented a compelling case that the Addendum has not provided adequate

relief for the substantial increase of black sea bass in New York state waters of Long Island Sound. The established ocean fishery operating under the existing allocation has created problems where the relief provided by the Addendum was not enough.

Based on this information, the Board found New York's appeal was justified and remanded Section 3.1.1. Baseline Quota Allocations, back to the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board for corrective action that addresses impacts to New York's baseline in a manner comparable to the consideration given Connecticut for the expansion of black sea bass into Long Island Sound. Corrective action taken by the Summer Flounder, Scup, and Black Sea Bass Board should not result in a decrease in Connecticut's baseline allocation to less than 3% or decrease the percentage of quota redistributed according to regional biomass. The Commission's Summer Flounder, Scup, and Black Sea Bass Management Board will address the August 2021 meeting.

The Board discussed how *de minimis* is used within Commission FMPs. As defined in the ISFMP Charter, *de minimis* is a situation in which, under existing conditions of the stock and the scope of the fishery, conservation and enforcement actions taken by an individual state would be expected to contribute insignificantly to a coastwide conservation program required by an FMP or amendment. *De minimis* provisions in FMPs reduce the management burden for states that have a negligible effect on the conservation of a species. The *de minimis* provisions in the FMPs vary by species and include a range of requirements for management measures, reporting requirements, and *de minimis* qualification periods. The Policy Board discussion focused on the balance between standardization across FMPs for consistent application of the provisions and the flexibility for the species management boards in developing *de minimis* provisions to address data collection needs (fishery-independent and -dependent), commerce issues, and management loopholes. The Board formed a small work group to provide a recommendation for addressing *de minimis* that addresses the concerns raised by the Board. The work group will report back to the Board in August.

The Board received an update on the East Coast Climate Change Scenario Planning Initiative, which was initiated by the Northeast Region Coordinating Council (NRCC) in 2020. Scenario planning is a tool that managers can use to test decisions or develop strategies in the context of uncontrollable and uncertain environmental, social, political, economic, or technical factors. It is a structured process for managers to explore and describe multiple plausible futures, termed "scenarios," and consider how to best adapt and respond to them. The NRCC, which consists of leadership from the Commission, MAFMC, New England Fishery Management Council, Greater Atlantic Regional Fisheries Office, and Northeast Fisheries Science Center, will serve as the primary decision-making body for this initiative, with the addition of South Atlantic Fishery Management Council representatives. The NRCC has appointed a Core Team of staff from each participating organization to serve as the technical team for this initiative, in conjunction with a contracted facilitator. The Commission reviewed a tentative plan and timeline for this process, which will be reviewed by the NRCC at its May meeting. Pending NRCC approval, a public scoping process is expected to occur this summer. Additional information can be found at the [webpage](#) for this initiative.

Each year management boards review and approve FMP Reviews and state compliance reports which have been drafted by PRTs. The PRTs include a recommendations section in the document that focuses on important issues related to management and science. Unless a board specifically takes action to address a recommendation, it is not addressed by the approval of the FMP Review. To maximize the

effectiveness of the PRT recommendations, the Board agreed PRT recommendations should be prioritized; limited to a reasonable number that can be addressed at one meeting; and focus on management/policy issues (research and science based recommendations should be in a separate section). Prior to the approval of the FMP Review, species boards will review and identify which recommendations require further tasking or action.

The Board reviewed a summary of the progress made by the MAFMC's Research Steering Committee on redevelopment of the RSA program. MAFMC will hold three workshops via webinar during the summer and early fall focusing on research, funding, and enforcement, followed by an in-person 1-day workshop in the fall to report all findings and recommendations to the participants. The Committee Chair Adam Nowalsky invited Commissioners to attend the workshops as the states have played important roles (e.g. issuing permits and enforcement) in the previous RSA program. The results of the workshops will be presented to the MAFMC in December with a recommendation on whether/how to re-initiate the RSA program.

Sarah Murray provided an update on the Southeast Area Monitoring and Assessment Program (SEAMAP) and reviewed the [2021-2025 SEAMAP Management Plan](#) and the [2021-2025 SEAMAP Strategic Plan](#). The Management Plan summarizes current goals, management policies and procedures, SEAMAP history, and program accomplishments. The Strategic Plan includes a prioritized list of potential activities to maintain and expand SEAMAP efforts. The top priorities for funding are maintaining the baseline program activities and returning the programs to full utilization. Secondary priorities are collecting additional data on existing surveys, for example, increasing life history and diet sampling or collecting oceanographic data. Finally, the plan lists priorities for developing new fishery-independent data collection programs; examples from the South Atlantic include developing a survey for pelagic species and developing a cobia survey.

The Board agreed to send letters to NOAA Fisheries and U.S. Fish and Wildlife Service to address fish passage performance for American shad (see relevant Shad and River Herring Management Board section earlier in this document for details on the letters). For more information, please contact Toni Kerns, ISFMP Director, at tkerns@asmfc.org or 703.842.0740.

Motions

Move to find that NY's appeal of Addendum XXXIII, based upon Criterion 1, Addendum is inconsistent with the Statement of the Problem, is justified.

Motion made by Dr. Davis and seconded by Mr. Bell. Motion passes (13 in favor, 4 opposed, 1 abstention).

Main Motion

Move to remand Addendum XXXIII, specifically Section 3.1.1. *Baseline Quota Allocations*, back to the ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board for corrective action that addresses impacts to New York's baseline in a manner comparable to the consideration given Connecticut for the expansion of black sea bass into Long Island Sound. Corrective action taken by the summer flounder, scup, and black sea bass Board should not result in a Connecticut baseline allocation less than 3% or decrease the percentage of quota redistributed according to regional biomass.

Motion made by Dr. Davis and seconded by Mr. Borden.

Motion to Amend

Move to amend this motion to remove the last sentence.

Motion made by Mr. Nowalsky and seconded by Mr. Clark. Motion fails (6 in favor, 10 opposed, 2 abstentions).

Main Motion

Move to remand Addendum XXXIII, specifically Section 3.1.1. *Baseline Quota Allocations*, back to the ASMFC Summer Flounder, Scup, and Black Sea Bass Management Board for corrective action that addresses impacts to New York's baseline in a manner comparable to the consideration given Connecticut for the expansion of black sea bass into Long Island Sound. Corrective action taken by the summer flounder, scup, and black sea bass Board should not result in a Connecticut baseline allocation less than 3% or decrease the percentage of quota redistributed according to regional biomass.

Motion made by Dr. Davis and seconded by Mr. Borden. Motion passes (12 in favor, 4 opposed, 2 abstentions).

Move that the Commission write a letter to NOAA Fisheries and USFWS supporting their activities in dam passage review to provide increased opportunities for population recovery for American shad:

- **Dam/barrier removals as the preferred approach to restore fish species habitat access for population restoration and for habitat restoration benefits. When dam removal is not an option,**
- **The development and use of fish passage performance standards in river systems based on available data, fish passage modeling tools, and fish passage expertise is recommended. If the required information to develop performance standards are not available, support their development for such purposes and applications.**

Motion by Dr. Davis on behalf of the Shad and River Herring Management Board. Motion passes by consensus with 1 abstention from NOAA Fisheries.

New England Fishery Management Council Meeting Agenda – Revised
Tuesday – Thursday, June 22-24, 2021
[By Webinar](#)

Sending comments? Written comments must be received at the NEFMC office no later than 8:00 a.m., Thursday, June 17, 2021 to be considered at this meeting. Please address comments to Council Chairman Dr. John Quinn or Executive Director Tom Nies at: NEFMC, 50 Water St., Mill 2, Newburyport, MA 01950. Email submissions should be sent to comments@nefmc.org.

IMPORTANT: Due to ongoing public safety considerations related to [COVID-19](#), this meeting will be conducted by webinar. Please continue to monitor the Council's [June 2021 meeting webpage](#).

PUBLIC COMMENTS: The Council's "Guidelines for Providing Public Comments" can be found [here](#). Anyone interested in speaking during the open period for public comment on June 22, 2021 at 10:45 a.m. should email Janice Plante at jplante@nefmc.org to get on the list.

Tuesday, June 22, 2021

9:00 a.m. Reports on Recent Activities

Council Chairman, Council Executive Director, Greater Atlantic Regional Fisheries Office (GARFO) Regional Administrator, National Oceanic and Atmospheric Administration (NOAA) General Counsel, Northeast Fisheries Science Center (NEFSC), Mid-Atlantic Fishery Management Council (MAFMC), Atlantic States Marine Fisheries Commission, U.S. Coast Guard, NOAA Enforcement, Stellwagen Bank National Marine Sanctuary, and Northeast Trawl Advisory Panel

10:45 Open Period for Public Comment

Opportunity for the public to provide brief comments on issues relevant to Council business but not listed on this agenda (please limit remarks to 3-5 minutes)

11:00 Conserving and Restoring America the Beautiful (Sam Rauch, NOAA Fisheries; Council staff)
NOAA Fisheries briefing on draft White House report, "Conserving and Restoring America the Beautiful," with discussion on how it applies to fisheries; report on formation of Council Coordination Committee (CCC) subcommittee on area-based management

11:30 Electronic Monitoring Procedural Directive (Brett Alger, NOAA Fisheries; Executive Director Tom Nies)
Receive presentation on draft National Marine Fisheries Service (NMFS/NOAA Fisheries) procedural directive on applying information law to electronic monitoring (EM) data in U.S. fisheries; approve Council comments

12:30 p.m. Lunch Break

1:30 Habitat Committee Report (Eric Reid; Peter Burns, GARFO; Andy Lipsky, NEFSC; Brian Hooker, BOEM)
Offshore Wind: GARFO, NEFSC, and BOEM updates on offshore wind-related projects and activities; Council Habitat-Related Work: update on efforts to revise Council's Wind Energy Policy, receive other habitat project updates

3:00 Atlantic Sea Scallop Biological Opinion (Bill Barnhill, GARFO)
Update on 2021 Atlantic Sea Scallop Biological Opinion to address turtle interactions in the fishery

3:45 Scallop Committee Report (Vincent Balzano)
Scallop Research Set-Aside (RSA) Program: approve 2022-2023 RSA priorities; Framework 34: initiate action for 2022 fishery specifications, 2023 default specs, other measures; Rotational Management Program Evaluation: update; Leasing Petition: review Scallopers Campaign letter to NMFS requesting secretarial action to implement a scallop leasing program, approve Council response

Wednesday, June 23, 2021

9:00 a.m. Atlantic Herring Committee Report (Rick Bellavance, SSC Chair Dr. Jason McNamee)

Framework Adjustment 9: (1) receive Scientific and Statistical Committee recommendations on herring rebuilding plan alternatives to address the overfished status of Atlantic herring, and (2) receive update on

the framework's rebuilding plan alternatives and measures to potentially adjust herring accountability measures; Framework Adjustment 7: update on action to protect adult spawning herring on Georges Bank

- 11:30 2021-2025 Council Research Priorities:** (Staff; SSC Chair Dr. Jason McNamee)
Review list of 2021-2025 Council Research Priorities; receive SSC recommendations on research priorities; discuss and approve final list
- 12:30 p.m. Lunch Break**
- 1:30 Groundfish Report** (Terry Alexander; Dr. Mackenzie Mazur, GMRI; SSC Chair Dr. Jason McNamee)
ABC Control Rules: (1) receive presentation on draft report titled "Evaluation of Alternative Harvest Control Rules for New England Groundfish," (2) receive SSC comments on ABC control rule presentation and report, (3) Council discussion on ABC control rules draft report and SSC comments; Atlantic Cod Stock Structure Working Groups: progress report; Framework Adjustment 63: initiate action to include (1) 2022 total allowable catches (TACs) for U.S./Canada shared resources on Georges Bank (GB), (2) 2022-2024 specifications for GB cod, Gulf of Maine (GOM) cod, GB haddock, and GOM haddock, (3) 2022-2023 specifications for GB yellowtail and 2022 specifications for white hake, and (4) other measures

Thursday, June 24, 2021

- 9:00 a.m. Skate Committee Report** (Dr. Matt McKenzie)
2022-2023 Specifications: update; Amendment 5 to the Northeast Skate Complex Fishery Management Plan: update; Control Dates: consider updating control dates for skate wing and skate bait fisheries
- 11:00 Financial Disclosures and Recusal** (Executive Director Tom Nies)
Approve Council comments on draft NMFS policy directive and procedural guidance for financial disclosures and recusals for regional fishery management councils
- 11:30 Ecosystem-Based Fishery Management (EBFM) MSE Steering Committee Report** (Dr. Matt McKenzie)
Approve plan for informational workshops using public outreach materials and focusing on potential application to a Georges Bank example Fishery Ecosystem Plan (eFEP)
- 12:30 p.m. Lunch Break**
- 1:00 Southeast For-Hire Electronic Reporting Requirements** (Rick Bellavance)
Update on NOAA Fisheries Southeast Region for-hire electronic reporting requirements and application to New England recreational party/charter vessels with permits for South Atlantic species; approve draft response letter
- 1:30 Highly Migratory Species (HMS)** (Tom Warren, NOAA Fisheries)
Presentation on Amendment 13 to the Consolidated Atlantic HMS Fishery Management Plan, which focuses on bluefin tuna issues; Council comments on proposed rule
- 2:00 HMS Advisory Panel and ICCAT Advisory Committee** (Rick Bellavance)
Reports on recent meetings of: (1) NOAA Fisheries' Highly Migratory Species Advisory Panel; and (2) the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas
- 2:15 Other Business**

Times listed next to the agenda items are estimates and are subject to change.

This meeting is being held entirely by webinar. Council member financial disclosure forms are available for examination on the Council website.

Although other non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Documents pertaining to Council actions are available for review prior to a final vote by the Council.

Please check the Council's website, www.nefmc.org, or call (978) 465-0492 for copies.

This meeting will be recorded. Consistent with 16 USC 1852, a copy of the recording is available upon request.

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

June 22-24, 2021

Via Webinar

FINAL MOTIONS

Tuesday, June 22, 2021

REPORTS ON RECENT ACTIVITIES

Council Chairman's Report

1. The Council agreed by consensus to have a hybrid format for the September Council meeting with members attending in-person preferable.

ELECTRONIC MONITORING PROCEDURAL DIRECTIVE

2. The Council agreed by consensus to approve the draft letter on the Electronic Monitoring Procedural Directive, as amended by the Council discussion.

HABITAT COMMITTEE REPORT

3. The Council agreed by consensus:
That staff develop comments on behalf of the Council, jointly with the MAFMC where appropriate, on the following issues: U.S. Army Corps of Engineers' permit application for the Blue Water Fisheries aquaculture project, BOEM's proposed sale notice for NY Bight leasing, BOEM's notice of intent for the Empire Wind project, and the U.S. Coast Guard's draft Approaches to Chesapeake Bay Port Access Route Study.

SCALLOPS

2022/2023 Scallop RSA Research Priorities

4. Mr. Balzano moved on behalf of the Committee:
that the Council approve the Scallop research set-aside priorities for 2022/2023 as recommended by the Scallop Committee on pages 1 and 2 of document #3, (Tab 4). The priority list is summarized in the table below.

#	HIGHEST PRIORITY (1a, 1b, 1c)	#	GENERAL RESEARCH (3, 4, 5, & 6 - not ranked)
1a	Intensive surveys of access areas	3	Sea turtle research
1b	Intensive surveys of areas of interest and GOM	4	Scallop Recruitment Supplementation
1c	Broadscale surveys of GB and MA	5	Bycatch: Small scallops & non-target species
	HIGH PRIORITY (2)		

2	Research on scallop biology	6	Gear: Commercial dredge research

- 4a. Dr. Sissenwine moved to amend and Dr. McKenzie seconded:
to elevate the priority to high priority for ESA listed sea turtle studies and add gear research to the turtle studies.

The motion to amend was agreed by consensus.

The main motion as amended was agreed by consensus.

Framework Adjustment 34

5. Mr. Balzano moved and Ms. Patterson seconded
that the Council initiate Framework Adjustment 34, an action that will set fishery specifications for fishing year 2022 and default measures for 2023. Framework 34 will consider modifications LAGC IFQ access area trip counting and implement measures from Amendment 21 that are approved by NMFS.

Roll call vote:

Yes: Mr. Gates, Mr. Alexander, Mr. Balzano, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Dr. McKenzie, Mr. Olszewski, Mr. Pappalardo, Mr. Pentony, Ms. Griffin, Mr. Reid, Dr. Sissenwine and Mr. Tracy.

No:

Abstain:

The motion *carried* unanimously on a roll call vote (16/0/0).

6. The Council agreed by consensus to approve the Council's response to GARFO regarding the Scallop's Campaign request for secretarial action to implement a scallop leasing program with one abstention (Mr. Pentony).

Wednesday, June 23, 2021

FINANCIAL DISCLOSURE AND RECUSAL

1. The Council agreed by consensus to approve the Council comments on draft NMFS policy directive and procedural guidance for financial disclosures and recusals for regional fishery management councils.

COUNCIL RESEARCH PRIORITIES

2. Consensus Statement:
The Council accepts the revisions to its Research Priorities and Data Needs for

2021-2025 as updated by the FMP Committees and the Scientific and Statistical Committee for submission to NMFS. Intent is to keep Albatross-Bigelow conversion and Red Crab survey on the list.

The Council agreed by consensus.

SOUTHEAST REGIONAL OFFICE (SERO) FOR-HIRE ELECTRONIC REPORTING REQUIREMENTS

3. The Council agreed by consensus to approve the draft letter to SERO with Council's response regarding the for-hire reporting requirements with one abstention (Mr. Pentony).

OTHER BUSINESS

4. Mr. Salerno moved and Mr. Alexander seconded:
to recommend to GARFO that they delay the eVTR reporting requirements implementation by six months.
- 4a. Ms. Ware moved to table and Ms. Etrie seconded:

Roll call vote:

Yes: Mr. Aarrestad, Mr. Alexander, Mr. Balzano, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Dr. McKenzie, Mr. Olszewski, Mr. Pappalardo, Ms. Griffin, Dr. Sissenwine and Mr. Tracy

No: Mr. Reid

Abstain: Mr. Pentony

Recusal: Mr. Bellavance

The motion *carried* on a roll call vote (14/1/1/1).

Recusal Statement: Mr. Bellavance recused himself because he may assist the contractor hired to educate fishermen on the eVTR requirements if they are approved by NMFS.

GROUND FISH

5. Mr. Pentony moved and Ms. Etrie seconded:
In order to consider the addition of default measure alternatives to the 2021 Northeast Multispecies framework, I move to suspend the rule that requires any proposed change in priorities to be reviewed by the relevant oversight committee before it is acted on by the Council.

Roll call vote:

Yes: Mr. Gates, Mr. Alexander, Mr. Balzano, Mr. Bellavance, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Dr. McKenzie, Mr. Olszewski, Mr. Pappalardo, Mr. Pentony, Ms. Griffin, Mr. Reid, Dr. Sissenwine and Mr. Tracy

No:

Abstain:

The motion *carried* unanimously on a roll call vote (17/0/0).

6. Mr. Alexander moved and Ms. Etrie seconded:
to initiate Framework Adjustment 63: 2022-2024 Specifications/Management Measures, to include:
- Set 2022 total allowable catches for US/Canada management units of Eastern Georges Bank (GB) cod and Eastern GB haddock, and 2022-2023 specifications for the GB yellowtail flounder stock,
 - Set 2022-2024 specifications for GB cod and Gulf of Maine (GOM) cod, and possibly adjust 2022 specifications for GB haddock and GOM haddock,
 - Adjust 2022 specifications for white hake based on the rebuilding plan,
 - Adopt additional measures to promote stock rebuilding,
 - Develop alternatives to the current default system
- 6a. Mr. Pentony moved to amend and Mr. Salerno seconded:
that the Council modify 2021 Northeast Multispecies priorities and develop alternatives to the current default system, for inclusion in Framework 63 and remove “in consultation with the SSC, revise ABC control rules for the NE multispecies stocks”.

Roll call vote:

Yes: Mr. Tracy, Dr. Sissenwine, Mr. Reid, Ms. Griffin, Mr. Pentony, Mr. Pappalardo, Mr. Olszewski, Dr. McKenzie, Ms. Ware, Mr. Salerno, Ms. Patterson, Mr. Godfroy, Ms. Etrie, Mr. Balzano, Mr. Bellavance, Mr. Alexander and Mr. Gates

No:

Abstain:

The motion to amend *carried* on a roll call vote (17/0/0).

The main motion as amended:

To initiate Framework Adjustment 63: 2022-2024 Specifications/Management Measures, to include:

- Set 2022 total allowable catches for US/Canada management units of Eastern Georges Bank (GB) cod and Eastern GB haddock, and 2022-2023 specifications for the GB yellowtail flounder stock,
- Set 2022-2024 specifications for GB cod and Gulf of Maine (GOM) cod, and possibly adjust 2022 specifications for GB haddock and GOM haddock,
- Adjust 2022 specifications for white hake based on the rebuilding plan,
- Adopt additional measures to promote stock rebuilding,
- Develop alternatives to the current default system

- 6b. Ms. Etrie moved to amend and Mr. Alexander seconded:
to initiate Framework Adjustment 63: 2022-2024 Specifications/Management Measures, to include:
- Set 2022 total allowable catches for US/Canada management units of Eastern Georges Bank (GB) cod and Eastern GB haddock, and 2022-2023 specifications for the GB yellowtail flounder stock,
 - Set 2022-2024 specifications for GB cod and Gulf of Maine (GOM) cod, and possibly adjust 2022 specifications for GB haddock and GOM haddock,
 - Adjust 2022 specifications for white hake based on the rebuilding plan,
 - Develop alternatives to the current default system

Roll call vote:

Yes: Mr. Tracy, Mr. Reid, Mr. Salerno, Ms. Etrie, Mr. Balzano and Mr. Alexander

No: Dr. Sissenwine, Ms. Griffin, Mr. Pentony, Mr. Pappalardo, Mr. Olszewski, Dr.

McKenzie, Ms. Ware, Ms. Patterson, Mr. Godfroy, Mr. Bellavance and Mr. Gates

Abstain:

The motion to amend *failed* on a show of hands (6/12/0).

The main motion:

To initiate Framework Adjustment 63: 2022-2024 Specifications/Management Measures, to include:

- Set 2022 total allowable catches for US/Canada management units of Eastern Georges Bank (GB) cod and Eastern GB haddock, and 2022-2023 specifications for the GB yellowtail flounder stock,
- Set 2022-2024 specifications for GB cod and Gulf of Maine (GOM) cod, and possibly adjust 2022 specifications for GB haddock and GOM haddock,
- Adjust 2022 specifications for white hake based on the rebuilding plan,
- Adopt additional measures to promote stock rebuilding,
- Develop alternatives to the current default system

Roll call vote:

Yes: Mr. Gates, Mr. Alexander, Mr. Balzano, Mr. Bellavance, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Dr. McKenzie, Mr. Olszewski, Mr. Pappalardo, Mr. Pentony, Ms. Griffin, Mr. Reid, Dr. Sissenwine and Mr. Tracy

No:

Abstain:

The motion *carried* unanimously on a roll call vote (17/0/0).

Thursday, June 24, 2021

SKATE COMMITTEE REPORT

Amendment 5

Skate FMP Objectives

1. Committee consensus statement:
That the Council recommends accepting the PDT recommendations on updating Skate FMP Objectives #2 (on rebuilding overfished stocks) and #5 (on setting research priorities).

The Council agreed by consensus.

Intermediate Possession Limits

2. Dr. McKenzie moved on behalf of the Committee:
that for the intermediate possession limit alternatives, the Council develops an alternative that would create a Step 1 trigger at 75% of the TAL and a Step 2 trigger at 90% of the TAL. This would apply to the wing and bait fisheries in all seasons. Under Step 1, the possession limit would lower to 75% (a 25% reduction). Step 2 would implement the incidental limit.

Roll call vote:

Yes: Mr. Aarrestad, Mr. Alexander, Mr. Balzano, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Mr. Olszewski, Ms. Griffin and Mr. Tracy

No: Mr. Bellavance, Dr. McKenzie, Mr. Pappalardo, Mr. Reid and Dr. Sissenwine

Abstain: Mr. Pentony

The motion ***carried*** on a roll call vote (11/5/1).

3. Dr. McKenzie moved on behalf of the Committee:
that the Council adds an option to each intermediate possession limit alternative that would implement the intermediate possession limit only in the last wing (Season 2) or bait season (Season 3).

The Council agreed by consensus.

4. Committee consensus statement:
that for all the intermediate possession limit alternatives, the Regional Administrator would have the discretion to not implement the intermediate possession limit, based on current landing rates and the timing relative to the end of the season, like the current discretion for implementing the incidental limit.

The Council agreed by consensus.

Federal Skate Permit

5. Dr. McKenzie moved on behalf of the Committee:
that the Council adds an alternative that would require that once the federal permit is obtained at any point in the year, it must be retained for the remainder of the fishing year.

The Council agreed by consensus.

Tabled Motion from April 2021

6. Dr. McKenzie moved and Ms. Etrie seconded:
to bring forward the motion tabled from April.

Roll call vote:

Yes: Mr. Aarrestad, Mr. Alexander, Mr. Balzano, Mr. Bellavance, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Dr. McKenzie, Mr. Olszewski, Mr. Pappalardo, Ms. Griffin, Mr. Reid, Dr. Sissenwine and Mr. Tracy

No:

Abstain: Mr. Pentony

The motion *carried* on a roll call vote (16/0/1).

Main motion:

That new control dates be established for the wing and bait fisheries.

- 6a. Dr. Sissenwine moved to substitute and Ms. Etrie seconded:
that the Council recommend to GARFO that they rescind the current control dates in the wing and bait fisheries.

Roll call vote:

Yes: Mr. Alexander, Mr. Balzano, Mr. Bellavance, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Mr. Olszewski, Mr. Pentony, Ms. Griffin and Dr. Sissenwine

No: Mr. Aarrestad, Mr. Pappalardo and Mr. Tracy

Abstain: Dr. McKenzie and Mr. Reid

The motion to substitute *carried* on a roll call vote (12/3/2).

Main motion:

That the Council recommend to GARFO that they rescind the current control dates in the wing and bait fisheries.

Roll call vote:

Yes: Mr. Alexander, Mr. Balzano, Mr. Bellavance, Ms. Etrie, Mr. Godfroy, Ms. Patterson, Mr. Salerno, Ms. Ware, Mr. Olszewski, Ms. Griffin and Dr. Sissenwine

No: Mr. Aarrestad, Mr. Pappalardo and Mr. Tracy

Abstain: Dr. McKenzie, Mr. Pentony and Mr. Reid

The main motion *carried* on a roll call vote (11/3/3).

EBFM

7. Dr. McKenzie moved and Ms. Patterson seconded:
that the Council approve Management Strategy Evaluation Steering Committee guidance
and recommendations for EBFM Public Information Workshops.

The Council agreed by consensus.

OTHER BUSINESS – CONT'D

Tabled motion:

To recommend to GARFO that they delay the eVTR reporting requirements
implementation by six months.

8. Ms. Etrie Moved and Mr. Pappalardo seconded: to bring forward the tabled motion

Roll call vote:

Yes: Mr. Aarrestad, Mr. Alexander, Mr. Balzano, Mr. Bellavance, Ms. Etrie, Ms.
Patterson, Mr. Salerno, Ms. Ware, Dr. McKenzie, Mr. Olszewski, Mr. Pappalardo,
Ms. Griffin, Mr. Reid, Dr. Sissenwine, Mr. Godfroy and Mr. Tracy

No: Ms. Bland

Abstain:

The motion *carried* on a roll call vote (16/1/0).

- 8a. The main motion:
to recommend to GARFO that they delay the eVTR reporting requirements implementation
by six months.

Roll call vote:

Yes: Mr. Alexander, Mr. Balzano Ms. Etrie Mr. Godfroy Ms. Patterson Mr. Salerno Mr.
Reid Mr. Tracy

No: Mr. Aarrestad, Ms. Ware Dr. McKenzie Mr. Olszewski Mr. Pappalardo Ms. Bland Ms.
Griffin Dr. Sissenwine

Abstain:

Recusal: Mr. Bellavance

The motion failed on a roll call vote (8/8/0/1).

Recusal Statement: Mr. Bellavance recused himself because he may assist the
contractor hired to educate fishermen on the eVTR requirements if they are
approved by NMFS.

Overview of Division of Marine Fisheries Rule Making

The Division of Marine Fisheries (DMF's) enabling statutes, found in Massachusetts General Law Chapter 130 (G.L. c. 130), provides the Director - often with the approval of the Commissioner of the Department of Fish and Game (DFG Commissioner) - with broad authority to develop and implement regulations relative to marine fisheries within the waters under the jurisdiction of the Commonwealth¹² and the landing of fish in Massachusetts ports. This includes, but is not limited to, the regulation of fishing permits; shellfish and aquaculture; fishing gear; catch and effort; and spatial and temporal restrictions. DMF regulations are promulgated at 322 CMR.

All regulations implemented by the Division of Marine Fisheries are subject to administration review under Executive Order 562 (EO562). Additionally, the Massachusetts Administrative Procedure Act at G.L. c. 30A §§ 2 and 3 also requires the agency hold public hearings and/or a public comment period prior to adopting any regulation. In its totality the regulation development process takes approximately 4-6 months.

EO562 was signed by Governor Baker in March 2015. It requires all state agencies to review their regulations to ensure and only pursue regulations that are necessary, written plainly, minimize the regulatory burden on business to the greatest extent practicable and better serve citizens and consumers of the Commonwealth. Agency regulations are reviewed and approved at both the draft and final phase by the DFG Commissioner, Executive Office of Energy and Environmental Affairs and the Executive Office of Administration and Finance to determine compliance with this Executive Order. Each round of administrative review under EO562 typically takes 4-8 weeks depending on the timeliness and complexity of the issue.

Notification and comment requirements are set forth at G.L. c. 30A §§ 2 and 3. These statutes require the agency hold a public hearing and public comment period before adopting, amending or rescinding any regulation³. The public hearing and the conclusion of the public comment period must occur at least 21 days after a Notice of Public Hearing is published in a local newspaper and the agency has informed

¹ The Magnuson Stevens Act, at 18 U.S.C. § 1856(a)(2), defines state jurisdiction to include, "any pocket waters that is adjacent to the state and totally enclosed by lines delimiting the territorial sea..." and "with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich." As a result, the waters under the jurisdiction of the Commonwealth (state waters) includes all waters within 3 nautical miles of the mean low tide water mark, Buzzards Bay and Mount Hope Bay, those waters of Cape Cod Bay and Massachusetts Bay enclosed within the three nautical mile line as depicted on NOAA charts, and those waters of Nantucket Sound west of 70°00' to the RI/MA border.

² G.L. c. 130 § 17 also authorizes the Director, with approval of the Governor, to extend the state's regulatory authority out 200 miles seaward or a 100 fathom depth, whichever is greater. Such rules would only affect Massachusetts permit holders, as the state only has authority over its permit holders in these waters and not activity in these waters generally. This would thereby disproportionately impact Massachusetts fishermen, without necessarily improving management. DMF encourages issues dealing with offshore fisheries be resolved through the federal Council process.

³ G.L. c. 30A § 2 requires a public hearing be held, "prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; (2) a public hearing is required by the enabling legislation of the agency or by any other law; or (c) a public hearing is required as a matter of constitution right." For any regulation that does not meet any of these stipulations, only a public comment period may be held. This is atypical of DMF regulations and DMF often holds both a public hearing and a written public comment period.

parties that have requested notification,⁴ and 7 days after a Notice of Public Hearing is published in the Massachusetts Register⁵. Additionally, per Executive Order 145, DMF must notify the Massachusetts Municipal Association and the Massachusetts Department of Housing and Community Development 14 days prior to giving notice of a public hearing or a public comment period.

Final regulations are submitted to the Massachusetts Secretary of State in accordance with G.L. c. 30A § 6. Final regulations become effective when published in the Massachusetts Register⁶. Following publication in the Massachusetts Register the Secretary of State will serve onto the agency the regulation filing form and replacement pages (this is also true of emergency regulations described below). These replacement pages are used to update official copies of the CMR.

The Director, with approval of the Commissioner, also has the authority to file emergency regulations. This authority is established at G.L. c. 30A § 2 and G.L. c. 130 § 17. Emergency regulations become effective when filed with the Secretary of State. These regulations do not require a public hearing or public comment period and remain in place for a period not to exceed 90-days. Emergency regulations may be extended for additional 90 day periods for cause.

As prescribed by these enabling statutes, DMF may only file an emergency regulation that ensures public safety, public health and general welfare and/or is necessary for the immediate management of the Commonwealth's marine fisheries. Such authority allows the Director to timely address emerging important fishery management issues and/or to ensure the state complies with implementation deadlines resulting from federal and interstate mandates.

Emergency rule making is also subject to EO562 approval. Consequently, emergency rule making may take 4-6 weeks from proposal development to implementation. If DMF moves to adopt an emergency regulation as a final regulation, then formal final rule making is initiated requiring a public hearing and comment period. Final rule making is also subject to EO562 approval.

Role of the Marine Fisheries Advisory Commission in Rule Making

G.L. c. 130 § 1B establishes a Marine Fisheries Advisory Commission (MFAC) within DMF. Under this law, the MFAC, "shall hold public hearings relative to matters within the jurisdiction of the Division and shall make recommendations to the Director for the proper management and development of the marine fisheries of the Commonwealth." G.L. c. 130 § 17A further stipulates that the MFAC is responsible for voting to approve or disapprove of only those proposals of the Director that effect: (1) the manner of taking fish; (2) the legal size limits of fish to be taken; (3) the seasons and hours in which fish may be

⁴ This statutory requirement for notification is principally satisfied through DMF publishing a public hearing notice on its website and through its electronic list serve to which members of the public may subscribe. However, if a party does not have an e-mail address and requests notification of public hearing, then a hard copy of the public notice will be sent to the requestor.

⁵ G.L. c. 30A § 6 establishes the Massachusetts Register publication schedule. The Massachusetts Register is published every other Friday. The publication date also serves as the deadline for submissions to be published in the subsequent issue of the Massachusetts Register. Therefore, a public hearing notice is not published until at least 2 weeks but not more than 4 weeks after it was filed with the Secretary of State.

⁶ Due to the publication schedule at G.L. c. 30A § 6, described in the above footnote, final regulations do not become effective until at least 2 weeks but not more than 4 weeks following a filing with the Secretary of State.

taken; (4) the numbers and quantities that fish may be taken; and (5) the open and closing of areas to the taking of any and all types of fish.

The legislative intent of this statute was to devise a system of governance whereby the Director's broadest authority over the management of marine fishery activities is subject to the input and approval of a citizen panel experienced in marine fisheries. The resulting system allows the MFAC to debate issues germane to marine fisheries management, provide advice to the Director on marine fisheries matters and proposals, and approve certain proposals of the Director relative to marine fisheries management. G.L. c. 130 § 17A also requires that the resulting DMF regulations be approved by the DFG Commissioner.

The G.L. c. 130 § 17A regulation MFAC review process is initiated through initial (draft) proposals of the Director. These draft proposals are developed by DMF based on input from the MFAC, public petition⁷ or in response to changes to state or federal fishery management plans or requirements of the National Shellfish and Sanitation Program's Model Ordinance. Draft proposals are brought to the MFAC for initial debate and then may be taken out to public hearing and public comment.

All public hearings are scheduled and managed by DMF but held jointly by the MFAC and DMF. MFAC approval is not required for DMF to hold a public hearing. However, by practice, DMF may seek input from the MFAC and may look for MFAC support or consensus. The MFAC does not hold public hearings independent of DMF. MFAC members are not required to attend public hearings, but their participation is strongly urged.

At the conclusion of the public hearing and public comment period, the MFAC will be provided with a final recommendation of the Director. The final recommendation will include a rationale for the proposal, as well as all written comment received by DMF and a summary of public comment taken at the public hearing. At a subsequent MFAC business meeting, the recommendation will be considered by the MFAC and subject to a vote.

A motion must be made and seconded by the MFAC to debate and vote on a recommendation of the Director. If a recommendation of the Director is approved, final rule making will commence. If it is not approved, the Director may modify the recommendation. The MFAC may then debate the modified recommendation through a motion that is seconded and may then vote to reject or approve the Director's modified recommendation. The MFAC does not have the legal authority to make a motion unilateral of the Director or to vote on rule changes that are not recommended by the Director. The MFAC may guide the Director towards a modified recommendation through debate and discussion.

⁷ The public may informally or formally petition DMF to adopt, amend or rescind any regulations. Formal petitions must be submitted in accordance with DMF regulations at 322 CMR 2.00. Different standards of review apply depending on whether the petition is formal or informal. Common practice is for DMF to review a public petition. Then based on this review, the Director will determine whether to reject it or adopt it (in part or in whole) as a draft proposal of the Division for potential discussion by the MFAC. DMF is not required to respond to all petitions, to take all petitions to public hearing or submit all petitions to the MFAC. However, if DMF writes a written response to a petition, it is common for the MFAC to be sent a copy of the petition and the agency's response.

It is important to note that MFAC approval is not required by statute for DMF to implement emergency regulations. However, as a matter of practice, DMF may consult the MFAC on any action that uses the agency's emergency regulatory authority. However, emergency regulations require a public hearing and a public comment period, and final approval of the MFAC for matters relevant to G.L. c. 130 § 17A, to become a permanent final regulation.

To enhance interaction between DMF and the MFAC on timely fisheries management issues, the MFAC is encouraged to create sub-committees, when warranted. Sub-Committee meetings may be held to review fishery management issues within their statutory domain under G.L. c. 130 § 17A, as well as issues outside of their statutory domain (e.g., enforcement or permitting⁸). These sub-committee meetings are designed to facilitate engagement, help develop thorough recommendations and promote consensus. Note that because the MFAC's business meetings are subject to the state open meeting law, any deliberation between a quorum (5) or more of MFAC members acting as a sub-committee would be subject to the requirements of such law.

Examples of recent sub-committees include the Law Enforcement Sub-Committee and the Permitting Sub-Committee. The permitting sub-committee was very influential in assisting DMF in the development of policies and regulations concerning limited entry permit and permit endorsement transfer. More recently, the Permitting Sub-Committee helped DMF develop a "permit bundling" policy and an upcoming public hearing proposal to liberalize its vessel replacement rules for Coastal Access Permit holders. The Law Enforcement Sub-Committee has historically been influential in assisting DMF in the development of improved regulations to enhance enforcement and compliance in state waters fisheries. More recently, they helped DMF and the Office of Law Enforcement review state's civil and criminal penalty schedule, which may prove a critical step in modernizing the schedule.

Specifications

For certain fishery management actions, DMF has also developed a specification process that is described by regulation. This process mirrors the notice, comment and MFAC approval process set forth by statute at G.L. c. 30A § 2 and 3 and G.L. c. 130 § 17A. This process was historically developed to timely implement changes that would not otherwise be possible under either the formal or emergency rule making process.⁹ Specifications are implemented through permit conditions, which are described in the below section.

⁸ DMF recognizes the important role that permitting plays in the management of marine fisheries and the interest that fishermen and the MFAC may have in DMF permitting rules and policies. So while the MFAC does not have the legal authority to vote on these items, DMF works to engage the MFAC on these issues to the greatest extent practicable.

⁹ The specification process is not subject to EO562 review. Additionally, the public comment and MFC approval process run concurrent with rather than subsequent to each other. In situations where the MFAC must take immediate action to implement a fisheries management action required by ASFMC or NMFS, the MFAC has voted by fax/email polls, to authorize such action as a specification, rather than at a monthly business meeting.

The specification process is utilized to implement fishery controls that are adjusted on an annual or intra-annual basis and supported up by ASMFC or NMFS specifications or rule making¹⁰. These fisheries are subject to joint management strategies and the specification process allows commercial fisherman to land fish in the Commonwealth that was lawfully harvested (potentially outside of state waters) under interstate or federal agreed up allowances.

Additionally, DMF may use the specification process to pursue in-season adjustments to trip limits for quota managed species. This allows DMF to maximize quota utilization by re-opening fisheries that may have closed before the quota was consumed, or to liberalize catch and effort controls to facilitate quota consumption.

Permit Conditions

Pursuant to G.L. c. 130 § 80 and 322 CMR § 7.01(7), the Director may condition any fishing permit to improve management of marine fisheries or protect public health or safety. Permit conditions are not subject to MFAC approval. However, as a matter of practice the Director may consult or notify the MFAC of actions to conditions permits. Permit conditions are implemented by either a direct letter to permit holders or through a Declaration of the Director to implement a specification.

This authority is typically used in only a few circumstances. These circumstances include, but are not limited to: (1) timely implementation of federal or interstate mandates when emergency rule making or specifications are not viable options; (2) requiring reporting to be up to date prior to renewal of a permit; (3) implementing certain discrete fishery management measures; (4) establishing pilot programs to better improve the management of marine fisheries; (5) adopting specific aquaculture controls (e.g., aquaculture permit conditions); (6) establishing specifications (e.g., sea herring days out); and (7) adopting permit sanctions resulting from adjudicatory hearings.

¹⁰ Examples of this include setting the commercial northern shrimp season, commercial sea herring days out for the Management Area 1A fishery, and commercial spiny dogfish and wintertime scup trip limits.