



**MARINE FISHERIES ADVISORY COMMISSION  
BUSINESS MEETING AGENDA**

**9:00 AM**

**October 29, 2020**

**Held Virtually Via Zoom**

**Webinar Link: <https://bit.ly/3dMAREB>**

**Dial In: +1 929 436 2866**

**Webinar ID: 884 5532 2550**

**Webinar Passcode: 151630**

1. Introductions and Announcements (9:00 – 9:10)
  - a. Review and Approval of the October 29, 2020 Business Meeting Agenda
  - b. Review and Approval of the September 24, 2020 Draft Business Meeting Minutes
2. Comments (9:10 – 9:30)
  - a. Chairman
  - b. Commissioner
  - c. Director
  - d. Law Enforcement
3. Presentation on 2020 Quota Monitored Fishery Performance (9:30 – 10:00)
4. Action Item to Increase Summer Flounder Limits for November and December (10:00 – 10:15)
5. Future Rule Making for Winter 2021 (10:15 – 11:00)
  - a. New Fixed Gear Regulations Related to Incidental Take Permit Application
  - b. Codifying Prohibition on Atlantic Bluefin Tuna Purse Seining
  - c. Rescinding Circle Hook Exemptions
6. Discussion Items (11:00 – 12:00)
  - a. Review of Recent ASMFC, MAFMC, and NEFMC Meetings
  - b. CARES Act Fisheries Relief Program Update
  - c. Commercial Menhaden Fishery Issues
  - d. Draft Policy on Transfer of Black Sea Bass and Fluke Endorsements for Rod and Reel Fishermen
  - e. Renewing Period I Summer Flounder Pilot Program
  - f. MFAC Sub-Committees
    - i. Convening the Law Enforcement Sub-Committee
    - ii. Forming and Convening a Commercial Striped Bass Sub-Committee
    - iii. Forming and Convening a Permitting Sub-Committee
7. Other Business (12:00 – 12:15)
  - a. Commission Member Comments
  - b. Public Comment
8. Adjourn (12:15)

**Future Meeting Dates**

**9AM  
November 19, 2020  
Location TBD**

**9AM  
December 10, 2020  
Location 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**

**September 24, 2020  
Held Virtually via Zoom**

### **In attendance:**

*Marine Fisheries Advisory Commission:* Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Arthur “Sooky” Sawyer; Kalil Boghdan; and Tim Brady. Absent: William Doyle, and Lou Williams

*Division of Marine Fisheries:* Daniel McKiernan, Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Jared Silva; Nichola Meserve; Julia Kaplan; Bob Glenn; Anna Webb; Erin Burke; and Jeff Kennedy

*Department of Fish and Game:* Ron Amidon, Commissioner; Mary Lee King, Deputy Commissioner; and Mark Reil, Director of Legislative Affairs.

*Massachusetts Environmental Police:* Lt. Matt Bass

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the September 24, 2020 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW AND APPROVAL OF SEPTEMBER 24, 2020 BUSINESS MEETING AGENDA**

There were no proposed changes to the September 24, 2020 MFAC business meeting agenda.

**Chairman Kane asked for a motion to approve the draft agenda. Kalil Boghdan made a motion to approve. The motion was seconded by Sooky Sawyer. The motion was approved by unanimous consent.**

## **REVIEW AND APPROVAL OF AUGUST 20, 2020 DRAFT BUSINESS MEETING MINUTES**

There were no proposed changes to the draft August 20, 2020 business meeting minutes. No comments were made.

**Ray Kane asked for a motion to approve the August 20, 2020 meeting minutes. Tim Brady made motion to approve the August meeting minutes. Kalil Boghdan seconded the motion. Motion was approved by unanimous consent.**

### **CHAIRMAN'S COMMENTS**

Chairman Kane reminded commission members that they would need to submit background checks to be reappointed to the MFAC and he asked that they do that in a timely manner.

### **COMMISSIONER'S COMMENTS**

Commissioner Amidon applauded the efforts of DMF's CARES Act team. He stated it is a proud time for Massachusetts as the state is a leader across the nation in getting the CARES program completed.

In regards to MFAC reappointments, the Commissioner shared the Chairman's opinion on the need to timely complete background checks. He requested that the commission members notify him of the date they send in their background checks.

Commissioner Amidon thanked Charlie Quinn for his years of service on the Commission. Charlie was not being reappointed as the expansion of his business required additional attention. The Commissioner then welcomed Shelley Edmundson and Bill Amaru to the MFAC. He stated that their appointments were pending and he expected they would be onboard for the October meeting. Bill and Shelly would be replaced Charlie and Andrew Walsh, so once these appointments were finalized the MFAC would be back operating at its full 9-member capacity.

### **DIRECTOR'S COMMENTS**

Director McKiernan began his comments by echoing Commissioner's sentiment regarding DMF's CARES Program. Dan was proud that Massachusetts' would be the first state on the East Coast providing relief to affected fishing and seafood businesses. He stated that this type of project shows the value of having dealer and fishermen catch data, as well as staff who know how to manipulate the data. He applauded the work of DMF's Statistics Program, particularly Anna Webb and Erich Druskat.

The Director then discussed other ongoing fisheries relief programs. This included direct subsidies through the USDA to oyster growers, as well as a federal tariff relief program for fish products.

Litigation concerning fixed gear fisheries and endangered turtles and whales remained ongoing. Per the order of the US District Court, DMF was in the process of applying to NOAA Fisheries for an Incidental Take Permit to cover the use of vertical buoy lines in its fixed gear fisheries. The MFAC received a presentation on this subject at their August business meeting.

Dan discussed the in-season adjustments to commercial fishing limits that the MFAC approved in August. He noted that many of these adjustments were predictable, and he

projected having to make them in the March quota managed species management memos to the MFAC. However, the in-season adjustment process creates a level of anxiety regarding the management of our commercial quotas and fosters animosity between user-groups. Dan stated his preference for certain predictable, seasonal adjustments to be written directly into the regulation, so that if a certain amount of quota remains at a certain date then a specific action is taken to increase access. This would create more regulatory predictability, help address days lost to weather in the fall, and allow DMF to avoid having to use the in-season adjustment process to make routine changes.

Sooky Sawyer expressed concerns that the AMSFC's adoption of ecosystem-based reference points for menhaden may result in reduced quotas and less access to bait. Nichola Meserve stated that the ASMFC's Menhaden Management Board adopted the ecological reference point at the last meeting and these reference points were more conservative than ones previously used in assessing the stock and setting the quota. The Board was now tasked with determining how the new reference points may affect the 2021 quota. She anticipated there will be a reduction in the coastwide quota. However, a reduction in the coastwide quota may not translate to reduced access to quota in MA, as quota would remain transferable between states. For 2020, MA obtained several menhaden quota transfers allowing continued access to the resource. Sooky remained concerned about how quota reductions may impact bait markets and bait availability for the lobster fishery.

Dan ended his comments by discussing longstanding informal requests from Wellfleet-based stakeholders regarding closing the harbor to the commercial harvest of horseshoe crabs. He stated that staff analyzed this request and he did not intend to move it forward. Dan provided the MFAC with a memorandum on the subject.

### **LAW ENFORCEMENT COMMENTS**

Lt. Matt Bass handled the comments for MEP. His opening remarks focused on the process of starting background checks for new officers, and that MEP was working to bring on more officers. He then broadly discussed enforcement actions over the summer and noted the courts were handling arraignments via Zoom. He noted there were a few adjudicatory hearing obstacles, but Jared Silva was working to ensure the cases stay active. There was an incident at the Cape Cod Canal regarding tribal members. This issue was being handled by Lt. Col. Moran.

Sooky Sawyer and Lt. Bass then discussed gear violations in lower Cape Cod Bay. Lt. Bass indicated that an investigation had been conducted and citations were issued. However, there were still ongoing conflicts among area fishermen.

### **ACTION ITEMS**

#### Action to Set 2020 Winter II Scup Trip Limits Items

DMF recommended that the MFAC vote to adopt a 24,000 pound commercial scup possession and landing limit for the 2020 Winter II (October 1 – December 31) period fishery. This is consistent with the possession limit set by NOAA Fisheries for this federally managed quota period. DMF received some public comment from recreational fishermen with some concern over stock health and equitable access between user groups.

Mike P. asked about the commercial quota not being reached, Jared Silva estimated that MA usually takes about 50% of the quota of its annual summertime quota. The federal Winter I and Winter II period quotas were also similarly underutilized.

Jared then explained that this recommended action would not result in increased fishing effort in state-waters due to longstanding mobile gear fishing restrictions and diminished seasonal abundance of scup. However, it would allow vessels fishing in the federal zone to land their catch in Massachusetts ports. The Director concurred with Jared's points. He added that the state's current scup quota was based on landings from the late 1980s. At that time, the market for scup was stronger and DMF allowed pair trawling and night trawling. The market for scup has since been diminished and the management of the inshore fishery has shifted towards a small vessel, large mesh fishery. In turn, there is less industrial-scale directed fishing effort on scup in state-waters. Dan reiterated that the recommended action addressed the offshore fishery and would allow vessels fishing in federal waters to land their catch in MA.

**No further comments were made. The Chairman called for a motion. Sooky Sawyer made a motion to approve winter scup proposal. Mike Pierdinock seconded the motion. The Motion was approved by unanimous consent.**

### **FUTURE RULE MAKING**

#### Turtle Excluder Devices for Blue Crab Traps

The Director informed the MFAC of an enforcement incident from this past summer, MEP hauled blue crab traps in the estuaries of upper Buzzards Bay and found numerous traps had drowned diamondback terrapins. In response to this investigation, and due to the fact that diamondbacks terrapins are listed as threatened under the Massachusetts Endangered Species Act (MESA), DMF investigated potential solutions to this bycatch problem.

DMF's protected species biologist, Erin Burke, presented on interactions between diamondback terrapins and blue crab traps in Massachusetts. Erin stated that other states have encountered similar issues with their blue crab trap fisheries. These states have adopted a variety of solutions including: requiring a turtle excluder device on traps; prohibiting the use of certain baits that may attract turtles; prohibiting traps in certain areas; and requiring traps to be checked once a day.

To address the capture of diamondback terrapins in blue crab traps, DMF proposed either prohibiting crab trap fishing in certain inshore waters or requiring all traps set within certain waters be configured with a turtle excluder device.

Erin concluded her presentation and began taking questions from the commission.

Ray Kane asked about the rule making schedule. Jared Silva stated DMF planned to go to public hearing this winter and the MFAC would vote on the issue during a spring meeting. DMF was currently seeking MFAC members to provide feedback on the issue and DMF's proposed solutions. The Chairman advised DMF to take comments on both the turtle excluder device requirement and the crab trap prohibition.

Mike P. asked about the number of recreational permits issued by DMF for blue crabs, and how many traps are allowed per permit. Dan clarified that the state's lobster permit is a lobster and crab trapping permit. Therefore, a lobster permit would be required to fish traps for blue crabs. Accordingly, DMF is unable to differentiate if people are setting traps for lobster rather than blue crab under the permit. Dan noted that there is a 25 crab daily limit, so most activity is likely recreational. The state's recreational lobster and crab permit allows for a permit holder to set 10 traps.

Mike P. then asked about the geographic range of diamondback terrapins and the geographic extent of this problem. Erin Burke explained that these turtles are generally limited to the estuaries around Buzzards Bay and Cape Cod. Dan noted that the incident had occurred in Wareham and it was the first time this bycatch issue was presented to DMF.

The Director stated that Massachusetts is at the northern extend of the blue crab's geographic range. The fishery has historically functioned at a small scale for personal use. Fishermen typically actively fished for the crabs using star traps or baited strings; the use of fixed gear was thought to be uncommon. However, this may be changing as the presence of blue crabs may be more common with warming inshore waters. Accordingly, there may be an information gap between harvesters and managers. Dan suggested this would be a good opportunity for additional information and education programs.

Kalil Boghdan asked if there were population estimates for diamondback terrapins. Erin Burke noted that the Commonwealth does not have good population indices for the species. Survey methodology were evolving and most survey work was localized. Kalil noted the distribution map in the presentation was outdated (1990-2006) and he was interested in what the more recent data may demonstrate regarding population and distribution. Erin noted that the more up-to-date data was available through DFW and would be provided in the public hearing presentation. Kalil followed up by asking if the distribution could have decreased. Erin stated this is a possibility.

Kalil then questioned the efficacy of a daily trap checking requirement and was interested in the ability of the diamondback terrapin to hold its breath. Erin stated that

there turtles can typically only hold their breath for about 20 minutes and concurred that the daily trap checking requirement is unlikely to prevent turtles from drowning in crab traps. This was why DMF was favoring the excluder device or the trap ban.

Kalil and Erin then discussed the difference between the various MESA listings and how they impact management.

#### Recreational GOM Cod and Haddock Rules

Jared mentioned NOAA fisheries final interim rule adjusting the GOM cod and haddock recreational fishing limits for the remainder of this fishing year (May 1, 2020 – April 30, 2021). This change involved three major components: (1) an extension of the fall for-hire fishery for GOM cod; (2) adding April 1- April 15 GOM cod recreational fishery; and (3) extending GOM haddock recreational fishery to include the entirety of April.

In response, DMF proposed setting recreational Gulf of Maine cod and haddock limits for April 2021 to complement the recently enacted federal rules. This will allow recreational fishermen to retain one-cod per angler measuring at least 21” during an April 1 – April 14 season. Additionally, it will extend the season when recreational anglers can retain 15-haddock per angler measuring at least 17” to include the entirety of April.

Mike P thanked DMF for getting the for-hire fleet some help during these times with cod.

#### Retail Boat Clarification on Histamine Producing Species

DMF issues a retail boat permit allowing the sale of fish from the back of the boat to the general public. Historically, this has been predominantly utilized by lobstermen to sell live lobsters and crabs. However, there was increased interest in the permit this year in response to the pandemic. This prompted concerns from DPH regarding the sale of histamine producing species. Under DPH regulations, the sale and processing of these species is done by seafood dealers under an approved HACCP plan. To address this, DMF wanted to make it clear that the sale of histamine producing species under a retail boat permit was prohibited.

Dan McKiernan, Jared Silva, Lt. Bass and Mike Pierdinock discussed the interaction of federal rules governing the sale of tunas, ongoing dockside activities, and public health requirements. Chairman Kane noted that there seemed to be ample confusion regarding what was occurring and what was permitted to occur and asked DMF to follow up with MFAC at the next business meeting.

#### Ghost Panel Size for Fish Pots

Jared Silva reminded the MFAC that DMF annually submits compliance plans to the ASMFC. This year, DMF was notified that its black sea bass pot regulations were out of phase with the FMP. Specifically, the plan requires three inches by six inches minimum ghost panel requirement on all black sea bass pots, whereas DMF requires a ghost panel but does not specify minimum dimensions. Jared indicated that this was likely a historic regulatory deficiency that was just observed now. Accordingly, DMF proposed

adopting a minimum ghost panel size of three-inches by six-inches for black sea bass pots. Jared did not anticipate any issues with fishermen given how the gear was typically configured.

Ray Kane wanted to ensure this adjustment will be made for the 2021 season and Jared confirmed that this was DMF's intent.

## **DISCUSSION ITEMS**

### Shellfish Updates

#### *Challenges Related to FDA Compliance*

Jeff Kennedy provided a brief presentation in regards to ongoing shellfish related management issues. There were new NSSP mandates regarding pollution assessment and shellfish growing area classification requirements for waterbodies featuring mooring areas. This may limit shellfish harvest activity in affected areas and DMF has established a working group to assist in DMF's application of the new requirements. There were also new federal requirements affecting the classification of shellfish growing areas around wastewater treatment plans, which will require DMF to conduct additional documentation and monitoring activities.

The MA Shellfish Initiative was in the process of completing several preliminary reports. Earlier the year, the Scoping Committee submitted its report to the Steering Committee and Task Force, and the Assessment Committee was on schedule to submit its report later this fall. These reports were expected to provide the foundation for a Strategic Plan.

Lastly, FDA and the EU were in the process of finalizing an agreement that would allow raw molluscan shellfish to be imported into the EU for the first time since 2010. Initially, firms from MA and WA will be able to access the EU market.

Kalil Boghdan thanked Jeff for the presentation. He then asked if there was an update on amnesic shellfish poisoning (ASP) monitoring. Jeff stated that there have been no illnesses associated with ASP in MA. DMF conducts biotoxin and phytoplankton monitoring and has a management and contingency plans for ASP and other marine biotoxins.

Mike P. thanked Jeff for the presentation and asked if the mooring field pollution assessments were going to be continuous. Jeff stated DMF would be required to collect the data from municipalities, but setting those areas and making the calculation was DMF's responsibility. DMF is required to conduct an assessment of these mooring areas within shellfish harvesting areas. DMF will interview harbormasters and constables annually for any changes particularly if boats are added to a mooring area.

Mike P. then followed up about how pollution is calculated from moored boats. Jeff noted the NSSP provides specific criteria on fecal coliform discharge assumptions based on vessel occupancy. Discharge rates are then determined based on the number



of vessels in the mooring area while accounting for existing regulations, patrol and enforcement, access to pump-outs, access and mooring area usage. Mike P. asked if FDA considers that all Commonwealth waters are a No Discharge Zone or if they are assuming that vessels are discharging when moored. Jeff stated that FDA is viewing water quality from the standpoint of a potential/direct impact versus an actual impact.

Ray Kane noted that there was a norovirus outbreak a few years back that resulted in Wellfleet cancelling Oyster Fest. Ray recalled that this outbreak was traced back to illegal discharging.

Ray suggested that DMF work with local harbor masters and constables to address this mooring field issue. Jeff expected DMF would have to develop MOUs with each town to address this due to the interplay between state water quality monitoring and municipal mooring field siting.

Dan stated there are many staff members involved in the shellfish program, but this project will require staff from the clean vessel program, as well as the habitat program. In essence, there could potentially be a third of DMF staff working on this issue. ISSC staff have been mediating between DMF and the FDA. The ISSC is trying to help DMF with these standards, as they are aware of what other states are doing to meet FDA standards. The Director anticipated this may create some challenges for municipal officials potentially having to choose shellfish fishing over boating, or shellfish fishing may become highly seasonal if areas are closed due to the presence of vessels.

#### Issues Related to COVID-19 and the Seafood and Fishing Industry *CARES Act Fisheries Relief Program Update*

Kevin Creighton provided a brief presentation about CARES Act relief program. The Massachusetts' programs were well ahead of the schedule when compared to other coastal states. Aid payments were made to for-hire sector applicants. DMF was in the process of wrapping up the application programs for the aquaculture and seafood processing sector with payments expected to be made by the end of September. The commercial sector's application period was ongoing was expected to conclude in mid-October with payments anticipated for late-October.

#### *Comments from Commission Members*

Mike Pierdinock stated that business operations for the for-hire fleet had improved since the spring. However, bookings continue to be low for non-New Englanders.

Ray Kane added that COVID cases are going down on the Cape, and charter captains have been running double bookings everyday.

#### Draft Permit Transfer Policy

##### *Black Sea Bass and Fluke Endorsements for Rod and Reel Fishermen*

DMF and the MFAC discussed a potential new policy to allow the transfer of limited entry black sea bass and summer flounder permit endorsements for rod and reel fishermen.

Jared Silva provided a brief presentation on the transfer of limited entry fluke and sea bass endorsements for rod and reel fishermen. DMF sought the MFAC's feedback on three specific issues: (1) should be a minimum landings threshold to be considered "actively fished" in a given year; (2) should the bundling of endorsements be allowed; and (3) should fishermen be able to spilt off single endorsements if bundling is allowed. The Director noted that the MFAC would not be required to vote on this issue, but provide guidance to DMF as the policy is being developed.

DMF intended to provide the MFAC with a more fully vetted policy at an upcoming meeting. The Director noted that while a future permitting sub-committee may discuss permit transfers, he intended to move this policy forward on a more immediate timeframe to accommodate potential transfers this winter.

#### MFAC Sub-Committees

The Director indicated his intention to form several sub-committees. However, he asked Chairman Kane to postpone doing so until the next meeting when new members may be appointed. There were no objections from Chair.

#### *Updates from Commission Members*

Kalil Boghdan thanked DMF for diligence and hard work.

Sooky Sawyer noted fishermen would like to see the 10% replacement trap tag allowance eliminated. Ray asked Dan to address this at a future meeting.

Mike P. informed the MFAC about upcoming wind energy meetings, as well as a NOAA Fisheries webinar on establishing a limited access for-hire fishery for multi-species groundfish.

Ray Kane thanked commission members for their attendance and congratulated the DMF staff for their work. He asked Dr. Shelley Edmundson and Bill Amaru if they had any comments.

Bill and Shelly both expressed excitement to be joining the MFAC.

#### **PUBLIC COMMENTS**

There were no public comments.

#### **ADJOURNMENT**

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

## **MEETING DOCUMENTS**

- September 24, 2020 MFAC Business Meeting Agenda
- August 20, 2020 MFAC Business Meeting Draft Minutes
- Winter II Scup Recommendation
- Spring 2021 Recreational GOM Cod and Haddock Limits Public Hearing Proposal
- Housekeeping Regulatory Changes Public Hearing Proposal
- NSSP Mooring Area Assessment Requirements
- Horseshoe Crab LOA for Driggers
- Status of HSC in Wellfleet and CCB
- Decision on Harvest of Horseshoe Crabs from Wellfleet Waters

## **MEETING DOCUMENTS**

**9AM**  
**October 29, 2020**  
**Via Zoom**

**9AM**  
**November 19, 2020**  
**Via Zoom**

**9AM**  
**December 10, 2020**  
**Via Zoom**

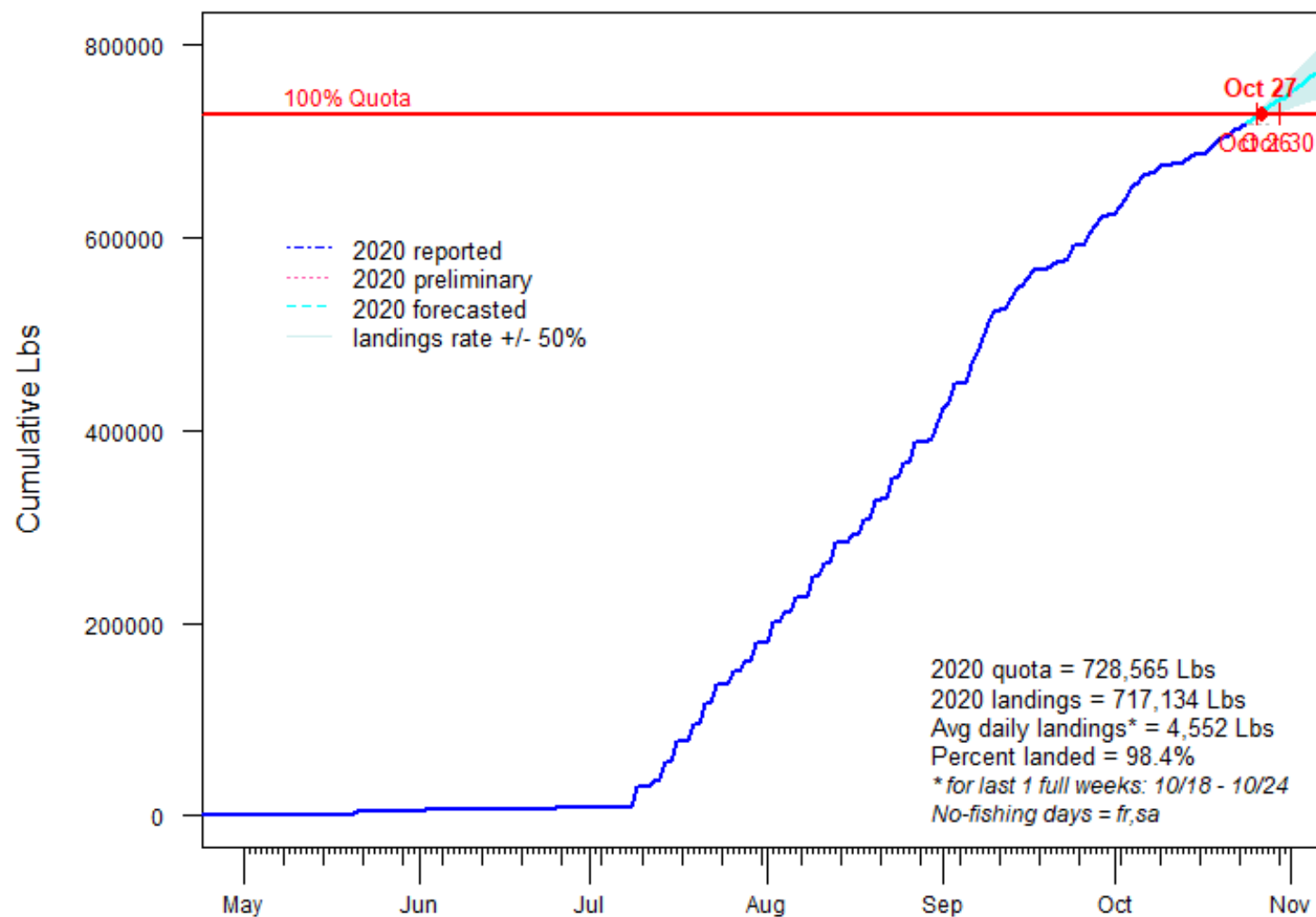
# Quota Monitoring

- Weekly dealer data is used to monitor quotas
  - Landings are due by Tuesday night of the following week
  - Often times DMF staff contact dealers within a reporting week to get landings updates
- Quotas & Landings page on the DMF website is updated daily but can have a lag because of the dealer reporting schedule



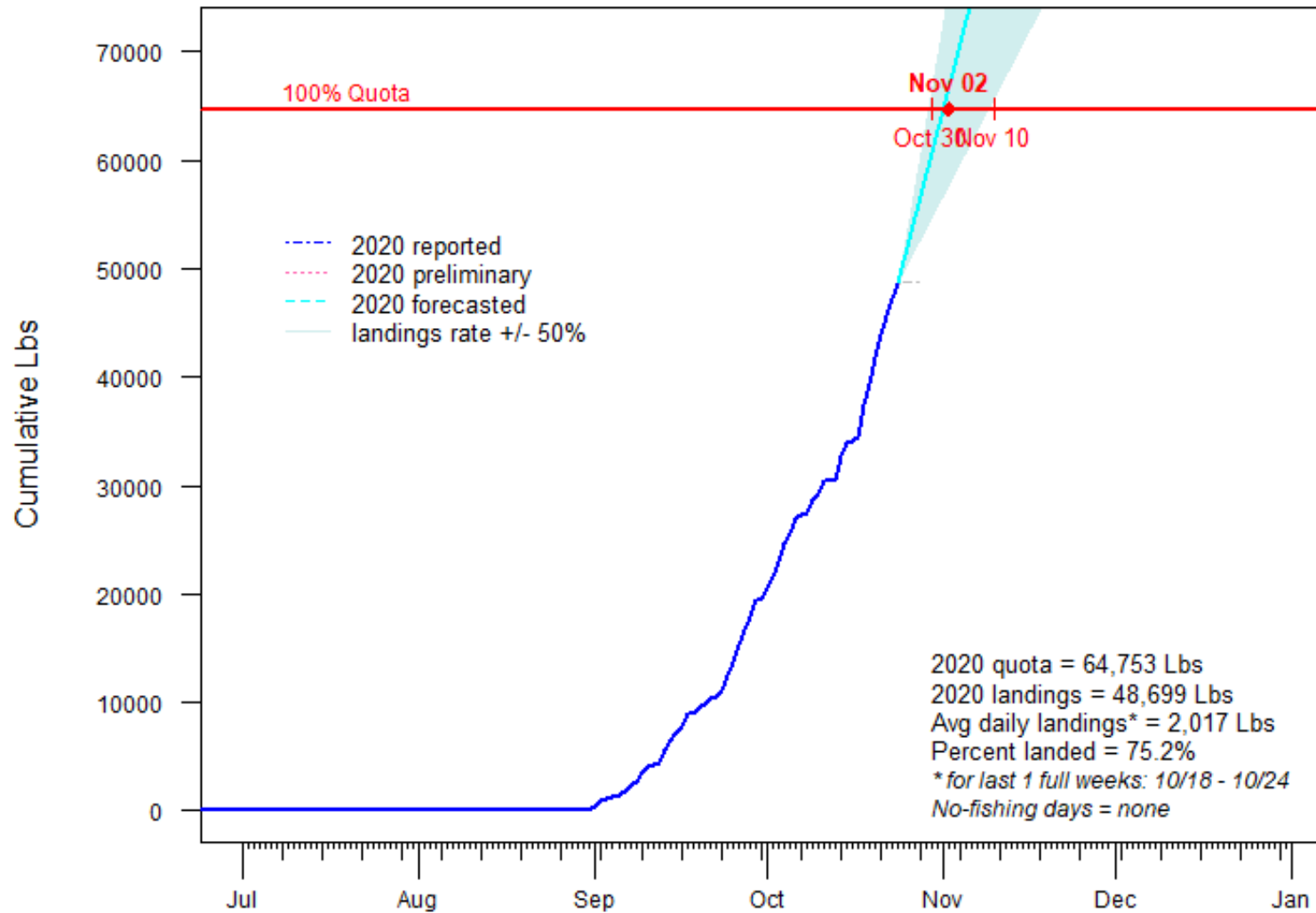
## 2020 BASS, BLACK SEA Quota Monitoring

as of October 28, 2020 11:19 AM



# 2020 TAUTOG Quota Monitoring

as of October 28, 2020 12:27 PM



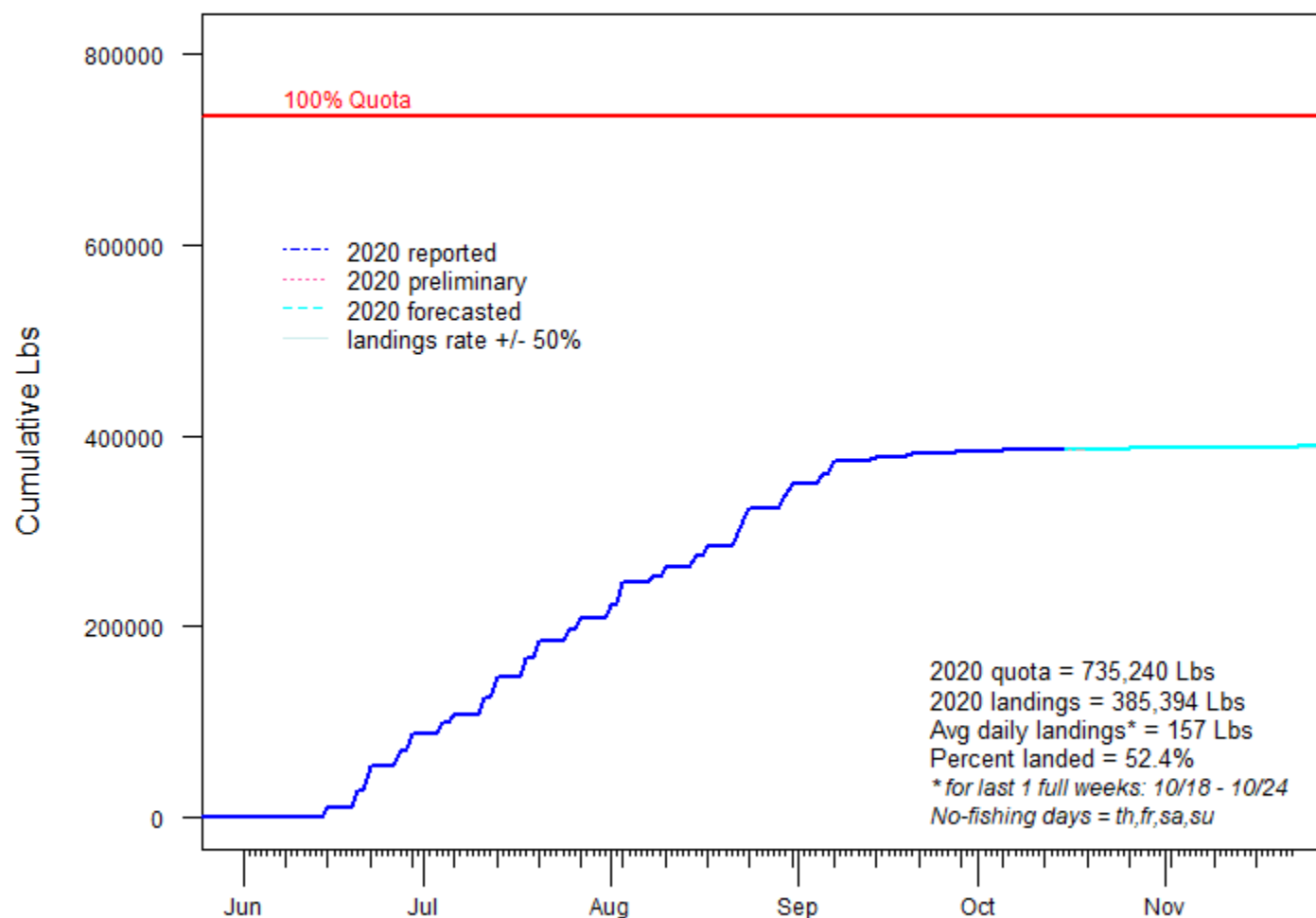
October 29, 2020

Massachusetts Division  
of Marine Fisheries



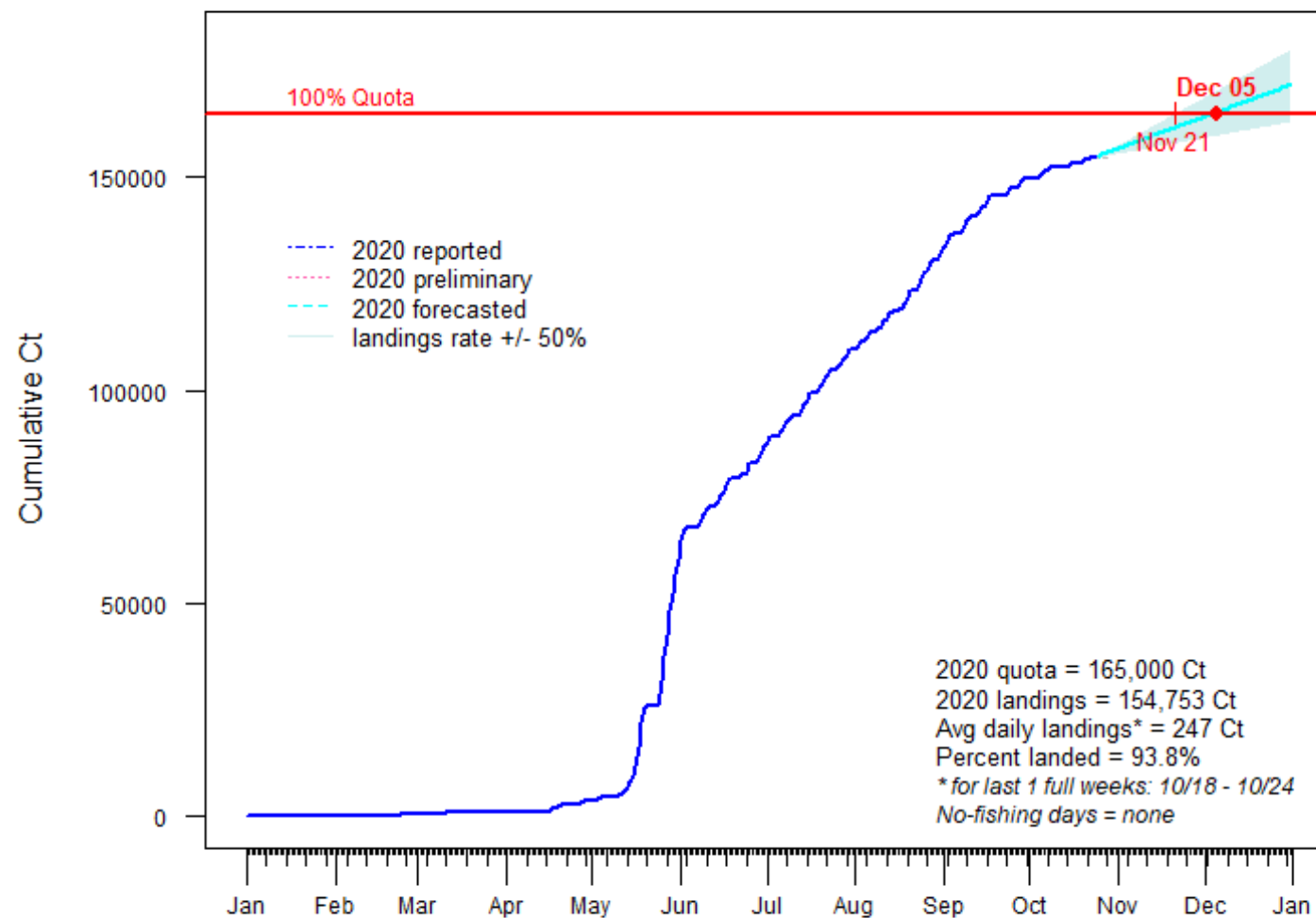
## 2020 BASS, STRIPED Quota Monitoring

as of October 28, 2020 11:27 AM



## 2020 CRAB, HORSESHOE Quota Monitoring

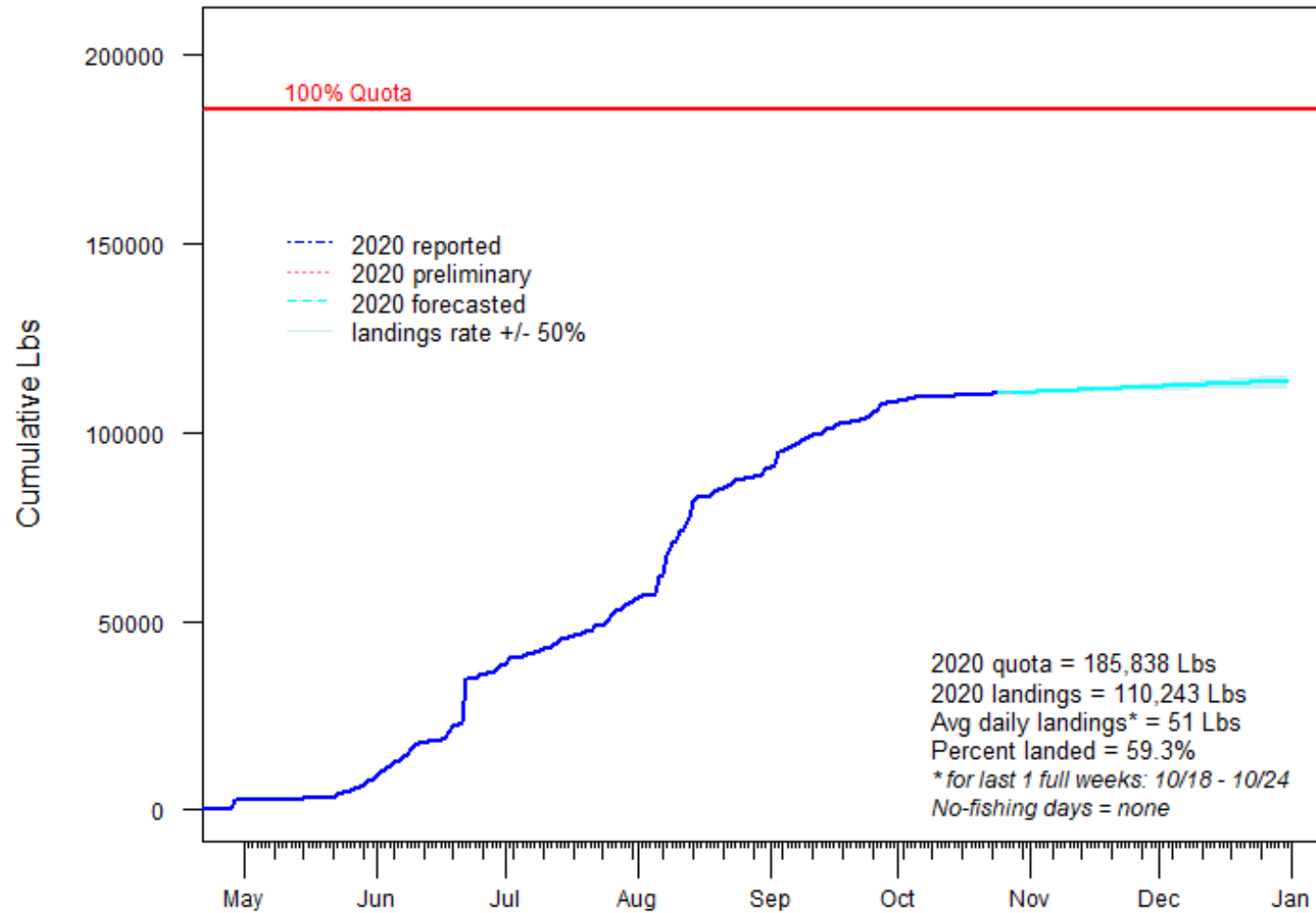
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# 2020 BLUEFISH Quota Monitoring

as of October 28, 2020 12:29 PM

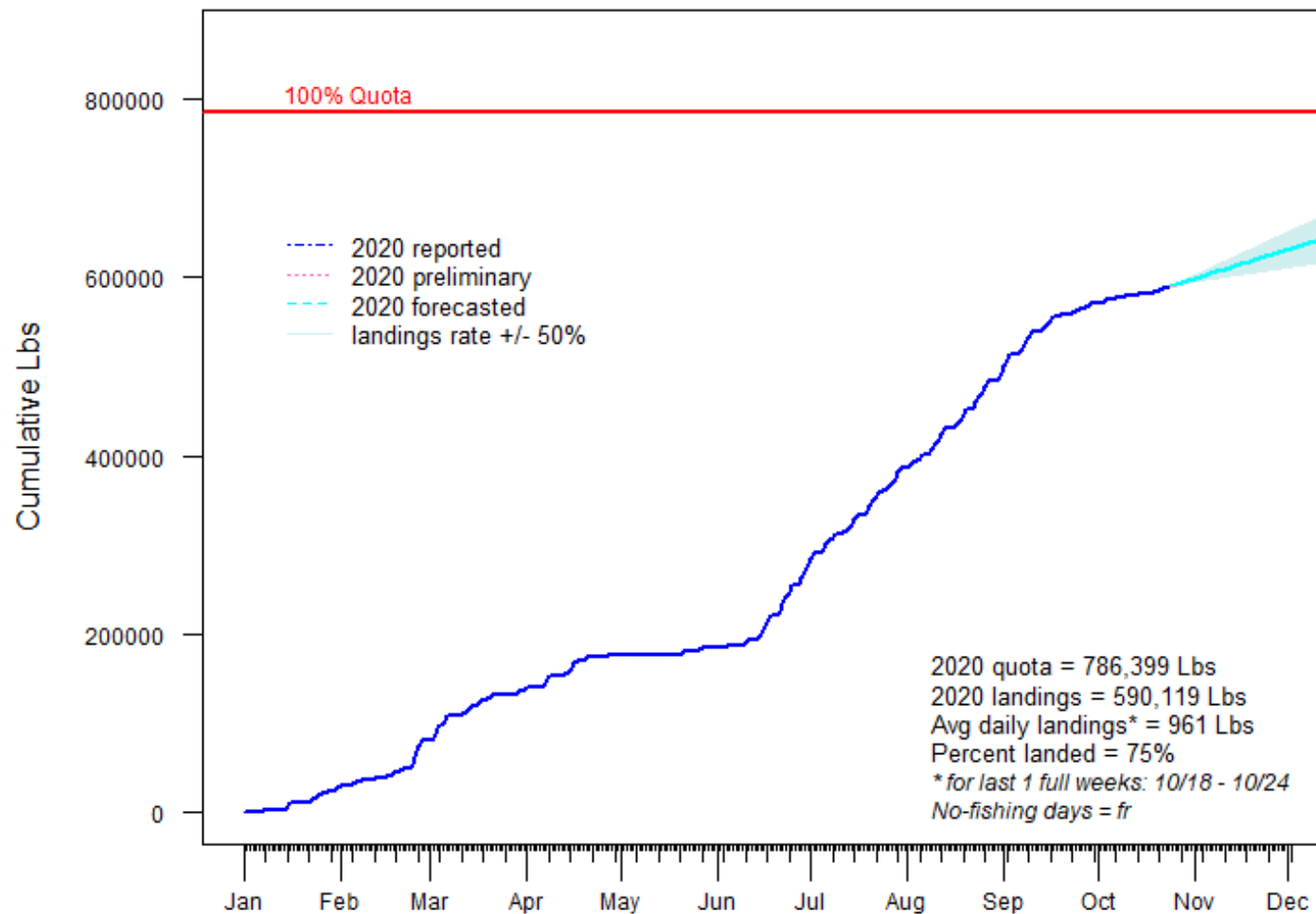


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# 2020 FLOUNDER, SUMMER Quota Monitoring

as of October 28, 2020 12:31 PM

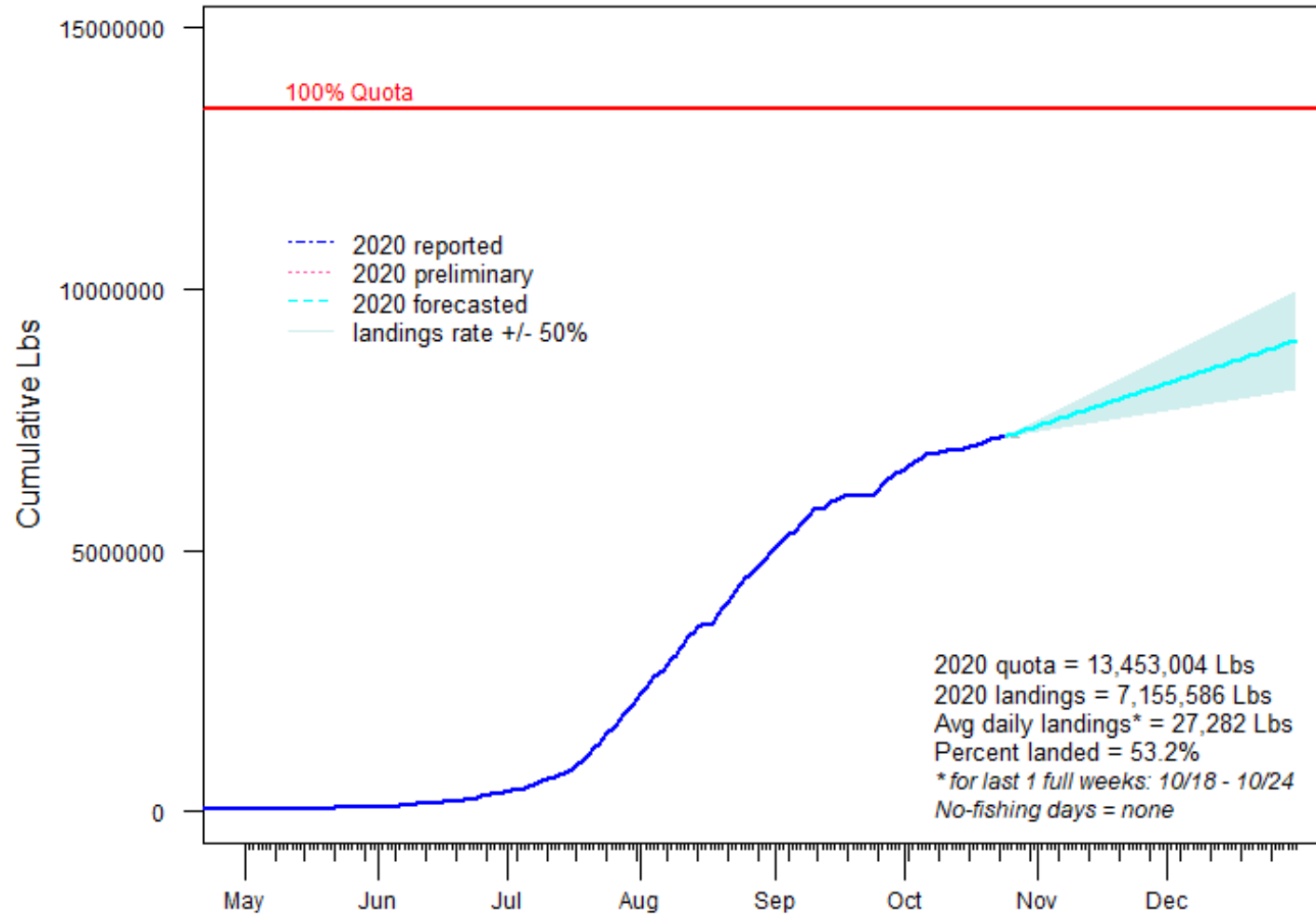


Massachusetts Division  
of Marine Fisheries



# 2020 SHARK, DOGFISH, SPINY Quota Monitoring

as of October 28, 2020 12:24 PM



Massachusetts Division  
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# 2020 Menhaden Limited Access Fishery

**Fishery start:** 6,046,094-lb quota; 125,000-lb trip limit

**June 29:** 85% quota use; trip limit reduced to 25,000 lbs

**July 8:** 600,000-lb quota transfer from NC; new quota of 6,646,094 lb; 25,000-lb trip limit

**July 21:** 900,000-lb quota transfer from SC; new quota of 7,546,094 lb; 25,000-lb trip limit

**August 7:** 100% quota use; limited access fishery closed; 6,000-lb bycatch/incidental trip limit

**August 17:** Episodic Event Set Aside Fishery opens with 425,000 lb available; 25,000-lb trip limit

**August 27:** 600,000-lb transfer from NC & 250,000-lb transfer from RI; new quota of 8,396,094 lb

**August 28:** EESA Fishery closed & quota fishery resumes; 25,000-lb trip limit

**October 24:** 100% quota use; limited access fishery closed; 6,000-lb bycatch/incidental trip limit



# 2020 Menhaden Quota-Monitoring Graph

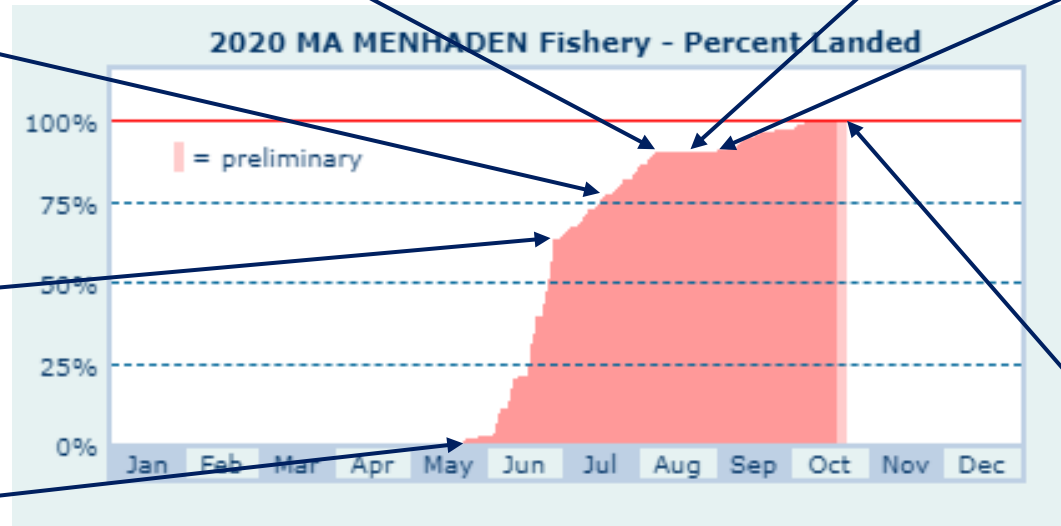
4. August 7: 100% Quota Use  
6,000-lb bycatch/incidental limit  
(Not on quota-monitoring graph)

5. August 17: EESA Fishery Opens (425,000 lb left of 4.76M)  
LE trip limit 25,000 lb; open entry 6,000 lb  
~400,000 lb harvested (Not on quota monitoring graph)

3. Mid-July: 600K transfer from NC & 900K transfer from SC  
New quota: 7,546,094 lb  
(No change to trip limits)

2. June 29: 85% Quota Use  
LE trip limit reduced to 25,000 lb

1. Fishery Commences  
6,046,094-lb quota (1.27% allocation);  
LE trip limit 125,000-lb; open entry 6,000 lb



6. August 28: EESA Fishery Closed & Quota Fishery Resumes using 600K transfer from NC & 250K transfer from RI  
New Quota: 8,396,094 lb  
LE trip limit 25,000 lb; open entry 6,000 lb

7. October 24: 100% Quota Use  
6,000-lb bycatch/incidental limit  
(Not on quota-monitoring graph)





# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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Governor

KARYN E. POLITO  
Lt. Governor

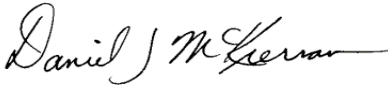
KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: October 28, 2020

SUBJECT: **Increase to Summer Flounder Trip Limit for November and December**

#### Recommendation

I recommend the MFAC vote in favor of an in-season adjustment to increase the summer flounder trip limit from 1,000 pounds to 2,000 pounds for November and December 2020. This is consistent with the in-season adjustment that I proposed for public comment on October 22.

#### Rationale

For 2020, Massachusetts was allocated a summer flounder quota of 786,399 pounds (6.8% of the 11.53-million pound coastwide quota). As of today, commercial fishermen have landed about 75% of that quota and landings have leveled off over the past few weeks as the fishery has moved offshore. To facilitate the harvest of this remaining quota, I am making the above recommendation. If approved, this action may encourage offshore druggers who may be permitted in multiple states to target summer flounder and to land their catch in Massachusetts. This would provide an economic benefit to our fishermen and dealers.

From 2018 to 2019, the coastwide commercial quota for summer flounder (and MA's share) was increased over 70% per the results of the latest stock assessment. Because of the mid-season timing of this quota increase, no changes were made to DMF's regulation of this fishery for 2019<sup>1</sup> and the quota was underutilized by about 25%. This prompted DMF to amend how the fishery was regulated for 2020 to promote quota utilization. This included: regulatory changes to the trip limits and open fishing days<sup>2</sup>, the implementation of two pilot programs<sup>3</sup>, and in-season adjustments for the fall period<sup>4</sup>.

Despite these management adjustments, it appears that quota will again be underutilized in 2020 under the current regulations. This is attributable to a couple differing reasons. I discussed these issues in my

<sup>1</sup> Note that in late August 2019, DMF implemented a pilot program that allowed trawlers to possess and land two consecutive daily limits of summer flounder. This was done to make the fishery more efficient as fishing activity was occurring further offshore - south and east of Nantucket. See footnote 5.

<sup>2</sup> For 2020, 322 CMR 6.22 was amended to: (1) eliminate the January closure; (2) increase the Period I (January 1–April 22) trip limit from 500 pounds to 1,000 pounds; (3) increase the June 10–October 31 trip limits from 300 pounds to 400 pounds for trawlers and from 200 pounds to 250 pounds for anglers; and (4) eliminate the closed fishing days during the November 1–December 31 period and increase the trip limit to 500 pounds or 1,000 pounds depending on the remaining quota level.

<sup>3</sup> The pilot programs operating in 2020 allowed for: (1) offshore wintertime vessels to possess multiple states' trip limits while offloading in Massachusetts during January 1 – April 22; and (2) inshore summertime trawlers to possess and land two consecutive daily limits of summer flounder during June 10–September 30.

<sup>4</sup> The in-season adjustments included: (1) increasing the trawl fishery trip limit from 400 pounds to 600 pounds effective August 23 and to 1,000 pounds effective October 4; and (2) eliminating closed fishing days effective October 4.

August 18 memo to the MFAC, but to facilitate our discussion of this recommendation I am summarizing them again in the bullets below:

- During the late-winter and spring, the pandemic response closed restaurants, which depressed demand for many seafood products . The loss of demand took a major economic toll on many seafood and fishing businesses. Additionally, some commercial fishermen faced personal health and welfare decisions that impacted their fishing activity and effort.
- There is an ongoing contraction in our summertime fishery for this species unrelated to COVID. Over the past two years, we have heard from commercial and recreational fishermen alike that the inshore abundance of large summer flounder is low. In the commercial fishery, some vessels (typically larger draggers) have moved south and east to Nantucket Shoals where there are larger fish<sup>5</sup>. However, other vessels (typically smaller single-handed draggers and small boat anglers) have continued to fish the Sounds. The catch in the sounds has reportedly produced mostly medium grade fish. Dealers and fishermen have indicated that the value for medium grade fish is substantially lower than large and jumbo grade fish. Additionally, the Sounds are producing large amounts of filamentous algae that reportedly clog up trawl nets and making fishing conditions difficult and some fishermen have stated they are often unable to take their daily limit given the time spent removing the algae from the meshes of the nets . These factors, combined with overhead (e.g., fuel, dockage), have likely driven down effort and participation in this inshore trawl fishery. Many of the vessels that have traditionally participated in this fishery are now deriving income from other fisheries for which they are permitted (e.g., scallops, black sea bass, lobster) or have turned to other endeavors (e.g., working as a research vessel).

We have also received some public comment on this proposed action. The comment has been dominated by recreational fishermen who are concerned about the status of the resource and inshore fishing conditions. I share their concerns regarding the status of inshore fishing conditions. Moreover, I recognize that given the size structure of fish inshore the potential for a user group conflict between inshore recreational and commercial fishing interests and this is furthered by the current minimum size rules (17” for recreational and 14” for commercial). This is something that DMF can work to characterize and address with the MFAC in the immediate future.

Additionally, while the last stock assessment shows that the resource is not overfished and overfishing is not occurring, there are some concerns regarding declines in spawning stock biomass and recruitment. While it is important to keep a watchful eye on the status on this resource, I do not think that this adjustment to regulations poses a substantial conservation concern, given that it will simply allow fishermen access to fish that have already been allocated. The quota is set based on the stocks ability to sustainably support harvest. The proposed trip limit increase will only provide access to the remaining 200,000 pounds of this quota and incentivize offshore vessels to land their catch of summer flounder in Massachusetts. Accordingly, I do not think there is sufficient reason to deny offshore fishermen this access.

## **Attachment**

Written public comment

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<sup>5</sup> In recognition of the fact that certain vessels were travelling further from port to target summer flounder and were incurring additional overhead as a result, DMF adopted the pilot program that allows trawlers to possess and land two consecutive daily limits of summer flounder. This allowed these vessels to not return to mainland ports nightly to offload, but instead lay up overnight closer to the fishing grounds and fish on two-day trips.

**From:** [charcoal](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** comment on summer flounder  
**Date:** Thursday, October 22, 2020 11:31:16 AM

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Attn: Director Dan McKiernan

We have not caught a single summer flounder in the Slocum river in Dartmouth Mass for the past 2 years. There is now an abundance of seals outside the river mouth in Buzzard's Bay and since their arrival there are NO scup, tautog, or summer flounder. Bluefish has also crashed to abysmally low levels historically (especially compared to the 1980s-1990s periods). Only schoolie/below limit stripped bass remain in any numbers.

Given that the fishing here has crashed to absolutely NOTHING....**please add my comment in the NOT IN FAVOR of increasing ANY fishing quota.**

Best wishes,

Nathan Tardif

508-636-5530

Dartmouth, Mass.



**From:** [andy mcbrearty](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** Commercial flounder quota increase  
**Date:** Thursday, October 22, 2020 9:33:54 AM

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Hello,

I am against increasing the commercial flounder quota THIS year. I do not believe that the low catch rate takes into account the impact of COVID on the fishing industry this year.

I believe that you should postpone this until at least next year to assess the situation when restaurants are back open (most likely the prime source of consumption) and things are more 'normal.

Best regards,

Andrew McBrearty  
781-817-5255  
Braintree, MA

**From:** [Randy Fairbanks](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** commercial fluke landing increase.  
**Date:** Friday, October 23, 2020 11:39:23 AM

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Good Morning Dan,

Before implementing the proposed increase in commercial fluke landings I hope you can analyze this action in light of it's impact on the recreational fishery. It does not make any sense to me to have a 5 fish limit of 17" fluke in place if few if any fish are going to escape the 14" commercial fishery to attain legal size. Based on my own ( limited) experience this summer I did not catch a single fish that met or exceeded 17'.

Thanks for the opportunity to comment

Randy

Randy Fairbanks  
fisherxp85@fastmail.us

**From:** [Russell V. Iuliano](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** DMF Proposing In-Season Increase to Commercial Summer Flounder Limits  
**Date:** Thursday, October 22, 2020 9:02:38 AM

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DMF,

Thanks for asking for input!

I disagree that it is conservation neutral from a recreational fishing perspective. I caught dozens of summer flounder this season (aka fluke) however all but two were 8"-12". Increasing the catch quota isn't going to make the fish grow larger. Rather, it will limit the future growth of the fishery. Please do not change the quota.

Russ Iuliano

27 Rockland St.

So Dartmouth ma 02748

781 820 3677

**From:** [Richard Deschamps Jr](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** flounder limit change  
**Date:** Thursday, October 22, 2020 8:51:36 AM

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I oppose your proposed change to increase commercial flounder limits. Perhaps you should change the name of your department to "MA Commercial Fish & Game?"

**From:** [Joseph Gomes](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Date:** Thursday, October 22, 2020 9:35:49 AM

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I wonder if while you're considering the manipulation of the quotas and seasons do you ever consider the Damage to the sea floor and flora and fauna thereon as the trawl net drags across it. It seems sort of like burning a field to drive a couple of deer off it. Sure, it Will grow back but that doesn't make it right. They tear up the bottom on a huge area to catch a ton of fish and so much bycatch and outright destruction, temporary or not !

**From:** [bruce tetreault](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Date:** Thursday, October 22, 2020 4:38:49 PM

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Once again the little fisherman is going to get screwed why don't you just put the quarter over for next year it's not because there's no fish is because of covid-19 alot of people are not fishing I myself am not for sure because I cannot come out of the house I'm 72 years old a lot of guys cannot fish instead of given the big boats all the fish that has guys hooking line guys should be able to get just bring it over to next year on all the fish there's not going to you're not going to get enough blackfish the fish houses are not buying they've already told us they're not buying no blackfish why don't you guys get it

**From:** [nausett](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** No to flounder commercial fishing. It's all ready over fished.  
**Date:** Thursday, October 22, 2020 8:55:30 AM

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Sent from my Samsung Galaxy smartphone.

**From:** [Scott Blazis](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** opposed to increased Summer flounder limits  
**Date:** Thursday, October 22, 2020 3:47:20 PM

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To Whom it may concern,

I wear multiple hats during the calendar year. I was a Conservation Commissioner, recently retired after 18 years on the board, High School Biology and Environmental Science Teacher at Barnstable High school, Senior employee during the summer months at Sports Port Bait and Tackle in Hyannis on the Cape, and licensed charter boat Captain. I run my vessel out of Lewis Bay in Hyannis.

The decline in summer flounder in both state and federal waters is well known on the south side despite your stock assessments. The decline has been steady for nearly a decade after the stock was fully recovered. My customers include many charter boat captains and commercial fisherman, who universally have observed the same decline.

The reason the quota hasn't been met is that boats have trouble finding fish. We now have to go beyond Nantucket to reliably fish for Fluke. It would be absurd in the extreme to hit the fishery harder because boats can't find fish. For the life of me I can't understand the continued mismanagement of nearly every species of fish in Massachusetts waters.

Sincerely,

Captain Scott Blazis

DBA Talechaser Fishing Charters



**From:** [Leah B](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** Proposed summer flounder limit increase  
**Date:** Thursday, October 22, 2020 5:54:58 PM

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Dear Committee Members,

I agree with your suggested proposal to increase the intake for commercial fishing vessels, offshore, in the federal zone from 1,000 pounds to 2,000.  
Given that the intake increase will only remain in effect for the remainder of the year (2020) or until the quota has been 100 percent reached.  
With only about two months in the season left I think this would benefit commercial fishing without doing damage to the marine ecosystem.

Thank you.

Stay well,

Leah Barton  
7816644632

**From:** [Luciano Mascari](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Cc:** [luciano.mascari@gmail.com](mailto:luciano.mascari@gmail.com)  
**Subject:** RE: DMF Proposing In-Season Increase to Commercial Summer Flounder Limits  
**Date:** Thursday, October 22, 2020 9:55:08 AM

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Why do we keep doing this? Can't we just give the biomass a break for a change? First we should make the commercial size limits on Fluke/Summer Flounder same as recreational size to stop taking younger fish. Second if the fish quota isn't all used up by seasons end then in my opinion as a scientist and fisherman it's more a sign of the fishery isn't as strong as you think it is based on the inexact science data. Give the biomass a chance to grow bigger both in individual fish size and biomass. They'll be out there bigger and better next season. Give the fish a pass for a change!  
LucianoMascari

---

**From:** MA Division of Marine Fisheries [<mailto:marine.fish@public.govdelivery.com>]  
**Sent:** Thursday, October 22, 2020 8:41 AM  
**To:** [luciano.mascari@gmail.com](mailto:luciano.mascari@gmail.com)  
**Subject:** DMF Proposing In-Season Increase to Commercial Summer Flounder Limits

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Commercial Fishing Advisory Image



October 22, 2020

## DMF Proposing In-Season Increase to Commercial Summer Flounder Limits

As of this week, approximately 75% of the state's 786,399-pound annual summer flounder quota has been taken. With just over two months left in the season, and approximately

200,000 pounds of quota remaining, DMF is proposing to increase the commercial trip limit for summer flounder from 1,000 pounds to 2,000 pounds, effective November 1, 2020. This proposed action is designed to allow vessels fishing offshore in the federal zone to retain more summer flounder per trip and have greater access to the remaining quota. DMF considers this to be a conservation neutral proposal, as quotas are set in accordance with the stock assessment and take into consideration biomass and target mortality rates.

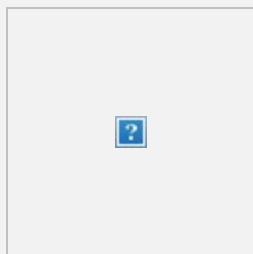
DMF is seeking public comment on this proposal (see instructions below). In accordance with 322 CMR 6.41(2)(d), this public comment period will run concurrent with a vote on the proposal by the Marine Fisheries Advisory Commission (MFAC). The MFAC is scheduled to meet on October 29, 2020 via Zoom and will vote on this proposal at this meeting. More information about this meeting can be found on the [MFAC's website](#). If approved, this trip limit adjustment will be announced on October 30, 2020 and will be in effect on November 1, 2020 for the remainder of 2020 or until 100% of the 2020 summer flounder quota has been taken.

### Instructions for Public Comment

DMF will be accepting public comment on these proposals through 5PM on Thursday, November 5, 2020. Please address all written comments to Director Dan McKiernan. All comments are to be submitted to DMF by e-mail ([marine.fish@mass.gov](mailto:marine.fish@mass.gov)) or by post (251 Causeway Street, Suite 400, Boston, MA 02114). All comment received prior to the October 29, 2020 MFAC business meeting will be provided to Commission members for their review and consideration; all comment received on or after that date will be considered in future decision making.

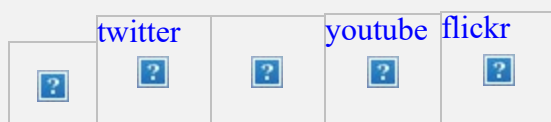
For more information about the management of marine fisheries in Massachusetts, contact DMF at [marine.fish@mass.gov](mailto:marine.fish@mass.gov) or visit our website at [www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries).

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### Massachusetts Division of Marine Fisheries

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**From:** [Jeff Clabault](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** Summer Flounder trip limit changes-  
**Date:** Thursday, October 22, 2020 11:17:18 AM

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Dear Director McKiernan;

The proposed doubling of the trip limit on commercial summer flounder trips from 1,000 lbs. to 2,000 lbs. would indeed make it easier for those fishing for flounder to reach the appointed quota. The issue that needs to be considered is the reason that the limit was not going to be reached without that change. As a long time tackle shop owner, I have witnessed the decline in quality of the summer flounder fishery over the last ten years. If the commercial limit is not reached it is because there is a lack of fish in the population and those remaining fish need to be protected. Making it easier to eliminate the few that remain is a policy that is likely to damage the resource for years to come. (as an example, witness the collapse of the striped bass population.) Thank you for your time.

Jeff Clabault  
former owner,  
Forestdale Bait and Tackle

**From:** [Russell LaMontagne](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** summer flounder  
**Date:** Thursday, October 22, 2020 8:56:46 AM

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Hi, I appreciate the emails about Summer Flounder. Has any caught a single Fluke on the out Cape? I do not know of a fluke taken in Provincetown in the last decade. Is anything be done about this?

**From:** [Henry Marcucella](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** Summer flounder  
**Date:** Thursday, October 22, 2020 2:53:39 PM

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Folks

Nowhere in your proposal do you state how the fishery is. Having an unfilled quota could mean that the flounder are in trouble. If so, allowing more to be harvested sounds like poor thinking.

Why is it a bad thing to leave fish in the water? In Spring, a lot of work goes into setting the quota. What is the point if you quietly change things near the end of the season? Why not wait until next year?

Henry Marcucella

**From:** [Michael LaMontagne](#)  
**To:** [Fish, Marine \(FWE\)](#)  
**Subject:** summer flounder  
**Date:** Thursday, October 22, 2020 12:30:48 PM

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Director McKiernan ,

I am against extending the commercial season for summer flounder. The reason the quota has not been met is because the stock is low. I haven't seen a summer flounder in Provincetown in a decade. We need to let the fluke population recover.

Michael LaMontagne, Ph.D.  
617-331-3214





# 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](http://www.mass.gov/marinefisheries)



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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: October 23, 2020

SUBJECT: **New Right Whale Conservation Measures**

#### Proposal

For 2021, DMF is proposing several new measures affecting fixed gear fishing. This proposal is designed to reduce the risk of endangered right whales becoming entangled in fixed fishing gear and reduce the lethality of any interaction with fixed fishing gear. The proposals are enumerated below and unless otherwise specified would go into effect for 2021.

#### 1. Closures.

- a. Expand Trap Closure. The existing February 1 – April 30 trap gear closure north and east of Cape Cod will be expanded to include all waters under the jurisdiction of the Commonwealth. During this closed period, it will be unlawful to set, haul, or abandon any trap gear in state-waters. This will ensure that our waters are free of trap gear as right whales seasonally migrate in and out of Cape Cod Bay.
- b. Conch Pot Fishery. The existing December 15 – April 14 conch pot fishery closure will be extended through April 30, consistent with the expanded trap gear closure described above.
- c. Recreational Lobster and Crab Trap Fishery. A new seasonal recreational lobster and crab trap fishery closure will be implemented with an exemption for non-buoyed gear set inside the Cape Cod Canal. This closure will be in effect from the Tuesday following Labor Day through the Friday immediately preceding Memorial Day. This will restrict the setting of recreational lobster and crab trap gear during the late winter and early spring period when right whales migrate into our waters. Moreover, by having it go into effect during the early fall, the Environmental Police will have ample opportunity to find and remove lost and non-compliant gear before the right whales arrive in the mid-winter.
- d. Gillnets. The existing January 15 – May 15 gillnet closure in Cape Cod Bay will remain in effect, but its geographic extent will be expanded to include those waters west of 70° 30' west longitude and south of 42° 12' north latitude. Effectively, this will close those state-waters along the south shore from Gurnet Point in Plymouth to Scituate. While this area is typically closed due to groundfish closures and harbor porpoise closures, it may open in April if the state's conditional groundfish closure is lifted. This is an area where right whales are known to aggregate and should be free of fixed gear.

## 2. Gear Restrictions

- a. Buoy Line Breaking Strength. All trap fishermen will be required to configure their vertical buoy lines with a 1,700 pound breaking strength requirement. This can be accomplished by deploying a rope with this specific breaking strength or using certain approved contrivances.
- b. Maximum Buoy Line Diameter. Commercial trap fishermen will be prohibited from fishing buoy lines with a diameter of larger than 3/8" and recreational trap fishermen will be prohibited from fishing buoy lines with a diameter of larger than 5/16".
- c. Prohibition on Single Traps. Effective January 1, 2022, all vessels smaller than 29' feet will be prohibited from fishing single lobster traps. This does not apply to fish pots, conch pots and eel pots. The use of single lobster traps will remain prohibited north of Cape Cod for all fishermen regardless of vessel size when fishing three nautical miles from shore, except within the Billingsgate exempted area.

## 3. Licensing

- a. Seasonal Lobster License. DMF will cap the number of seasonal lobster licenses issued annually at 150. This is not expected to impact current effort, but will prevent the proliferation of new fishing activity under this seasonal student lobster permit.

### **Rule Making Timeline**

The MFAC was briefed on these potential rule changes at their August business meeting and is now receiving the formal proposal in writing. DMF anticipates a public hearing will be announced by the end of October for early December. The public hearing will occur via Zoom. The MFAC will then be asked to vote on a final recommendation at their December 10 business meeting. If approved, final rules could go into place for February 2021.

### **Background**

In January 2020, an Endangered Species Act citizens suit was filed in the US District Court in Massachusetts against the Commonwealth of Massachusetts. It was argued that: (1) DMF licenses and regulates the deployment of vertical buoy lines in fixed gear fisheries; and (2) this activity violates the Endangered Species Act, as it may cause entanglements of endangered right whales and sea turtles. Accordingly, the Court was petitioned to halt the further deployment of vertical buoy lines in fixed gear fisheries and to require the state apply for an Endangered Species Act Incidental Take Permit (ITP) for the licensing and regulating of its fixed gear fisheries. In April 2020, the Court ordered DMF to apply to NOAA Fisheries for an ITP.

In an ITP application, a Habitat Conservation Plan (HCP) is developed to detail the steps the applicant is taking to minimize and mitigate impacts the activity is having on an endangered species. These draft regulations constitute the foundation of the state's HCP to reduce the risk of right whales becoming entangled in fixed gear. In the development of its ITP application, DMF has been in consultation with NOAA. For a number of complex reasons, we remain uncertain as to whether or not an ITP will be issued. However, DMF believes these regulations provide a sufficient HCP and will adequately differentiate the state's conservation and management regime from that of adjacent fisheries.

It is noteworthy that this set of regulation only addresses right whale conservation, whereas the litigation also addressed sea turtles. This is because right whale conservation benefits from the Atlantic Large

Whale Take Reduction Team's ongoing rule making process, which has vetted and reviewed what is being proposed here. Sea turtle conservation has not had the same level of ongoing management. Accordingly, there are no widely available or agreed upon methods of reducing sea turtle entanglements. As a result, DMF – in collaboration with NOAA Fisheries – will have to analyze current turtle data and develop potential management options. Future rules affecting sea turtle conservation may be proposed separately and would be subject to separate rule making.

**Attachments**

Draft strikethrough regulations

## 6.02: Lobster Conservation and Management

(2) Gear Restrictions. It **shall be is**-unlawful for any person to take or attempt to take lobsters from **the** waters under the jurisdiction of the Commonwealth by the use of traps without said traps having the following features:

- (f) All traps must be marked in accordance with the trap gear marking requirements at 322 CMR 4.13(2)
- (g) All traps are configured to comply with shall comply with the relevant fixed gear and trap gear restrictions at 322 CMR 12.06(1) and (3).

(7) Seasonal Closures.

- (a) Outer Cape LCMA. Fishing for lobster with traps is prohibited within the Outer Cape LCMA, as defined at 322 CMR 6.33, from February 1 – April 30. Fishermen are required to remove all lobster traps from the waters of the Outer Cape LCMA prior to this closed period. It shall be unlawful to fish, set or abandon any lobster traps in the Outer Cape Cod LCMA or any LCMA during this seasonal closure.
- (b) Non-Commercial Lobster and Crab Traps. Fishing for lobsters with traps by non-commercial lobster and crab trap permit holders is prohibited in all waters under the jurisdiction of the Commonwealth from the Tuesday immediately following Columbus Day through the Friday immediately preceding Memorial Day. It shall be unlawful for non--commercial lobster and crab trap permit holders to fish, set, store or abandon any lobster traps within the waters under the jurisdiction of the Commonwealth during this seasonal closure. This shall not apply to any buoyless lobster and crab trap gear set inside the Cape Cod Canal.

~~Fishing for lobster with traps is prohibited in the Outer Cape LCMA from February 1<sup>st</sup> through April 30<sup>th</sup>. Fishermen are required to remove all lobster traps from waters of the Outer Cape LCMA as defined in 322 CMR 6.33 during this closed period. It is unlawful for any fisherman authorized to fish traps in the Outer Cape LCMA to fish, set, or abandon any lobster pots in the Outer Cape LCMA or any other LCMA during this seasonal closure.~~

## 6.12: Fish Pot Fishery Restrictions

(2) Closed Season.

- (a) Conch Pots. From December 15 through April 30 ~~April 14~~ it shall be **is** unlawful for any person to take whelks by pots or set, haul, tend or abandon conch pots in the waters under the jurisdiction of the Commonwealth.

(4) Gear Restrictions.

- (d) All fish pots and conch pots shall comply with the relevant fixed gear and trap gear restrictions at 322 CMR 12.06(1) and (3).

#### 7.01: Form, Use and Contents of Permits

(2) Commercial Fisherman Permits. In order to harvest, possess or land fish, shellfish or bait for commercial purposes, the following permits are required for the following fishing activities:

(f) Seasonal Lobster. Authorizes only the named individual to harvest, possess and land lobsters for commercial purposes, to be issued only to full-time students 12 years of age or older and conditioned to authorize the harvest, possession and landing of lobsters for commercial purposes only from June 15<sup>th</sup> to September 15<sup>th</sup> of each year and further conditioned to the use of not more than 25 lobster pots. **DMF may issue up to 150 seasonal lobster permits for use during any single calendar year.**

## 12.01: Purpose

In 1972 the federal government passed the Marine Mammal Protection Act to protect marine mammal species that may be in danger of extinction or depletion due to anthropogenic activity and to keep populations levels at sustainable levels. Then in 1973, the federal government passed the Endangered Species Act to provide a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. As marine mammals and sea turtle species may interact with fishing gear and fishing activity, and are protected under the Marine Mammal Protection Act or the Endangered Species Act, fisheries are managed at the state and federal level to address the risk posed to these protected species.

For the waters under the jurisdiction of the Commonwealth, the management of fisheries for protected species is accomplished by the Division of Marine Fisheries pursuant to its authorities at G.L. c. 130. DMF has been managing fisheries and vessel activities in this manner for more than 30-years. Management measures have evolved over time, but currently include certain restrictions on the use and configuration of fixed gear (i.e., traps and gillnets) designed to reduce the risk of protected species becoming entangled in the gear and make any entanglements that may occur less injurious, as well as certain rules on vessel conduct in areas where protected species may be present.

The regulations at 322 CMR 12.00 are particularly focused on minimizing the risk of injury or mortality posed to North Atlantic right whales (“right whale”) by certain fishing and vessel activity. The right whale is a critically endangered species. There are just over 400 known individuals in the population, as of 2020, and the population has been slowly declining since 2010. Large numbers of these whales migrate into Commonwealth waters during the winter period and aggregate in Cape Cod Bay to feed on zoo plankton before migrating out during the early spring. During the time when right whales congregate in Commonwealth waters, they are susceptible to ship strikes and entanglements in fixed fishing gear.

To address these risks, DMF has promulgated a series of regulations at 322 CMR 12.00 to protect right whales. This includes: a February 1 – April 30 seasonal closure of all waters under the jurisdiction of the Commonwealth to trap gear fishing; a January 1 – May 15 closure of Cape Cod Bay and certain adjacent waters to gillnet gear; and a March 1 – April 30 speed limit for small vessels operating in Cape Cod Bay and certain adjacent waters. Each of these seasonal restrictions may be extended beyond their end date in response to the continued presence of these whales in the waters under the jurisdiction of the Commonwealth.

The protected species regulations at 322 CMR 12.00 address only a part of Division’s efforts to address protected species. DMF also regulates buoy line marking for gillnets and trap gear 322 CMR 4.00, establishes lobster and fish trap fishing seasons at 322 CMR 6.00, and restricts the issuance of lobster and trap fishing permits at 322 CMR 7.00. In aggregate, these various regulations create a portfolio of measures designed with the goal of minimizing the impact fishing and vessel activity may have on protected species when in the waters under the jurisdiction of the Commonwealth and improving management moving forward, particularly with regards to the endangered right whale.

~~The Division of Marine Fisheries works to protect marine protected species such as endangered turtles, harbor porpoise and large whales. The Division's efforts dovetail with federal regulation of marine mammals, including the northern right whale is the rarest of the world's great whales. Despite international protection by the International Whaling Commission established pursuant to the 1946 International Convention for the Regulation of Whaling and national protection afforded by the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 the northern right whale is listed as endangered and its population remains dangerously low in the Atlantic.~~

~~In response to this threat the Massachusetts Legislature passed a Resolve in 1985 requesting the Department of Fisheries, Wildlife and Environmental Law Enforcement to study the right whale in Massachusetts waters and make recommendations for its conservation. That study recommended, among other measures, a 500 yard buffer zone between right whales and vessels within Massachusetts waters. The purpose of 322 CMR 12.00 is to:~~

~~(1) implement a 500 yard buffer zone and prohibit activities of vessels that affect large whales, including right whales, within waters under the jurisdiction of the~~

~~Commonwealth. 322 CMR 12.00 exempts vessels with federal or state Right Whale scientific study permits and commercial fishing vessels in the act of hauling back or towing gear. In addition, 322 CMR 12.00 applies to both commercial and recreational fishermen, but only to waters under the jurisdiction of the Commonwealth.~~

~~(2) minimize the risk of large whale entanglements, including right whales in waters under the jurisdiction of the Commonwealth.~~

~~(3) reduce interactions between harbor porpoise and commercial gillnet gear in waters under the jurisdiction of the Commonwealth.~~

## 12.02: Definitions

For the purposes of 322 CMR 12.00 the following terms shall have the following meanings:

**1,700 pound contrivance** means any contrivance, insert, or other means of establishing a buoy line with a breaking strength of 1,700 pounds or less that is approved and published by the National Marine Fisheries Service pursuant to the Atlantic Large Whale Take Reduction Plan.

Bottom or Sink Gillnet means a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Buffer Zone means an area outward from a right whale a distance of 500 yards in all directions.

**Cape Cod Bay Vessel Speed Restriction Area.** The Cape Cod Bay Vessel Speed Restriction Area shall consist of all waters of Cape Cod Bay south of 42° 08' north latitude and those waters north and east of Cape Cod west of 70° 10' west longitude.

**Commercial Fisherman** means any person who may set gear or catch, possess or land fish for the purpose of sale, barter, or exchange or keeps for personal use any fish taken under the authority of a commercial fisherman permit issued in accordance with M.G.L. c. 130, §§ 2, 37, 38 or 80, and 322 CMR 7.01(2).

~~**Critical Habitat** means those waters in Cape Cod Bay under the jurisdiction of the Commonwealth that fall within the federally designated Right Whale Cape Cod Bay Critical Habitat area listed in the federal Right Whale Recovery Plan and found in 322 CMR 12.12.~~

Double means two traps connected together by a groundline with a single vertical line buoy attached.

Fixed Fishing Gear means any bottom or sink gillnets or **trap pots** that are set on the ocean bottom or in the water column and are usually connected to lines that extend to the water's surface.

Gillnet means anchored, or surface or drifting vertical walls of webbing, buoyed on top and weighted at the bottom, designed to capture fish by entanglement, gilling, or wedging.

Groundlines means the lines connecting traps/pots on a trap/**pot** trawl and lines connecting gillnets to anchors.

Harass means to approach, pursue, chase, follow, interfere with, observe, threaten, harm in any fashion, turn in any manner to intercept or attempt to engage in any such conduct.

**Massachusetts Restricted Area** means those waters described in the federal Atlantic Large Whale Take Reduction Plan this bounded by the following coordinates: beginning at the shoreline at 42°12'N latitude; thence heading due east to where 42°12'N latitude intersects with 70° 30' W longitude; thence due north to where 70° 30' W longitude intersects with 42° 30' N latitude; thence due east to where 42° 30' N latitude intersects with 69° 45' W longitude; thence due south to where 69° 45' W longitude intersects with 41° 56.5' N latitude; thence in a straightline in a southeasterly direction to where it intersects with 41° 21.5' N latitude and 69° 16' W longitude; thence

in a straight line in a west southwesterly direction to where it intersects with 41°15.3' N latitude and 69° 57.9' W longitude at the shoreline of Nantucket; thence following the eastern shoreline of Nantucket to where it intersects with 70° 00' W longitude; thence due north to where 70° 00' W longitude intersects with the shoreline of Cape Cod at 41° 40.2' N latitude; thence following the shore line of Cape Cod back to the original point.

~~Large Whale Seasonal Trap/Pot Gear Closure Area means those waters under the jurisdiction of the Commonwealth that fall within the federally designated Massachusetts Restricted Area listed in the Atlantic Large Whale Take Reduction Plan and established at 322 CMR 12.11.~~

Negatively Buoyant Line means line that has a specific gravity equal to or greater than that of seawater, 1.03, and does not float up in the water column.

Positively Buoyant Line means line that has a specific gravity less than that of seawater, 1.03, and floats up in the water column.

Recreational Fisherman means any person permitted in accordance with G.L. c. 130, §38 and 322 CMR 7.01(4)(b) to catch, possess and land lobster or crabs for family use, sport, or pleasure, which are not to be sold, traded, or bartered.

Right Whale means that species of marine mammal known as *Eubalaena (Balaena) glacialis*.

Single Trap means individual set and buoyed traps.

To Abandon or To Store means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods.

To Fish means to use, set, maintain, leave in the water or haul gillnets or pots to harvest, catch, or take any species of fish or lobster.

Trap means any lobster trap, modified lobster trap, fish pot, fish trap, conch pot, or other contrivance, other than nets, that is placed on the ocean bottom and designed to catch finfish, whelks, lobsters or crabs.

Trawls means a series of single traps that are tied together and buoyed at one or both ends.

Vessel means any waterborn craft.

Weak Link means a breakable section or device that will part when subjected to specified poundage of pull pressure and after parting, will result in a knot-less end, no thicker than the diameter of the line, the so-called “bitter end” to prevent lodging in whale baleen. **Lawful weak links are those devices approved and published by the National Marine Fisheries Service pursuant to the Atlantic Large Whale Take Reduction Plan.**

12.03: Prohibition on Abandoning Fixed Gear ~~Certain Gear or Lines in Waters under Jurisdiction of the Commonwealth~~

(1) It shall be unlawful for any fisherman to abandon any fixed gear in the waters under the jurisdiction of the Commonwealth.

~~(1) It shall be unlawful for any person to fish fixed fishing gear with:~~

~~(a) Lines floating at the water's surface;~~

~~(b) Positively buoyant groundline; and~~

~~(c) Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 of overall length of the buoy line.~~

~~(2) It shall be unlawful to abandon any fixed gear.~~



#### 12.04: Fixed Gear Seasonal Closures

(1) Gillnet Closure to Protect ~~s-in~~ Right Whales in Cape Cod Bay ~~Critical Habitat and Cape Cod Bay~~. From January 1 through May 15, it shall be unlawful to fish, store or abandon gillnets within those waters under the jurisdiction of the Commonwealth beginning at 42° 12' north latitude and the shoreline, thence due east to where it intersects with the state-federal waters line, then following the state waters line in an easterly direction to where it intersects with 70° 10 west longitude, thence due south to where 70° 10 west longitude intersects with the coastline of Cape Cod; thence following the shoreline along Cape Cod and South Shore back to the starting point at 42° 12' north latitude and the shoreline. ~~It is unlawful to fish, store, or abandon gillnets in Critical Habitat and in waters of Cape Cod Bay west of the Critical Habitat south of 42° North Latitude during the period January 1<sup>st</sup> through May 15<sup>th</sup>.~~

(2) Trap Gear Haul-out Period. It shall be unlawful for ~~any recreational or~~ commercial fisherman, ~~permitted in accordance with M.G.L. c. 130, §§ 37, 38 or 80, and 322 CMR 7.01(2): Commercial Fisherman Permits or (4): Special Permits,~~ to fish, set, store, or abandon any trap gear in any waters under the jurisdiction of the Commonwealth from February 1 – April 30. For vessels permitted by NOAA fisheries and registered in Massachusetts, this seasonal trap closure also extends into those federal waters north and east of Cape Cod within the Massachusetts Restricted Area. This closure may be extended in accordance with 322 CMR 12.04(3). ~~the Large Whale Seasonal Trap/Pot Gear Closure Area from February 1<sup>st</sup> through April 30<sup>th</sup>.~~

(3) Notice of Declaration to Amend Timing of Fixed Gear Seasonal Closures. The Director, through Notice of Declaration, may adjust the duration of the fixed gear seasonal closures at 322 CMR 12.04(1) and (2), as reasonably necessary to prevent the entanglements of the North Atlantic right whale in fixed fishing gear based on the Director's assessment of the documented presence of the North Atlantic right whale in Massachusetts waters. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the *Massachusetts Register*, publishing the Notice on the Division's Legal Notice web page, and distributing it *via* the Division's e-mail list serve.

## 12.05: Speed Restrictions to Protect North Atlantic Right Whales

(1) Purpose and Scope. North Atlantic right whales are a critically endangered species. Annually they migrate through state waters and aggregate in Cape Cod Bay to feed during the late-winter and early-spring. In order to protect these whales from vessel strikes, the National Marine Fisheries Service promulgated regulations at 50 CFR 224.105 in 2008 that restrict the speed of vessels measuring at least 65 feet in overall length to ten knots while transiting certain waters around Cape Cod. In order to establish similar measures to prevent strikes of whales by vessels smaller than those regulated under the federal regulations, the Division of Marine Fisheries has established these seasonal vessel speed restrictions for Cape Cod Bay.

~~(2) Cape Cod Bay Vessel Speed Restriction Area. The Cape Cod Bay Vessel Speed Restriction Area shall consist of all waters of Cape Cod Bay south of 42° 08' north latitude and those waters north and east of Cape Cod west of 70° 10' west longitude, as described in the map below.~~

(2) ~~(3)~~ Vessel Speed Restriction and Time Period. During the period of March 1<sup>st</sup> through April 30<sup>th</sup>, all vessels measuring less than 65' overall length and operating within the Cape Cod Bay Restricted Speed Area shall travel at a speed of ten knots or less.

(3) ~~(4)~~ Exemptions. 322 CMR 12.05(2) and (3) shall not apply:

- (a) Inshore Areas. Within those waters within Plymouth, Kingston and Duxbury Harbors, Barnstable Harbor and Wellfleet Harbor, as defined at 322 CMR 4.02(2) and (3).
- (b) Enforcement and Emergency Personnel. To law enforcement and emergency personnel in the course of their authorized duties including, but not limited to, authorized federal whale disentanglement personnel when responding to an entangled whale.

(4) ~~(5)~~ Notice of Declaration to Amend the Vessel Speed Restriction Time Period. The Director may, through a Notice of Declaration, adjust the duration of the Cape Cod Bay Vessel Speed Restriction Time Period in 322 CMR 12.05(3), as reasonably necessary to prevent vessel strikes on right whales, based on the Director's assessment of the documented presence of North Atlantic right whales in Cape Cod Bay. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the *Massachusetts Register*, publishing the Notice on the Division's Legal Notice web page, and distributing it *via* the Division's e-mail list serve.

## 12.06: Fixed Gear Year-round Gear Restrictions

(1) Fixed Gear. It shall be unlawful for any person to fish fixed fishing gear with:

- (a) Lines floating at the water's surface;
- (b) Positively buoyant groundline; and
- (c) Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 of overall length of the buoy line.

(2) ~~(4)~~ Gillnets. It shall be ~~is~~ unlawful to fish any gillnet in any waters under the jurisdiction of the Commonwealth, unless the net is rigged with the following breakaway features:

- (a) Knot-less weak link at the buoy with a breaking strength of 600 pounds.
- (b) Weak links with a breaking strength of up to 1,100 pounds are installed in the float rope between net panels.
- (c) Anchoring system for the gillnets must anchor with the holding power of at least 22 pound Danforth anchor.

(3) ~~(2)~~ Trap Gear.

- (a) Weak Link Requirement. It shall be ~~is~~ unlawful to fish any traps in any waters under the jurisdiction of the Commonwealth unless all buoy lines are equipped with a Weak Link that will part when subjected to 600 pounds or less of pull pressure along the buoy line.

(b) Buoy Line Breaking Contrivance. It shall be unlawful for any commercial fisherman to fish any traps in the waters under the jurisdiction of the

Commonwealth unless all buoy lines are equipped with a 1,700 pound breaking strength contrivance.

(c) ~~(b)~~ Maximum Buoy Line Restriction Requirements for Trawls. It is unlawful to fish two and three trap trawls with two buoy lines in the waters under the jurisdiction Commonwealth. Two buoy lines may only be fished on trawls of four or more traps.

(d) ~~(c)~~ Prohibitions on Single Traps. It shall be unlawful for:

(i) any commercial fisherman, permitted in accordance with M.G.L. c. 130, §§ 37, 38 or 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits* or

(4): *Special Permits*, to set, fish or store single traps within any of the waters under the jurisdiction of the Commonwealth when using a vessel greater than 29' overall length. This prohibition shall not apply to any scup, black sea bass, or conch traps fished lawfully in accordance with 322 CMR 6.12 or eel traps fished lawfully under municipal regulations pursuant to G.L. c. 130, §52. This prohibition shall go into effect on January 1, 2022.

(ii) for any person to set, fish or store any single traps in the waters under the jurisdiction of the Commonwealth north of Cape Cod that are seaward of three nautical miles from the mean low tide water mark, except within those waters along Billingsgate Shoal that are shoreward of Loran C Line 9960-X-25360 as it rules runs north east from 41°47.2' north latitude and 70°19.5' west longitude (Barnstable) to 41°55.8' north latitude and 70°8.4' west longitude (Wellfleet). This prohibition shall not apply to any eel traps fished lawfully under municipal regulations pursuant to G.L. c. 130, §52.

(e) Restrictions on Buoy Line Diameters. It shall be unlawful for:

(i) any commercial fisherman, permitted in accordance with G.L. c. 130, §§ 37, 38 or 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits* or (4): *Special Permits*, to set or fish traps within the waters under the jurisdiction of the Commonwealth with buoy lines that are greater 3/8" diameter.

(ii) any recreational lobster or crab trap fishermen, permitted in accordance with G.L. c. 130, §38 and 322 CMR 7.01(4)(b), to fish traps within the waters under the jurisdiction of the Commonwealth with buoy lines that are greater than 5/16" diameter.

~~It is unlawful to set, fish or abandon any single traps in the waters under the jurisdiction of the Commonwealth north of Cape Cod that are seaward of three miles from mean low tide water mark.~~

~~Exception for Billingsgate Shoal. It is lawful to set and fish single traps within those waters under the jurisdiction of the Commonwealth within of southeast Cape Cod Bay that are shoreward of Loran C Line 9960-X-25360 as it runs north east from 41°47.2' north latitude and 70°19.5' west longitude (Barnstable) to 41°55.8' north latitude and 70°8.4' west longitude (Wellfleet).~~

~~(d) Buoy Line Requirement for Single Traps. It is unlawful to fish single traps with a buoy line requirement that does exceed 3/8 inch diameter.~~

~~(3) A list of DMF approved weak links is available from DMF and furnished to fishermen upon request.~~

## 12.07: Conduct Related to Interacting with Right Whales

(1) Harassment and Harm. It is unlawful for any vessel, or operator thereof, to harass or harm any right whale at any time or place.

(2) Vessel Interactions and Buffer Zones. It shall be unlawful for any vessel registered in Massachusetts or within the waters under the jurisdiction of the Commonwealth to:

(a) enter into a buffer zone created by the presence of a surfacing right whale;

(b) approach or intercept a right whale from a buffer zone; or

(c) not immediately depart from a buffer zone upon presence of a surfacing right whale.

(3) Commercial Fishing Activity and Buffer Zones. It shall be unlawful for any commercial fishing vessel which has complete a haul back, a tow of its gear, or otherwise completed its active fishing operation and is no longer at anchor to not immediately depart from a buffer zone upon presence of a surfacing right whale. If a commercial fishing vessel is in the act of hauling back, towing gear, or is actively

engaged in a fishing operation within a buzzer zone created by a surfacing right whale, the operation may complete its haul, tow or active fishing operation provided it does so with minimum disruption to the right whale and immediately departs from the buzzer zone upon complete. This shall not authorize a commercial fishing vessel to begin a haul, tow, or active fishing operation in or into a buffer zone.

- (4) **Commercial Fishing.** Commercial fishing vessels in the act of hauling back, towing gear or engaged in fishing operations at anchor within a buffer zone created by the surfacing of a right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow, or fishing operation. In no event may 322 CMR 12.07(4) be construed to authorize a commercial fishing vessel to begin to haul, tow, or conduct its fishing operation in or into a buffer zone.

(5) **Entanglements.**

(a) It shall be unlawful for the operator of any vessel to fail to report the entanglement of a right whale in any fishing gear or lines.

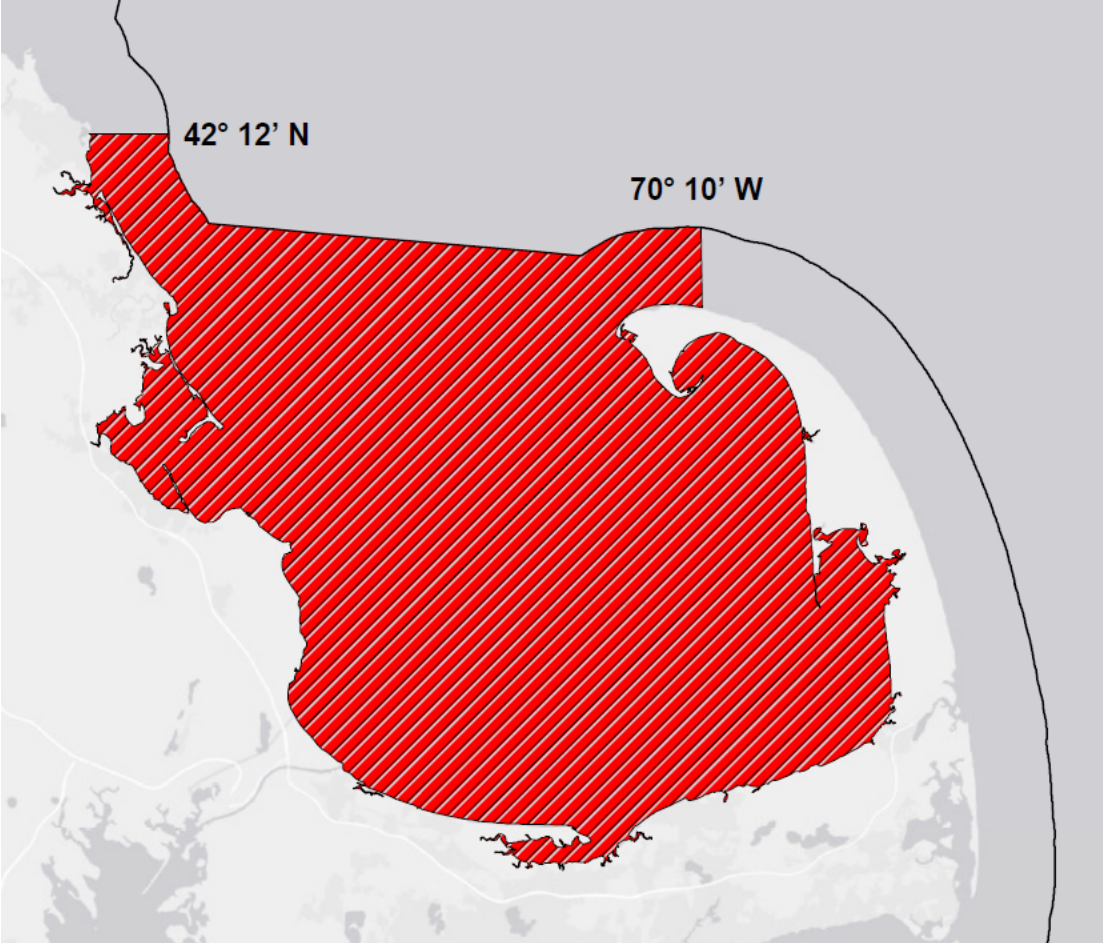
(b) Operators of vessels that observe right whales entangled in fishing gear or lines shall report said entanglements to the National Marine Fisheries Service, the Division of Environmental Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled right whale may operate in the buffer zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.

(c) Upon reporting an entanglement in accordance with this section - and if so requested by the National Marine Fisheries Service, the Division of Environmental Law Enforcement, the Coast Guard, or to designees of those agencies - the vessel that has sighted the entangled whale is exempt from complying with 322 CMR 12.07(2) for the strict purpose of assisting in the locating and tracking of the right whale. Any vessel operating in accordance with this section shall operate the vessel so as to minimize the disruption to the right whale; operate the vessel at a speed of less than 10 nautical miles per hour; and immediately depart the buffer zone once disentanglement efforts begin or when requested to do so by the agencies or their designees.

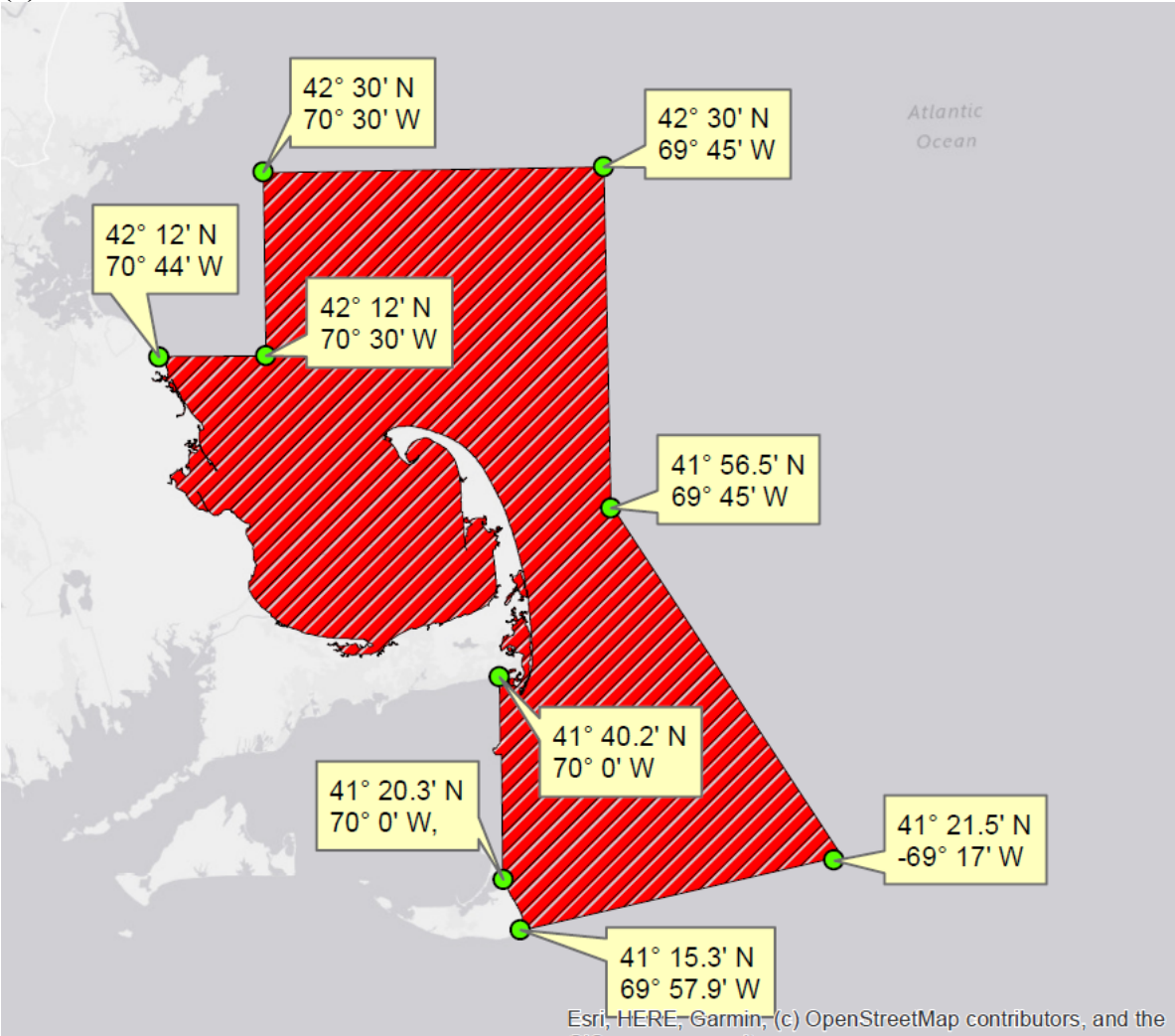
- (6) **Exceptions of Scientific Permits.** Any entity issued a special scientific permit from the Division in accordance with G.L. c 130, §17 and 322 CMR 7.01(4)(c) or from any federal department, agency or instrumentality having the authority to issue permits for scientific research, observation, or management of right whales may be exempt from this section for the purposes of conducting the research activity authorized by such a permit.

12.08: Maps

(1) Gillnet Closure to Protect Right Whales in Cape Cod Bay

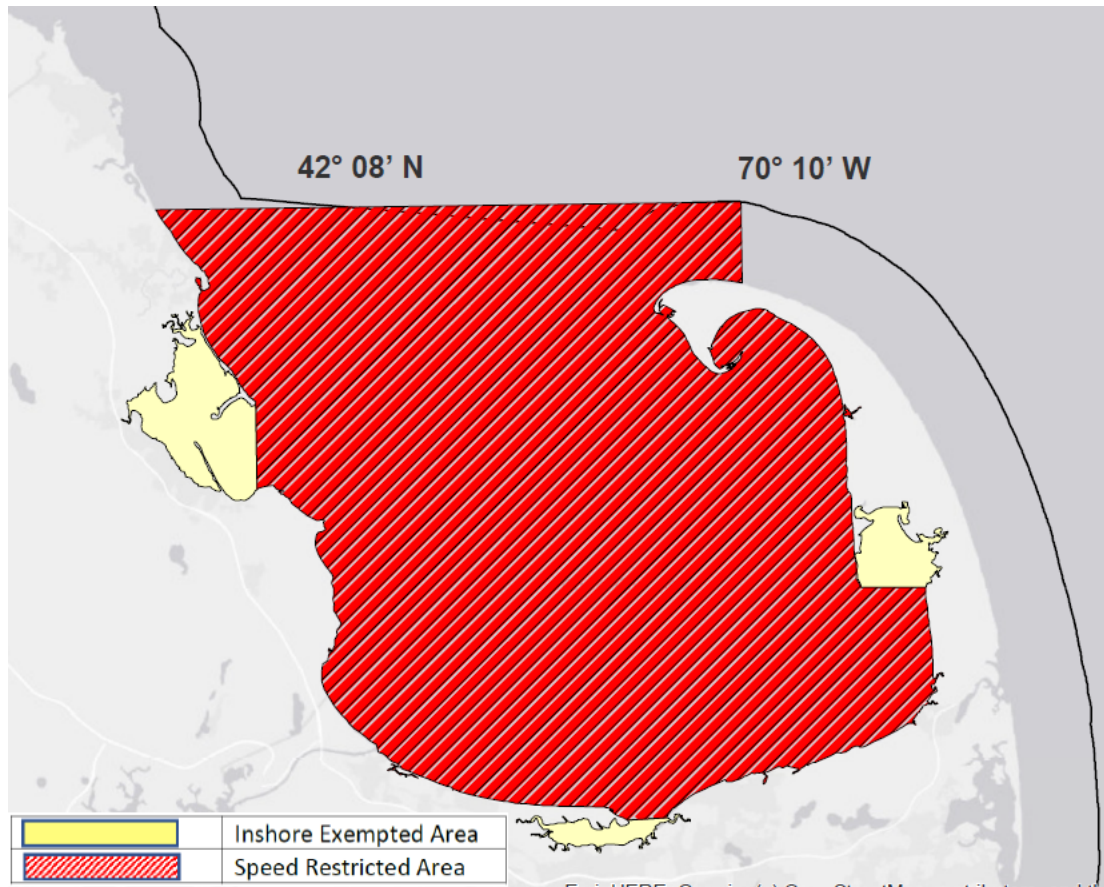


(2) Massachusetts Restricted Area





322 CMR: DIVISION OF MARINE FISHERIES  
(3) Cape Cod Bay Vessel Speed Restricted Area



~~12.07: Buffer Zone~~

~~Except as otherwise provided for in 322 CMR 12.10, it is unlawful:~~

- ~~(1) for any vessel to enter a right whale buffer zone;~~
- ~~(2) for any vessel to approach or intercept a right whale within a buffer zone;~~
- ~~(3) for any vessel not to depart immediately from a buffer zone; or~~
- ~~(4) for any commercial fishing vessel which has completed a haul back, a tow of its gear or otherwise completed its fishing operation and is no longer at anchor not to depart immediately from a buffer zone.~~

~~12.08: Harassment and Harm~~

~~It is unlawful for any operator of a vessel to harass or to harm any right whale at any time or place.~~

~~12.09: Entanglement Reporting~~

~~It is unlawful for any operator of a commercial or recreational vessel to fail to report the entanglement of a right whale in its gear or lines.~~

~~12.10: Exceptions~~

- ~~(1) Federal Permit. Any person issued a permit from any federal department, agency or instrumentality having authority to issue permits for the scientific research, observation, or management of the right whale, may conduct the activity authorized by such permit.~~
- ~~(2) State Permit. Any person issued a permit in accordance with 322 CMR 7.01(4)(d) for the scientific research, observation, or management of the right whale may conduct the activity authorized by such permit.~~
- ~~(3) Commercial Fishing. Commercial fishing vessels in the act of hauling back, towing~~

~~gear or engaged in fishing operations at anchor within a buffer zone created by the surfacing of a right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow, or fishing operation. In no event may 322 CMR 12.09(3) be construed to authorize a commercial fishing vessel to begin to haul, tow, or conduct its fishing operation in or into a buffer zone.~~

~~(4) Disentanglement.~~

~~(a) To assist federally approved disentanglement efforts for northern right whales, any vessel that reports to the National Marine Fisheries Service, the Division of Environmental Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled right whale may operate in the buffer zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.~~

~~(b) Any vessel operating in the buffer zone under 322 CMR 12.06(4) shall:~~

- ~~1. operate so as to minimize disruption to the right whale, and~~
- ~~2. immediately depart the buffer zone once the disentanglement effort begins, or when requested to do so by the agencies or their designees.~~

~~(c) When conducting activities within the scope of 322 CMR 12.06(4), vessels shall make every effort to comply with 322 CMR 12.00.~~

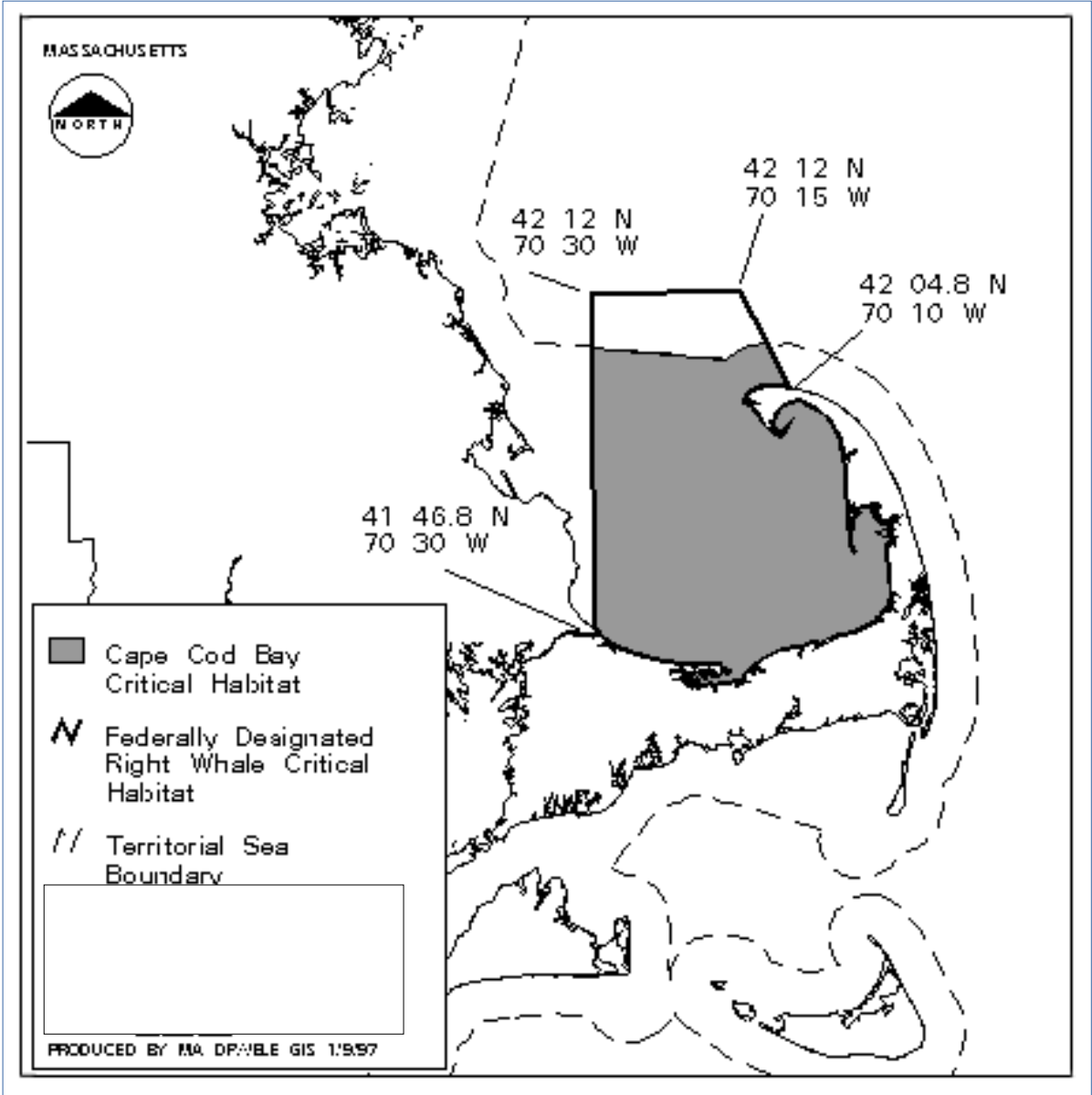
**12.11 Large Whale Seasonal Trap/Pot Gear Closure Area**

~~The following map depicts the federal Massachusetts Restricted Area and its coordinates. That portion of the Massachusetts Restricted Area within the waters under the jurisdiction of the Commonwealth is referred to as the Large Whale Seasonal Trap/Pot Gear Closure Area.~~



12.12: Right Whale Cape Cod Bay Critical Habitat Map

The following map depicts the Cape Cod Bay Critical Habitat and its coordinates.







# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: October 23, 2020

SUBJECT: **New Right Whale Conservation Measures**

#### Proposal

For 2021, DMF is proposing several new measures affecting fixed gear fishing. This proposal is designed to reduce the risk of endangered right whales becoming entangled in fixed fishing gear and reduce the lethality of any interaction with fixed fishing gear. The proposals are enumerated below and unless otherwise specified would go into effect for 2021.

#### 1. Closures.

- a. Expand Trap Closure. The existing February 1 – April 30 trap gear closure north and east of Cape Cod will be expanded to include all waters under the jurisdiction of the Commonwealth. During this closed period, it will be unlawful to set, haul, or abandon any trap gear in state-waters. This will ensure that our waters are free of trap gear as right whales seasonally migrate in and out of Cape Cod Bay.
- b. Conch Pot Fishery. The existing December 15 – April 14 conch pot fishery closure will be extended through April 30, consistent with the expanded trap gear closure described above.
- c. Recreational Lobster and Crab Trap Fishery. A new seasonal recreational lobster and crab trap fishery closure will be implemented with an exemption for non-buoyed gear set inside the Cape Cod Canal. This closure will be in effect from the Tuesday following Labor Day through the Friday immediately preceding Memorial Day. This will restrict the setting of recreational lobster and crab trap gear during the late winter and early spring period when right whales migrate into our waters. Moreover, by having it go into effect during the early fall, the Environmental Police will have ample opportunity to find and remove lost and non-compliant gear before the right whales arrive in the mid-winter.
- d. Gillnets. The existing January 15 – May 15 gillnet closure in Cape Cod Bay will remain in effect, but its geographic extent will be expanded to include those waters west of 70° 30' west longitude and south of 42° 12' north latitude. Effectively, this will close those state-waters along the south shore from Gurnet Point in Plymouth to Scituate. While this area is typically closed due to groundfish closures and harbor porpoise closures, it may open in April if the state's conditional groundfish closure is lifted. This is an area where right whales are known to aggregate and should be free of fixed gear.

## 2. Gear Restrictions

- a. Buoy Line Breaking Strength. All trap fishermen will be required to configure their vertical buoy lines with a 1,700 pound breaking strength requirement. This can be accomplished by deploying a rope with this specific breaking strength or using certain approved contrivances.
- b. Maximum Buoy Line Diameter. Commercial trap fishermen will be prohibited from fishing buoy lines with a diameter of larger than 3/8" and recreational trap fishermen will be prohibited from fishing buoy lines with a diameter of larger than 5/16".
- c. Prohibition on Single Traps. Effective January 1, 2022, all vessels greater than 29' feet will be prohibited from fishing single lobster traps. This does not apply to fish pots, conch pots and eel pots. The use of single lobster traps will remain prohibited north of Cape Cod for all fishermen regardless of vessel size when fishing three nautical miles from shore, except within the Billingsgate exempted area.

## 3. Licensing

- a. Seasonal Lobster License. DMF will cap the number of seasonal lobster licenses issued annually at 150. This is not expected to impact current effort, but will prevent the proliferation of new fishing activity under this seasonal student lobster permit.

### **Rule Making Timeline**

The MFAC was briefed on these potential rule changes at their August business meeting and is now receiving the formal proposal in writing. DMF anticipates a public hearing will be announced by the end of October for early December. The public hearing will occur via Zoom. The MFAC will then be asked to vote on a final recommendation at their December 10 business meeting. If approved, final rules could go into place for February 2021.

### **Background**

In January 2020, an Endangered Species Act citizens suit was filed in the US District Court in Massachusetts against the Commonwealth of Massachusetts. It was argued that: (1) DMF licenses and regulates the deployment of vertical buoy lines in fixed gear fisheries; and (2) this activity violates the Endangered Species Act, as it may cause entanglements of endangered right whales and sea turtles. Accordingly, the Court was petitioned to halt the further deployment of vertical buoy lines in fixed gear fisheries and to require the state apply for an Endangered Species Act Incidental Take Permit (ITP) for the licensing and regulating of its fixed gear fisheries. In April 2020, the Court ordered DMF to apply to NOAA Fisheries for an ITP.

In an ITP application, a Habitat Conservation Plan (HCP) is developed to detail the steps the applicant is taking to minimize and mitigate impacts the activity is having on an endangered species. These draft regulations constitute the foundation of the state's HCP to reduce the risk of right whales becoming entangled in fixed gear. In the development of its ITP application, DMF has been in consultation with NOAA. For a number of complex reasons, we remain uncertain as to whether or not an ITP will be issued. However, DMF believes these regulations provide a sufficient HCP and will adequately differentiate the state's conservation and management regime from that of adjacent fisheries.

It is noteworthy that this set of regulation only addresses right whale conservation, whereas the litigation also addressed sea turtles. This is because right whale conservation benefits from the Atlantic Large

Whale Take Reduction Team's ongoing rule making process, which has vetted and reviewed what is being proposed here. Sea turtle conservation has not had the same level of ongoing management. Accordingly, there are no widely available or agreed upon methods of reducing sea turtle entanglements. As a result, DMF – in collaboration with NOAA Fisheries – will have to analyze current turtle data and develop potential management options. Future rules affecting sea turtle conservation may be proposed separately and would be subject to separate rule making.

**Attachments**

Draft strikethrough regulations

## DRAFT STRIKETHROUGH REGULATIONS

### 6.02: Lobster Conservation and Management

(2) Gear Restrictions. It shall be ~~is~~ unlawful for any person to take or attempt to take lobsters from ~~the~~ waters under the jurisdiction of the Commonwealth by the use of traps without said traps having the following features:

(f) All traps must be marked in accordance with the trap gear marking requirements at 322 CMR 4.13(2)

(g) All traps must be configured to comply with the relevant fixed gear and trap gear restrictions at 322 CMR 12.06(2) and (3).

(7) Seasonal Closures.

(a) Outer Cape LCMA. Fishing for lobster with traps is prohibited within the Outer Cape LCMA, as defined at 322 CMR 6.33, from February 1 – April 30. Fishermen are required to remove all lobster traps from the waters of the Outer Cape LCMA prior to this closed period. It shall be unlawful to fish, set or abandon any lobster traps in the Outer Cape Cod LCMA or any LCMAs during this seasonal closure.

(b) Non-Commercial Lobster and Crab Traps. Fishing for lobsters with traps by non-commercial lobster and crab trap permit holders is prohibited in all waters under the jurisdiction of the Commonwealth from the Tuesday immediately following Columbus Day through the Friday immediately preceding Memorial Day. It shall be unlawful for non--commercial lobster and crab trap permit holders to fish, set, store or abandon any lobster traps within the waters under the jurisdiction of the Commonwealth during this seasonal closure. This shall not apply to any buoyless lobster and crab trap gear set inside the Cape Cod Canal.

~~Fishing for lobster with traps is prohibited in the Outer Cape LCMA from February 1<sup>st</sup> through April 30<sup>th</sup>. Fishermen are required to remove all lobster traps from waters of the Outer Cape LCMA as defined in 322 CMR 6.33 during this closed period. It is unlawful for any fisherman authorized to fish traps in the Outer Cape LCMA to fish, set, or abandon any lobster pots in the Outer Cape LCMA or any other LCMA during this seasonal closure.~~

### 6.12: Fish Pot Fishery Restrictions

(2) Closed Season.

(a) Conch Pots. From December 15 through April 30 ~~April 14~~ it shall be ~~is~~ unlawful for any person to take whelks by pots or set, haul, tend or abandon conch pots in the waters under the jurisdiction of the Commonwealth.

(4) Gear Restrictions.

(d) All fish pots and conch pots must be configured to comply with the relevant fixed gear and trap gear restrictions at 322 CMR 12.06(2) and (3).

#### 7.01: Form, Use and Contents of Permits

(2) Commercial Fisherman Permits. In order to harvest, possess or land fish, shellfish or bait for commercial purposes, the following permits are required for the following fishing activities:

(f) Seasonal Lobster. Authorizes only the named individual to harvest, possess and land lobsters for commercial purposes, to be issued only to full-time students 12 years of age or older and conditioned to authorize the harvest, possession and landing of lobsters for commercial purposes only from June 15<sup>th</sup> to September 15<sup>th</sup> of each year and further conditioned to the use of not more than 25 lobster pots. **DMF may issue up to 150 seasonal lobster permits for use during any single calendar year.**

## 12.01: Purpose

In 1972 the federal government passed the Marine Mammal Protection Act to protect marine mammal species that may be in danger of extinction or depletion due to anthropogenic activity and to keep populations levels at sustainable levels. In 1973, the federal government passed the Endangered Species Act to provide a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. As marine mammals and sea turtle species may interact with fishing gear and fishing activity, and are protected under the Marine Mammal Protection Act or the Endangered Species Act, fisheries are managed at the state and federal level to address the risk posed to these protected species.

For the waters under the jurisdiction of the Commonwealth, the management of fisheries for protected species is accomplished by the Division of Marine Fisheries pursuant to its authorities at G.L. c. 130. DMF has been managing fisheries and vessel activities in this manner for more than 30-years. Management measures have evolved over time, but currently include certain restrictions on the use and configuration of fixed gear (i.e., traps and gillnets) designed to reduce the risk of protected species becoming entangled in the gear and make any entanglements that may occur less injurious, as well as certain rules governing vessel conduct in areas where protected species may be present.

The regulations at 322 CMR 12.00 are particularly focused on minimizing the risk of injury or mortality posed to North Atlantic right whales (“right whale”) by certain fishing and vessel activity. The right whale is a critically endangered species. There are estimated to be approximately 400 known individuals in the population, as of 2019, and the population has been declining since 2010. Large numbers of these whales migrate into Commonwealth waters during the winter period and aggregate in Cape Cod Bay to feed on zooplankton before migrating out of the area during the early spring. During the time when right whales congregate in Commonwealth waters, they are susceptible to ship strikes and entanglements in fixed fishing gear.

To address these risks, DMF has promulgated a series of regulations at 322 CMR 12.00 to protect right whales. This includes: a February 1 – April 30 seasonal closure of all waters under the jurisdiction of the Commonwealth to trap gear fishing; a January 1 – May 15 closure of Cape Cod Bay and certain adjacent waters to gillnet gear; and a March 1 – April 30 speed limit for small vessels operating in Cape Cod Bay and certain adjacent waters. Each of these seasonal restrictions may be extended beyond their end date in response to the continued presence of right whales in the waters under the jurisdiction of the Commonwealth.

The protected species regulations at 322 CMR 12.00 reflect only a part of Division’s efforts to address protected species. DMF also regulates buoy line marking for gillnets and trap gear 322 CMR 4.00, establishes lobster and fish trap fishing seasons at 322 CMR 6.00, and restricts the issuance of lobster and trap fishing permits at 322 CMR 7.00. In aggregate, these various regulations create a portfolio of measures designed with the goal of minimizing the impact fishing and vessel activity may have on protected species when in the waters under the jurisdiction of the Commonwealth and improving management moving forward, particularly with regards to the endangered right whale.

~~The Division of Marine Fisheries works to protect marine protected species such as endangered turtles, harbor porpoise and large whales. The Division's efforts dovetail with federal regulation of marine mammals, including the northern right whale is the rarest of the world's great whales. Despite international protection by the International Whaling Commission established pursuant to the 1946 International Convention for the Regulation of Whaling and national protection afforded by the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 the northern right whale is listed as endangered and its population remains dangerously low in the Atlantic.~~

~~In response to this threat the Massachusetts Legislature passed a Resolve in 1985 requesting the Department of Fisheries, Wildlife and Environmental Law Enforcement to study the right whale in Massachusetts waters and make recommendations for its conservation. That study recommended, among other measures, a 500 yard buffer zone between right whales and vessels within Massachusetts waters. The purpose of 322 CMR 12.00 is to:~~

~~(1) implement a 500 yard buffer zone and prohibit activities of vessels that affect large whales, including right whales, within waters under the jurisdiction of the Commonwealth. 322 CMR 12.00 exempts vessels with federal or state Right Whale~~



~~scientific study permits and commercial fishing vessels in the act of hauling back or towing gear. In addition, 322 CMR 12.00 applies to both commercial and recreational fishermen, but only to waters under the jurisdiction of the Commonwealth.~~

~~(2) minimize the risk of large whale entanglements, including right whales in waters under the jurisdiction of the Commonwealth.~~

~~(3) reduce interactions between harbor porpoise and commercial gillnet gear in waters under the jurisdiction of the Commonwealth.~~

## 12.02: Definitions

For the purposes of 322 CMR 12.00 the following terms shall have the following meanings:

**1,700 pound contrivance** means any contrivance, insert, or other means of establishing a buoy line with a breaking strength of 1,700 pounds or less.

Bottom or Sink Gillnet means a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Buffer Zone means an area outward from a right whale a distance of 500 yards in all directions.

**Cape Cod Bay Vessel Speed Restriction Area.** The Cape Cod Bay Vessel Speed Restriction Area shall consist of all waters of Cape Cod Bay south of 42° 08' north latitude and those waters north and east of Cape Cod west of 70° 10' west longitude.

**Commercial Fisherman** means any person who may set gear or catch, possess or land fish for the purpose of sale, barter, or exchange or keeps for personal use any fish taken under the authority of a commercial fisherman permit issued in accordance with M.G.L. c. 130, §§ 2, 37, 38 or 80, and 322 CMR 7.01(2).

~~**Critical Habitat** means those waters in Cape Cod Bay under the jurisdiction of the Commonwealth that fall within the federally designated Right Whale Cape Cod Bay Critical Habitat area listed in the federal Right Whale Recovery Plan and found in 322 CMR 12.12.~~

Double means two traps connected together by a groundline with a single vertical line buoy attached.

Fixed Fishing Gear means any bottom or sink gillnets or ~~traps pots~~ that are set on the ocean bottom or in the water column and are usually connected to lines that extend to the water's surface.

Gillnet means anchored, or surface or drifting vertical walls of webbing, buoyed on top and weighted at the bottom, designed to capture fish by entanglement, gilling, or wedging.

Groundlines means the lines connecting traps/pots on a trap/~~pot~~ trawl and lines connecting gillnets to anchors.

Harass means to approach, pursue, chase, follow, interfere with, observe, threaten, harm in any fashion, turn in any manner to intercept or attempt to engage in any such conduct.

**Massachusetts Restricted Area** means those waters described in the federal Atlantic Large Whale Take Reduction Plan and bounded by the following coordinates: beginning at the shoreline at 42° 12' N latitude; thence heading due east to where 42° 12' N latitude intersects with 70° 30' W longitude; thence due north to where 70° 30' W longitude intersects with 42° 30' N latitude; thence due east to where 42° 30' N latitude intersects with 69° 45' W longitude; thence due south to where 69° 45' W longitude intersects with 41° 56.5' N latitude; thence in a straight line in a southeasterly direction to where it intersects with 41° 21.5' N latitude and 69° 16' W longitude; thence in a straight line in a west southwesterly direction to where it intersects with 41° 15.3' N latitude and 69° 57.9' W longitude at the shoreline of Nantucket; thence following the eastern shoreline of Nantucket to where it intersects with 70° 00' W longitude; thence

due north to where 70° 00' W longitude intersects with the shoreline of Cape Cod at 41° 40.2' N latitude; thence following the shore line of Cape Cod back to the original point.

~~Large Whale Seasonal Trap/Pot Gear Closure Area means those waters under the jurisdiction of the Commonwealth that fall within the federally designated Massachusetts Restricted Area listed in the Atlantic Large Whale Take Reduction Plan and established at 322 CMR 12.11.~~

Negatively Buoyant Line means line that has a specific gravity equal to or greater than that of seawater, 1.03, and does not float up in the water column.

Positively Buoyant Line means line that has a specific gravity less than that of seawater, 1.03, and floats up in the water column.

Recreational Fisherman means any person permitted in accordance with G.L. c. 130, § 38 and 322 CMR 7.01(4)(b) to catch, possess and land lobster or crabs for family use, sport, or pleasure, which are not to be sold, traded, or bartered.

Right Whale means that species of marine mammal known as *Eubalaena (Balaena) glacialis*.

Single Trap means individual set and buoyed traps.

To Abandon or To Store means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods.

To Fish means to use, set, maintain, leave in the water or haul gillnets or pots to harvest, catch, or take any species of fish or lobster.

Trap means any lobster trap, modified lobster trap, fish pot, fish trap, conch pot, or other contrivance, other than nets, that is placed on the ocean bottom and designed to catch finfish, whelks, lobsters or crabs.

Trawls means a series of single traps that are tied together and buoyed at one or both ends.

Vessel means any waterborn craft.

Weak Link means a breakable section or device that will part when subjected to specified poundage of pull pressure and after parting, will result in a knot-less end, no thicker than the diameter of the line, the so-called "bitter end" to prevent lodging in whale baleen. **Lawful weak links are those devices approved by the National Marine Fisheries Service pursuant to the Atlantic Large Whale Take Reduction Plan and published in the Atlantic Large Whale Take Reduction Plan's Supplemental Gear Guide.**

**12.03: Prohibition on Abandoning Fixed Gear ~~Certain Gear or Lines in Waters under Jurisdiction of the Commonwealth~~**

(1) It shall be unlawful for any fisherman to abandon any fixed gear in the waters under the jurisdiction of the Commonwealth.

~~(1) It shall be unlawful for any person to fish fixed fishing gear with:~~

~~(a) Lines floating at the water's surface;~~

~~(b) Positively buoyant groundline; and~~

~~(c) Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 of overall length of the buoy line.~~

~~(2) It shall be unlawful to abandon any fixed gear.~~

## 12.04: Fixed Gear Seasonal Closures

(1) Gillnet Closure to Protect ~~s-in~~ Right Whales in Cape Cod Bay ~~Critical Habitat and Cape Cod Bay~~. From January 1 through May 15, it shall be unlawful to fish, store or abandon gillnets within those waters under the jurisdiction of the Commonwealth beginning at 42° 12' north latitude and the shoreline, thence due east to where it intersects with the state-federal waters line, then following the state waters line in an easterly direction to where it intersects with 70° 10 west longitude, thence due south to where 70° 10 west longitude intersects with the coastline of Cape Cod; thence following the shoreline along Cape Cod and South Shore back to the starting point at 42° 12' north latitude and the shoreline. ~~It is unlawful to fish, store, or abandon gillnets in Critical Habitat and in waters of Cape Cod Bay west of the Critical Habitat south of 42° North Latitude during the period January 1<sup>st</sup> through May 15<sup>th</sup>.~~

(2) Trap Gear Haul-out Period. It shall be unlawful for ~~any recreational or~~ any Commercial Fisherman, ~~permitted in accordance with M.G.L. c. 130, §§ 37, 38 or 80, and 322 CMR 7.01(2): Commercial Fisherman Permits or (4): Special Permits,~~ to fish, set, store, or abandon any trap gear in any waters under the jurisdiction of the Commonwealth from February 1 – April 30. For vessels permitted by NOAA fisheries and registered in Massachusetts, this seasonal trap closure also extends into those federal waters north and east of Cape Cod within the Massachusetts Restricted Area. This closure may be extended in accordance with 322 CMR 12.04(3). ~~the Large Whale Seasonal Trap/Pot Gear Closure Area from February 1<sup>st</sup> through April 30<sup>th</sup>.~~

(3) Notice of Declaration to Amend Timing of Fixed Gear Seasonal Closures. The Director, through Notice of Declaration, may adjust the duration of the fixed gear seasonal closures at 322 CMR 12.04(1) and (2), as reasonably necessary to prevent the entanglements of the North Atlantic right whale in fixed fishing gear based on the Director's assessment of the documented presence of the North Atlantic right whale in Massachusetts waters. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the *Massachusetts Register*, publishing the Notice on the Division's Legal Notice web page, and distributing it *via* the Division's e-mail list serve.

## 12.05: Speed Restrictions to Protect North Atlantic Right Whales

(1) Purpose and Scope. North Atlantic right whales are a critically endangered species. Annually they migrate through state waters and aggregate in Cape Cod Bay to feed during the late-winter and early-spring. In order to protect these whales from vessel strikes, the National Marine Fisheries Service promulgated regulations at 50 CFR 224.105 in 2008 that restrict the speed of vessels measuring at least 65 feet in overall length to ten knots while transiting certain waters around Cape Cod. In order to establish similar measures to prevent strikes of whales by vessels smaller than those regulated under the federal regulations, the Division of Marine Fisheries has established these seasonal vessel speed restrictions for Cape Cod Bay.

~~(2) Cape Cod Bay Vessel Speed Restriction Area. The Cape Cod Bay Vessel Speed Restriction Area shall consist of all waters of Cape Cod Bay south of 42° 08' north latitude and those waters north and east of Cape Cod west of 70° 10' west longitude, as described in the map below.~~

(2) ~~(3)~~ Vessel Speed Restriction and Time Period. During the period of March 1<sup>st</sup> through April 30<sup>th</sup>, all vessels measuring less than 65' overall length and operating within the Cape Cod Bay Restricted Speed Area, **as defined at 322 CMR 12.02**, shall travel at a speed of ten knots or less.

(3) ~~(4)~~ Exemptions. 322 CMR 12.05(2) **and (3)** shall not apply:

(a) Inshore Areas. Within those waters within Plymouth, Kingston and Duxbury Harbors, Barnstable Harbor and Wellfleet Harbor, as defined at 322 CMR 4.02(2) and (3).

(b) Enforcement and Emergency Personnel. To law enforcement and emergency personnel in the course of their authorized duties including, but not limited to, authorized federal whale disentanglement personnel when responding to an entangled whale.

(4) ~~(5)~~ Notice of Declaration to Amend the Vessel Speed Restriction Time Period. The Director may, through a Notice of Declaration, adjust the duration of the Cape Cod Bay Vessel Speed Restriction Time Period in 322 CMR **12.05(2) 12.05(3)**, as reasonably necessary to prevent vessel strikes on right whales, based on the Director's assessment of the documented presence of North Atlantic right whales in Cape Cod Bay. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the *Massachusetts Register*, publishing the Notice on the Division's Legal Notice web page, and distributing it *via* the Division's e-mail list serve.

## 12.06: Fixed Gear Year-round Gear Restrictions

(1) Gillnets. It **shall be is** unlawful to fish any gillnet in any waters under the jurisdiction of the Commonwealth, unless the net is rigged with the following breakaway features:

(a) Knot-less weak link at the buoy with a breaking strength of 600 pounds.

(b) Weak links with a breaking strength of up to 1,100 pounds are installed in the float rope between net panels.

(c) Anchoring system for the gillnets must anchor with the holding power of at least 22 pound Danforth anchor.

(2) Trap Gear.

(a) Weak Link Requirement. It **shall be is** unlawful to fish any traps in any waters under the jurisdiction of the Commonwealth unless all buoy lines are equipped with a Weak Link that will part when subjected to 600 pounds or less of pull pressure along the buoy line.

(b) Buoy Line Breaking Contrivance. It shall be unlawful for any Commercial Fisherman to fish any traps in the waters under the jurisdiction of the Commonwealth unless all buoy lines are equipped with a 1,700 pound breaking strength contrivance.

(c) ~~(b)~~ Maximum Buoy Line Restriction Requirements for Trawls. It is unlawful to fish two and three trap trawls with two buoy lines in the waters under the jurisdiction Commonwealth. Two buoy lines may **only** be fished **only** on trawls of four or more traps.

(d) ~~(e)~~ Prohibitions on Single Traps. It shall be unlawful for:  
(i) any Commercial Fisherman to set, fish or store single traps within any of the waters under the jurisdiction of the Commonwealth when using a vessel greater than 29' overall length. This prohibition shall not apply to any scup, black sea bass, or conch traps fished lawfully in accordance with 322 CMR 6.12 or eel traps fished lawfully under municipal regulations pursuant to G.L. c. 130, § 52. This prohibition shall go into effect on January 1, 2022.

(ii) for any person to set, fish or store any single traps in the waters under the jurisdiction of the Commonwealth north of Cape Cod that are seaward of three nautical miles from the mean low tide water mark, except within those waters along Billingsgate Shoal that are shoreward of Loran C Line 9960-X-25360 as it runs north east from 41° 47.2' north latitude and 70° 19.5' west longitude (Barnstable) to 41° 55.8' north latitude and 70° 8.4' west longitude (Wellfleet). This prohibition shall not apply to any eel traps fished lawfully under municipal regulations pursuant to G.L. c. 130, § 52.

(e) Restrictions on Buoy Line Diameters. It shall be unlawful for:

(i) any Commercial Fisherman to set or fish traps within the waters under the jurisdiction of the Commonwealth with buoy lines that are greater 3/8" diameter.  
(ii) any recreational lobster or crab trap fishermen, permitted in accordance with G.L. c. 130, § 38 and 322 CMR 7.01(4)(b), to fish traps within the waters under the jurisdiction of the Commonwealth with buoy lines that are greater than 5/16" diameter.

~~It is unlawful to set, fish or abandon any single traps in the waters under the jurisdiction of the Commonwealth north of Cape Cod that are seaward of three miles from mean low tide water mark.~~

~~Exception for Billingsgate Shoal. It is lawful to set and fish single traps within those waters under the jurisdiction of the Commonwealth within of southeast Cape Cod Bay that are shoreward of Loran C Line 9960-X-25360 as it runs north east from 41°47.2' north latitude and 70°19.5' west longitude (Barnstable) to 41°55.8' north latitude and 70°8.4' west longitude (Wellfleet).~~

~~(d) Buoy Line Requirement for Single Traps. It is unlawful to fish single traps with a buoy line requirement that does exceed 3/8 inch diameter.~~

~~(3) A list of DMF approved weak links is available from DMF and furnished to fishermen upon request.~~

(3) Fixed Gear. It shall be unlawful for any person to fish fixed fishing gear with:

- (a) Lines floating at the water's surface;
- (b) Positively buoyant groundline; and
- (c) Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 of overall length of the buoy line.

## 12.07: Conduct Related to Interacting with Right Whales

(1) Harassment and Harm. It shall be unlawful for any vessel, or operator thereof, to harass or harm any right whale at any time or place.

(2) Vessel Interactions and Buffer Zones. It shall be unlawful for any vessel registered in Massachusetts or within the waters under the jurisdiction of the Commonwealth to:

- (a) enter into a Buffer Zone created by a surfacing right whale;
- (b) approach or intercept a right whale from a Buffer Zone; or
- (c) not depart immediately from a Buffer Zone upon the presence of a surfacing right whale.

(3) Commercial Fishing Activity and Buffer Zones. It shall be unlawful for any commercial fishing vessel which has completed a haul back, a tow of its gear, or otherwise completed its active fishing operation and is no longer at anchor not to depart immediately from a Buffer Zone upon presence of a surfacing right whale. If a commercial fishing vessel is in the act of hauling back, towing gear, or is actively engaged in a fishing operation within a Buffer Zone created by a surfacing right whale, the vessel may complete its haul, tow or active fishing operation provided it

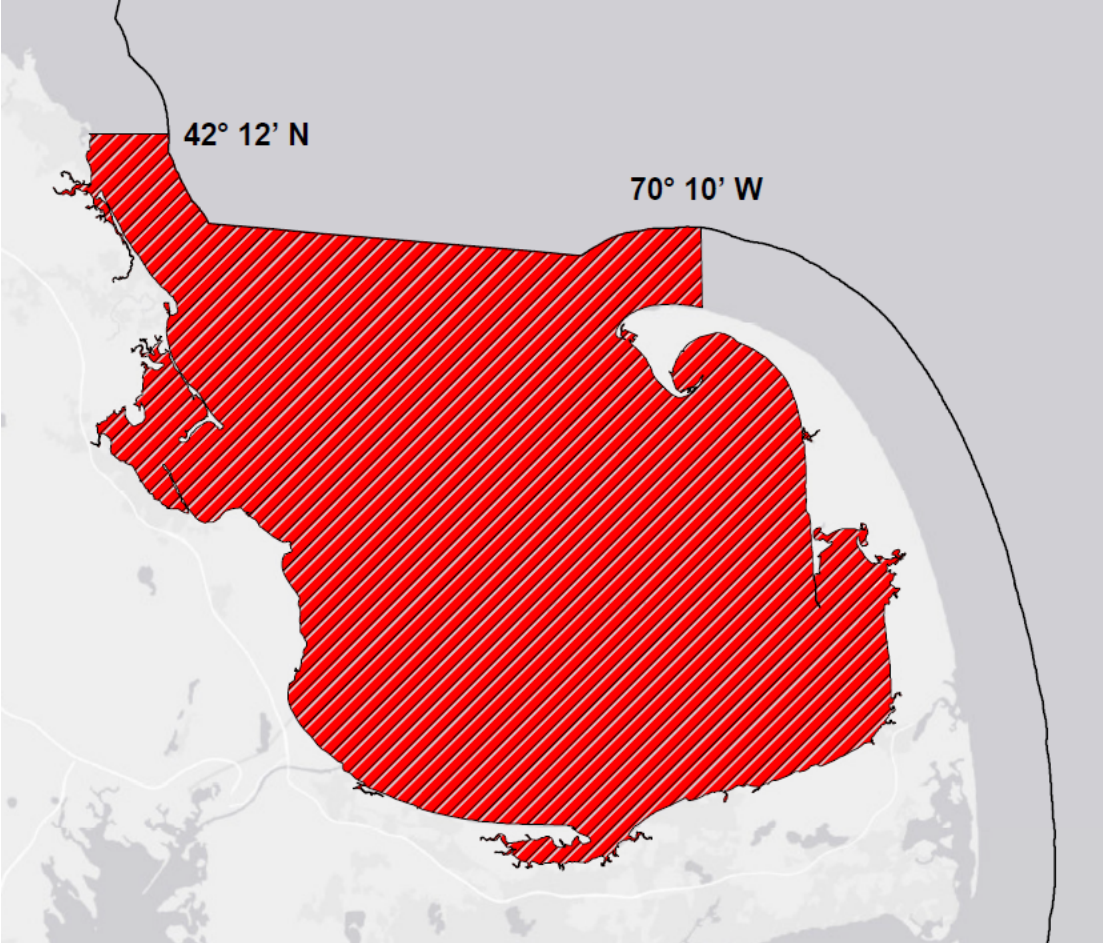
does so with minimum disruption to the right whale and immediately departs from the Buffer Zone upon completion. This provision shall not authorize a commercial fishing vessel to begin a haul, tow, or active fishing operation in or into a Buffer Zone.

- (4) **Commercial Fishing.** Commercial fishing vessels in the act of hauling back, towing gear or engaged in fishing operations at anchor within a Buffer Zone created by a surfacing right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow, or fishing operation. In no event may 322 CMR 12.07(4) be construed to authorize a commercial fishing vessel to begin to haul, tow, or conduct its fishing operation in or into a Buffer Zone.
- (5) **Entanglements.**
- (a) It shall be unlawful for the operator of any vessel to immediately fail to report the entanglement of a right whale in any fishing gear or lines.
- (b) Operators of vessels that observe right whales entangled in fishing gear or lines shall report said entanglements to the National Marine Fisheries Service, the Office of Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled right whale may operate in the Buffer Zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.
- (c) Upon reporting an entanglement in accordance with this section - and if so requested by the National Marine Fisheries Service, the Office of Law Enforcement, the Coast Guard, or to designees of those agencies - the vessel that has sighted the entangled whale is exempt from complying with 322 CMR 12.07(2) for the sole purpose of assisting in the locating and tracking of the right whale. Any vessel operating in accordance with this section shall operate the vessel so as to minimize the disruption to the right whale; operate the vessel at a speed of less than 10 nautical miles per hour; and immediately depart the Buffer Zone once disentanglement efforts begin or when requested to do so by the agencies or their designees.
- (6) **Exceptions for Scientific Permit Holders.** Any entity issued a special scientific permit from the Division in accordance with G.L. c 130, § 17 and 322 CMR 7.01(4)(c) or from any federal department, agency or instrumentality having the authority to issue permits for scientific research, observation, or management of right whales may be exempt from this section for the purposes of conducting the research activity authorized by such a permit.

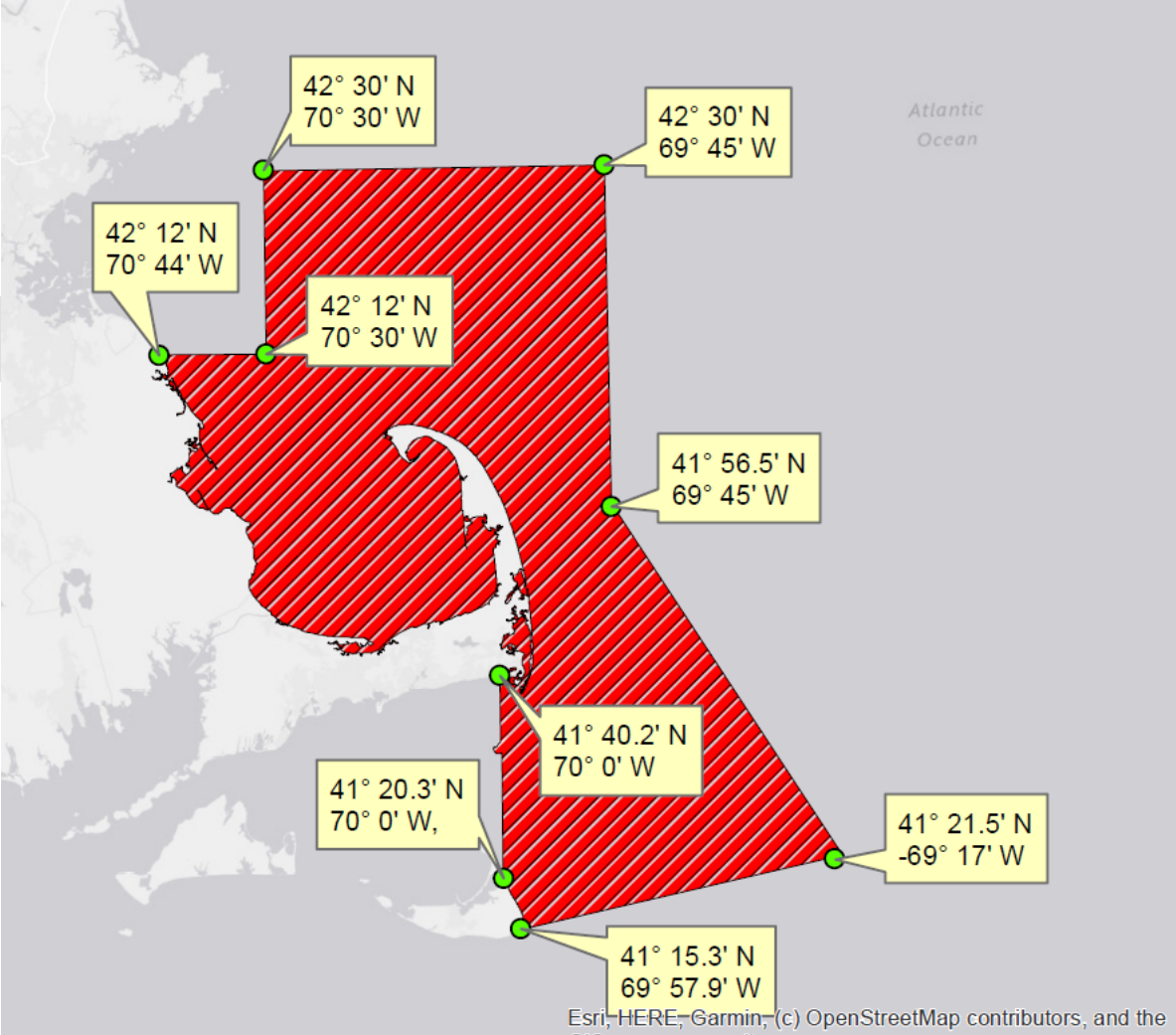


12.08: Maps

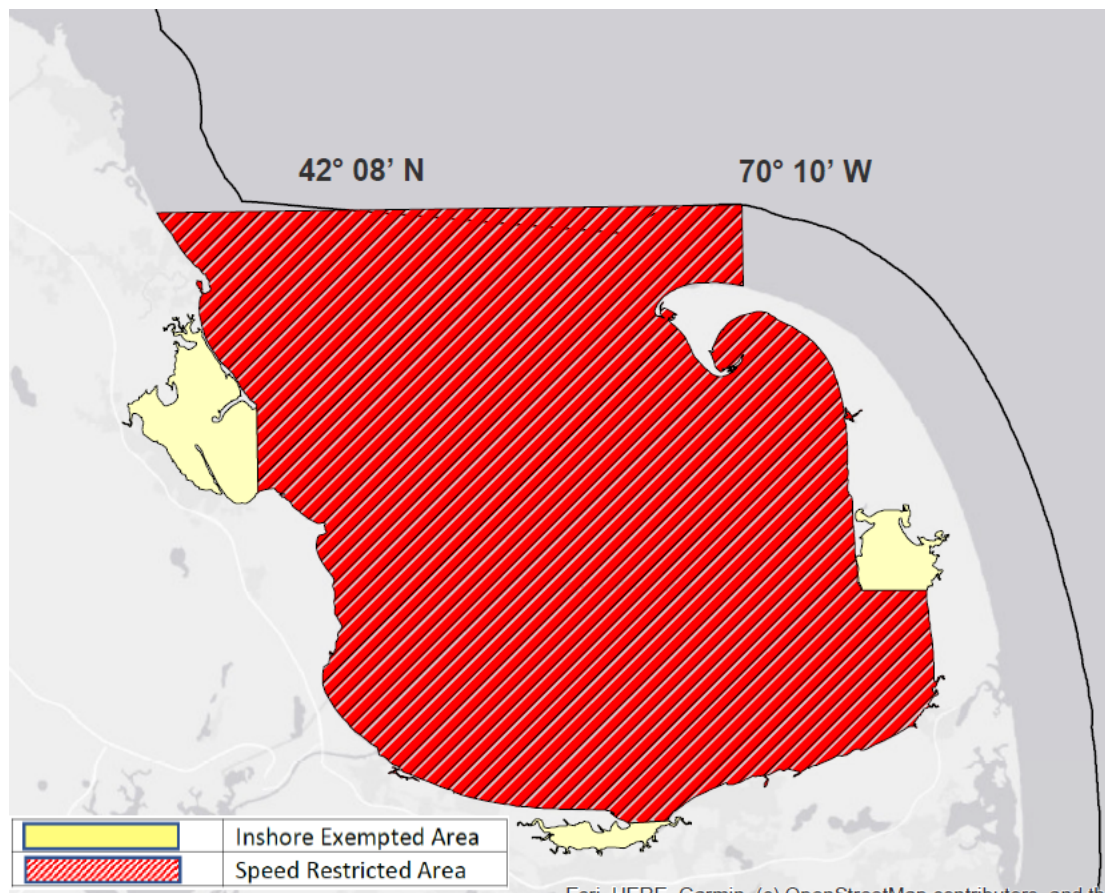
(1) Gillnet Closure to Protect Right Whales in Cape Cod Bay



(2) Massachusetts Restricted Area



322 CMR: DIVISION OF MARINE FISHERIES  
(3) Cape Cod Bay Vessel Speed Restricted Area



~~12.07: Buffer Zone~~

~~Except as otherwise provided for in 322 CMR 12.10, it is unlawful:~~

- ~~(1) for any vessel to enter a right whale buffer zone;~~
- ~~(2) for any vessel to approach or intercept a right whale within a buffer zone;~~
- ~~(3) for any vessel not to depart immediately from a buffer zone; or~~
- ~~(4) for any commercial fishing vessel which has completed a haul back, a tow of its gear or otherwise completed its fishing operation and is no longer at anchor not to depart immediately from a buffer zone.~~

~~12.08: Harassment and Harm~~

~~It is unlawful for any operator of a vessel to harass or to harm any right whale at any time or place.~~

~~12.09: Entanglement Reporting~~

~~It is unlawful for any operator of a commercial or recreational vessel to fail to report the entanglement of a right whale in its gear or lines.~~

~~12.10: Exceptions~~

- ~~(1) Federal Permit. Any person issued a permit from any federal department, agency or instrumentality having authority to issue permits for the scientific research, observation, or management of the right whale, may conduct the activity authorized by such permit.~~
- ~~(2) State Permit. Any person issued a permit in accordance with 322 CMR 7.01(4)(d) for the scientific research, observation, or management of the right whale may conduct the activity authorized by such permit.~~
- ~~(3) Commercial Fishing. Commercial fishing vessels in the act of hauling back, towing~~



~~gear or engaged in fishing operations at anchor within a buffer zone created by the surfacing of a right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow, or fishing operation. In no event may 322 CMR 12.09(3) be construed to authorize a commercial fishing vessel to begin to haul, tow, or conduct its fishing operation in or into a buffer zone.~~

~~(4) Disentanglement.~~

~~(a) To assist federally approved disentanglement efforts for northern right whales, any vessel that reports to the National Marine Fisheries Service, the Division of Environmental Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled right whale may operate in the buffer zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.~~

~~(b) Any vessel operating in the buffer zone under 322 CMR 12.06(4) shall:~~

- ~~1. operate so as to minimize disruption to the right whale, and~~
- ~~2. immediately depart the buffer zone once the disentanglement effort begins, or when requested to do so by the agencies or their designees.~~

~~(c) When conducting activities within the scope of 322 CMR 12.06(4), vessels shall make every effort to comply with 322 CMR 12.00.~~

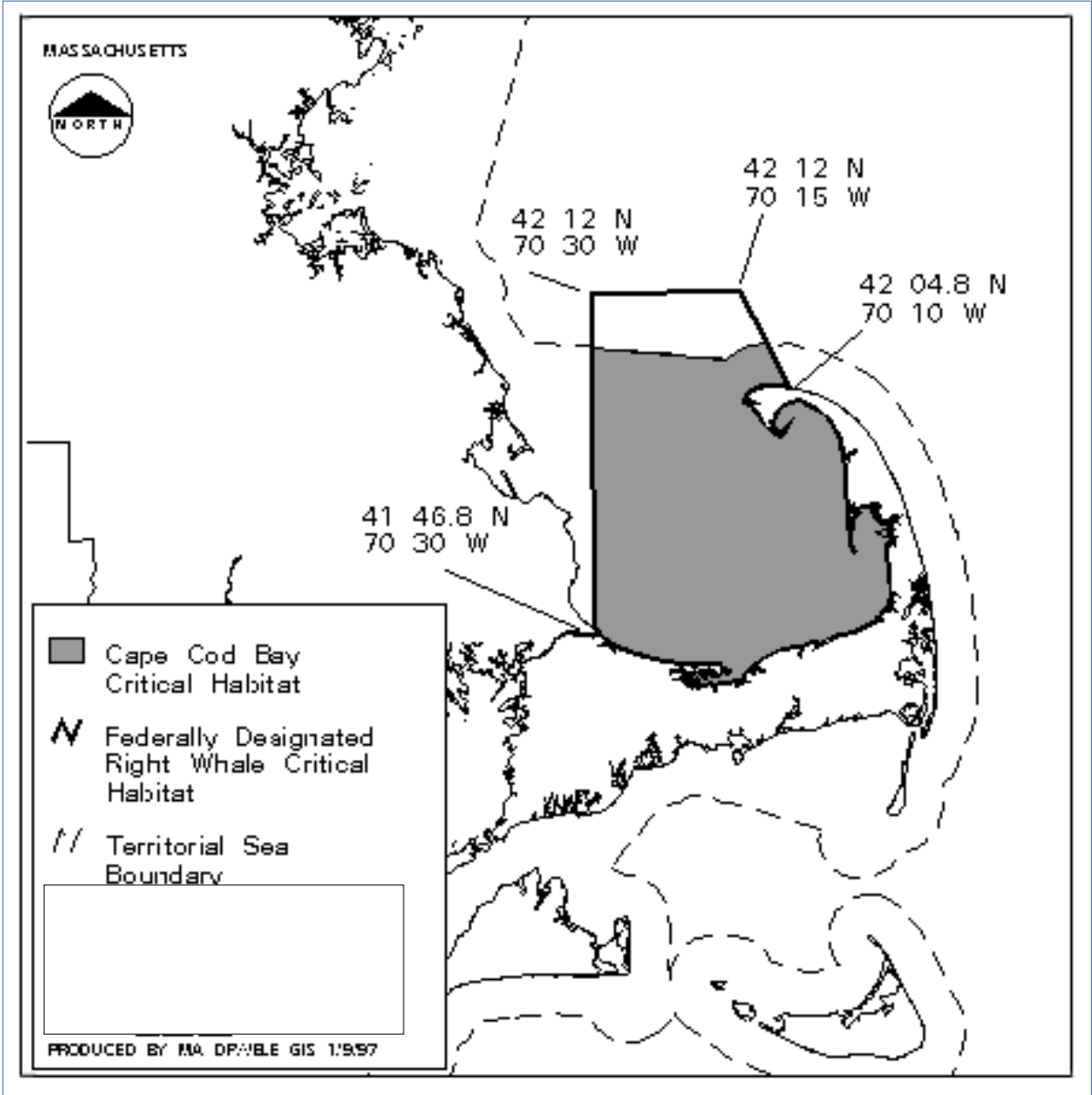
**12.11 Large Whale Seasonal Trap/Pot Gear Closure Area**

~~The following map depicts the federal Massachusetts Restricted Area and its coordinates. That portion of the Massachusetts Restricted Area within the waters under the jurisdiction of the Commonwealth is referred to as the Large Whale Seasonal Trap/Pot Gear Closure Area.~~

DRAFT

12.12: Right Whale Cape Cod Bay Critical Habitat Map

The following map depicts the Cape Cod Bay Critical Habitat and its coordinates.



DRAFT

# Draft Right Whale Conservation Regulation Summary

- Closures
  - Expand existing Feb. 1 – Apr. 30 commercial trap gear closure to all state-waters.
  - Extend Dec. 15 – Apr. 14 conch pot closure through Apr. 30.
  - Adopt Columbus Day to Memorial Day recreational trap gear closure.
  - Expand Jan. 1 – May 15 CCB gillnet closure along south shore (Plymouth to Scituate).
- Gear Restrictions
  - Adopt a 1,700 lb breaking strength buoy line requirement for trap gear
  - Require commercial trap fishermen to fish buoy lines  $> 3/8''$
  - Require recreational trap fishermen to fish buoy lines  $> 5/16''$
  - Prohibit single lobster traps fished from vessels  $> 29'$  (effective 1/1/22)
- Licensing
  - Cap annual issuance of Seasonal Lobster Permits at 150



# Timeline for Rule Making

- Oct. 29: Review with MFAC
- Nov. 13: Publish public hearing notice
- Dec. 7 – 11: Hold virtual public hearings
- Dec. 18: Conclude written public comment period
- Jan. 7: Provide final recommendation to MFAC
- Feb. 1: Promulgate final regulations





# 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](http://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: October 28, 2020

SUBJECT: **Atlantic Bluefin Tuna Purse Seine Regulations**

#### Proposal

For 2021, I intend to go out to public hearing with draft regulations to rescind those regulations at 322 CMR 6.04 governing the management of the Atlantic bluefin tuna purse seine fishery in the waters under the jurisdiction of the Commonwealth, and instead replace these existing regulations with a prohibition on this activity.

#### Background

In 1974, DMF – with approval of the MFAC - adopted regulations governing the taking, landing, and sale of bluefin tuna in Massachusetts. These regulations predated the federal management of tunas by one year. In 1975, Congress adopted the Atlantic Tunas Convention Act. Pursuant to this Act, federal regulations governing the harvest of tunas (including bluefin tuna) were promulgated and made applicable within state-waters. In response, DMF and the MFAC rescinded all state regulatory provisions affecting bluefin tuna, except those governing the harvest of bluefin tuna by purse seine. In 1979, NOAA Fisheries published an interpretation of its regulations that stated the application of federal regulations in state waters did not prevent the application of state regulations within the state's jurisdiction provided that when applied concurrently state regulations do not conflict with federal regulations and do not undermine tuna conservation measures.

The remaining measures established a regulated purse seine fishery for bluefin tuna. This fishery was subject to a limited entry regulated fishery permit endorsement ("bluefin tuna purse seine"), was to be conducted after September 1, and would not be authorized in certain waters of Cape Cod Bay during the weekend. These actions were taken to limit the proliferation of new purse seining effort and to minimize user group conflicts with other tuna fishermen. In the early 2000s, former Director Diodati established permit conditions for the bluefin tuna purse seine regulated fishery permit endorsement to further manage the fishery. The permit conditions would annually prohibit fishermen from fishing for bluefin tuna with purse seines inside Cape Cod Bay. Although certain permit holders continued to renew their permits into this past decade, this effectively ended the bluefin tuna purse seine fishery in state-waters.

As of 2020, DMF no longer issues any bluefin tuna purse seine permit endorsements. Accordingly, I am seeking to eliminate these remnant regulations. Instead, to simplify the regulatory code, I seek to prohibit the use of purse seine gear as a means of harvesting bluefin tuna in the waters under the jurisdiction of the Commonwealth.



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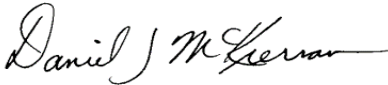
KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: October 23, 2020

SUBJECT: **Future Rule Making on Recreational Striped Bass Circle Hook Requirement**

#### Proposal

This memorandum provides notice to the MFAC of my intent to take to public hearing this winter mandatory revisions to our recreational striped bass circle hook requirement. Specifically, we will propose to rescind the two exemptions our regulations allow for: 1) anglers fishing aboard for-hire vessels, and 2) anglers fishing with an artificial lure to which natural bait is attached. These revisions are necessary to comply with the interstate Striped Bass Management Board's recent decisions pertaining to the states' implementation of Addendum VI's circle hook requirement for 2021. Once implemented, all anglers recreationally fishing for striped bass with natural bait shall be required to use a non-offset circle hook, both in Massachusetts and throughout the stock's range.

#### Background

To reduce recreational discard mortality, Addendum VI to Amendment 6 of the Interstate Fishery Management Plan for Striped Bass requires all states to implement the mandatory use of circle hooks by anglers recreationally fishing for striped bass with bait. As approved by the Atlantic States Marine Fisheries Commission's Striped Bass Management Board in October 2019, Addendum VI offered states "flexibility to further specify details of the regulation to address specific needs" of their fishery.

While the mandate was not required to be implemented until 2021, DMF went to rule making that winter to pro-actively adopt a circle hook requirement (while bait fishing) for the 2020 fishing season. Based on stakeholder input received during the public comment period, the Division included the two exemptions described above in its final rule as implemented in May 2020. We did so, however, with the understanding that the continuation of these exemptions into 2021 would be decided by the Striped Bass Board during its review and approval of the states' implementation plans (as was indicated in my March 27, 2020 final recommendation memo to the MFAC).

The states' circle hook implementation plans were reviewed by the Striped Bass Board on October 21, 2020 at the ASMFC's Annual Meeting. Despite the language in Addendum VI, the Board did not approve any of the proposed exemptions to the circle hook mandate. In addition to our requested exemptions, this included only one other from the state of Maine for single-hook rubber or latex tube rigs. The Division expects to be able to comply with the Board's decisions prior to the start of the 2021 fishing season.



# ASMFC Updates

## **Striped Bass: Addendum 6 & Amendment 7**

- No requested circle hook exemptions were approved.
- Approval of Amendment 7 PID for public comment delayed until February.

## **Spiny Dogfish: FY2021-2022 Specifications**

- Commercial quota increase of 27% from FY20 (to 29.6 mlb).
- 6,000-lb federal waters & northern region state waters trip limit; future analyses.



# ASMFC Updates

## **Atlantic Herring: Area 1A Seasonal Quota Allocations**

- 72.8% June-Sept & 27.2% Oct-Dec; closures at 92% use (consistent with 2020).
- Will set other Area 1A specifications after NOAA publishes final rule on NEFMC recommendations (including ACL decrease of 57% for FY21).

## **Winter Flounder: Stock Assessment Results**

- GOM: Overfishing not occurring & unknown biomass status.
- SNE/Mid-Atlantic: Overfishing not occurring but stock is overfished.
- Board to set state waters measures in February, after NEFMC recommends overall specifications in December.



# ASMFC Updates

## Menhaden: 2021-2022 TACs under ERP Management

- 10% decrease from 216,000 mt to 194,400 mt

Probability of Exceeding the ERP Target	TAC for 2021-2022	TAC for 2021	TAC for 2022
25%	148,700	148,700	150,800
30%	153,200	153,200	157,200
35%	158,000	158,000	162,900
40%	163,100	163,100	169,400
45%	169,400	169,400	177,300
50%	176,800	176,800	187,400
55%	186,600	186,600	200,600
60%	197,200	197,200	216,200

TAC	Probability of Exceeding ERP Target		Probability of Exceeding ERP Threshold	
	2021	2022	2021	2022
194,400 mt (-10%)	58.5%	52.5%	0%	0%
205,200 mt (-5%)	63.5%	56.5%	0%	0%
216,000 mt (current TAC)	66%	60%	0%	0%
226,800 mt (+5%)	68.5%	62.5%	0%	0.5%
237,600 mt (+10%)	70.5%	65%	0.5%	0.5%

Year	TAC	Landings
2017	200,000 mt	173,000 mt
2018	216,000 mt	191,500 mt
2019	216,000 mt	208,800 mt
2020	216,000 mt	Not available

- MA Quota: 5,407,708 lb
- Reallocation discussion to begin in February



# ASMFC Updates

## Lobster: Stock Assessment Results

- GOM/GB: Not overfished nor experiencing overfishing

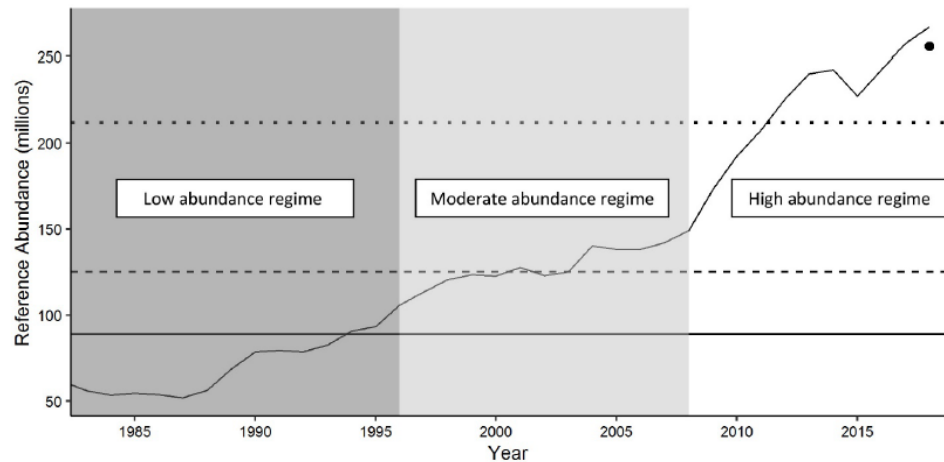


Figure 1. GOM/GBK stock abundance compared to the fishery/industry target (dotted black line), abundance limit (dashed black line), and abundance threshold (solid black line) reference points based on detected low (dark grey period), moderate (light grey period), and high (white period) abundance regimes. The circle is the three-year (2016-2018) average reference abundance.

- SNE: Significantly depleted

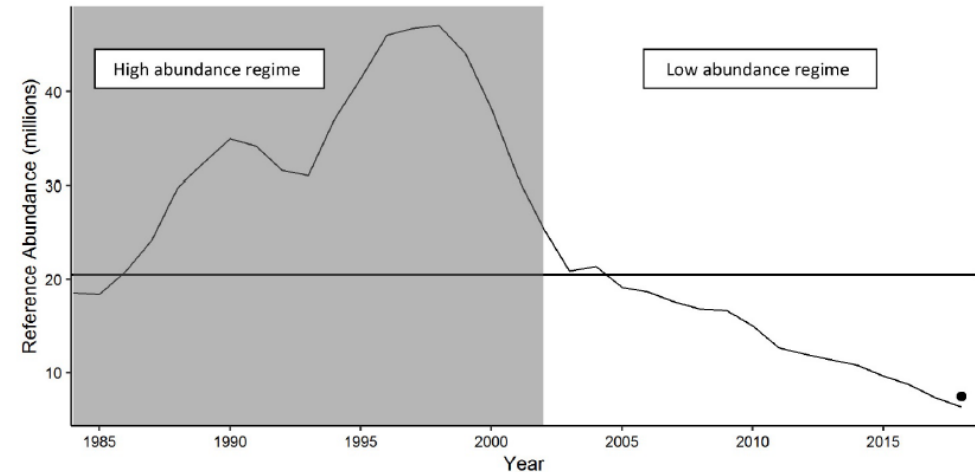


Figure 2. SNE stock abundance compared to the abundance threshold (solid black line) reference point based on detected high (grey period) and low (white period) abundance regimes. The circle is the three-year (2016-2018) average reference abundance.

- Other Issues: Requested VTR changes; Electronic tracking white paper

# ASMFC/MAFMC Updates

## **Bluefish Allocation & Rebuilding Amendment**

- Range of alternatives approved; public hearing document reviewed in February.

## **Recreational Management Reform Initiative (bluefish/fluke/scup/BSB)**

- Addendum/Framework: incorporating MRIP uncertainty; maintaining status quo measures; multi-year measures; timing of federal waters measures; HCR.
- Amendment: recreational sector separation and catch accounting.

## **Black Sea Bass Commercial Reallocation**

- MA Public Hearing Webinar tonight at 6pm!



# NEFMC Updates

## Activities between September and October MFC Meetings (September 28<sup>th</sup> – October 29<sup>th</sup>)

### Two Council meetings during this period:

1. September 29<sup>th</sup> – October 1<sup>st</sup>, final actions on:  
Groundfish (A23), Scallops (A21) and Atlantic herring (FW8)
2. October 27<sup>th</sup>, final actions on  
2021 priorities and EO on seafood competitiveness



# NEFMC Updates - GROUND FISH

- **A23 Outcome:**

100% monitoring goal over 4 years → 2024 review to adjust coverage rate

Intent for federal funding to reimburse 100% of industry

- **CLF Petition for Rulemaking on Atlantic Cod**

- **FW 61 – final action in December**

FY2021-2023 specifications

Rebuilding (white hake)

Red hake exemption

- **New Committee Structure**

## 2021 Priorities:

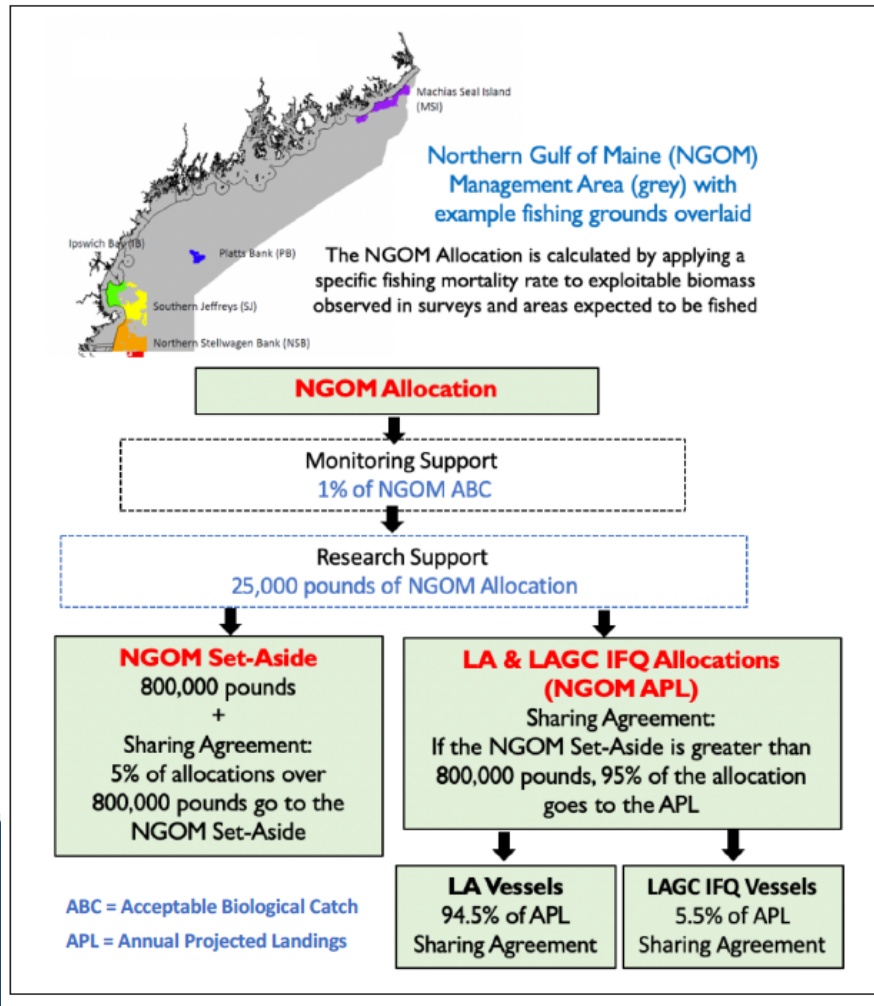
- FW61
- Monitoring review metrics
- For-hire limited entry consideration
- Adjust management as needed relative to Atlantic Cod Stock Structure revisions





# NEFMC Updates - SCALLOP

- **A21 outcome:**



800,000-lb. NGOM TAC with 95/5 split  
800-lb IFQ trip limit in AAs

## 2021 Priorities:

- FW33
- Survey & RSA review recommendations
- Rotational management review

Massachusetts Division  
of Marine Fisheries





# NEFMC Updates - Herring

- **FW8 Outcome:**

## Specs

Specification	2021	2022	2023
Overfishing Limit (OFL)	23,423	26,292	44,600
Acceptable Biological Catch (ABC)	9,483	8,767	8,767

## Mackerel Optimization

Sub-ACL	Total ACL
40,000-lb @ 90%	
2,000-lb. @ 98%	2,000-lb. @ 95%

### 2021 Priorities:

- Rebuilding
- FW7



# NEFMC Updates

## EO Seafood Competitiveness

- Seafood marketing branch
- Seafood imports meet/exceed US fishery standards
- Develop tools/website to allow online exchange of Atlantic Sea Scallop fishery access area trips
- Modify LAGC closure noticing



# NEFMC Upcoming

## **December Council (1<sup>st</sup> – 3<sup>rd</sup>), final action on:**

EBFM prioritization, Groundfish FW61 & Spiny Dogfish specs

## **Committee and other work in the meantime:**

Nov 4 – Groundfish

Nov 17 - Habitat

Nov 9-10 – Northeast Region  
Coordinating Council (NRCC)

Nov 18 - Executive

Nov 12 – Scallops & SSC (hakes)

Nov 23 – SSC

Nov 16 – Whiting

Nov 30 - Groundfish





# Atlantic States Marine Fisheries Commission

## 79<sup>th</sup> Annual Meeting Webinar Summary

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*Sustainable and Cooperative Management of Atlantic Coastal Fisheries*

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79<sup>th</sup> Annual Meeting Webinar  
October 19-22, 2020

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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## **ATLANTIC HERRING MANAGEMENT BOARD (OCTOBER 19, 2020)**

### ***Meeting Summary***

The Atlantic Herring Management Board reviewed the 2021-2023 fishery specifications package which was approved by the New England Fishery Management Council (Council) through Framework 8. The Framework proposes a lower sub-annual catch limit (ACL) for Area 1A in 2021 (1,391 mt) and 2022/2023 (1,184 mt) based on results of the 2020 Management Track Assessment and following the acceptable biological catch ABC control rule proposed in Amendment 8. The Framework also proposes changes to the 2,000-pound incidental catch limit for Atlantic herring in Areas 2 and 3 to aid the mackerel fishery in better utilizing its available quota when the herring quota is low. This and other decision points in Framework 8, such as the management uncertainty buffer, transfers for at-sea processing, carryover of unused quota, and the research set aside, were informed by recommendations from the Council's Scientific and Statistical Committee, Advisory Panel, and Herring Committee.

Framework 8 was submitted to NOAA Fisheries for review in September. Similar to previous years, the Board decided to wait until a final rule is released by NOAA Fisheries before it considers specifications for the Area 1A fishery in 2021 (and beyond). However, the Board did approve a seasonal quota allocation for the 2021 Area 1A fishery with 72.8% available from June through September and 27.2% allocated from October through December, which is consistent with the seasonal allocation strategy set for the Area 1A fishery in 2020. Additionally, the fishery will close when 92% of the seasonal period's quota has been projected to be harvested and underages from June through September shall be rolled into the October through December period.

Lastly, the Board received an update regarding ongoing discussions between Commission and Council leadership on better coordinating state and federal herring management. A proposed list of shared management responsibilities, developed by a work group of Commission Plan Review Team and Council Fishery Management Action Team members, was reviewed by Commission and Council leadership. While no action was taken at their last meeting, leadership agreed to continue to discuss how best to cooperatively manage the herring resource and fishery. Another update will be provided to the Board in February.

For more information, please contact Max Appelman, Fishery Management Plan Coordinator, at [mappelman@asmfc.org](mailto:mappelman@asmfc.org) or 703.842.0740.

### ***Motions***

**Move to allocate the 2021 Area 1A sub-ACL seasonally with 72.8% available from June through September and 27.2% allocated from October through December. The fishery will close when 92% of the seasonal period's quota has been projected to be harvested and underages from June through September shall be rolled into the October through December period.**

Motion made by Ms. Ware and seconded by Mr. Kane. Motion approved by consent (Roll Call: in favor – ME, NH, MA, RI, CT, NY, NJ, NEFMC, NMFS)

## **WINTER FLOUNDER MANAGEMENT BOARD (OCTOBER 19, 2020)**

### ***Meeting Summary***

The Winter Flounder Management Board reviewed the 2020 assessment updates for the Gulf of Maine (GOM) and Southern New England Mid-Atlantic (SNE/MA) winter flounder stocks. The stock assessment reports were peer-reviewed in September as part of the Northeast Fisheries Science Center's 2020 Management Track Stock Assessment process.

The GOM stock assessment indicates overfishing was not occurring in 2019. The assessment produces biomass estimates from three different fall surveys, but the area-swept methodology does not provide biomass reference points, resulting in an unknown stock biomass status. The GOM survey indices of abundance are relatively flat over the full time series with little change to the size structure. The Board expressed concern that these indices of winter flounder abundance have not demonstrated any response to the large declines in commercial and recreational removals since the 1980s. It was suggested that research is needed to better understand winter flounder abundance and distribution within different habitat types and especially estuaries for future stock assessments.

The SNE/MA assessment indicates the stock is overfished but overfishing did not occur in 2019. The spawning stock biomass estimate reached a time series low in 2019 of 64% of the biomass threshold despite sustained low levels of fishing mortality. Recruitment, an important indicator of the stock's ability to rebuild, has declined sharply since the 1980s and remains near the time series low. The Board expressed concern over the SNE/MA's depleted stock status and the low probability of rebuilding to the biomass target by 2023, the rebuilding plan target date. The Board emphasized the importance of incorporating environmental indicators into future stock assessments to better capture the influence of climate change on the stock's ability to rebuild.

In December, the New England Fishery Management Council will recommend specifications to NOAA Fisheries based on the 2020 assessment results and recommendations from its Scientific and Statistical Committee. After reviewing the Council's recommendation to NOAA, the Board will set state water specifications in February.

For more information, please contact Dustin Colson Leaning, Fishery Management Plan Coordinator, at [dleaning@asmfc.org](mailto:dleaning@asmfc.org).

### ***Motions***

**Move to nominate William Hyatt as the Vice-chair to the Winter Flounder Management Board.**

Motion made by Ms. Ware and seconded by Ms. Patterson. Motion stands approved.

***Press Release***

**American Lobster Benchmark Stock Assessment Finds GOM/GBK Stock Not Overfished nor Experiencing Overfishing & SNE Stock Significantly Depleted  
*Assessment Introduces Regime Shift Methodology to Address Changing Environmental Conditions***

The 2020 American Lobster Benchmark Stock Assessment presents contrasting results for the two American lobster stock units, with record high abundance and recruitment in the Gulf of Maine and Georges Bank stock (GOM/GBK) and record low abundance and recruitment in the Southern New England stock (SNE) in recent years. The GOM/GBK stock is not overfished nor experiencing overfishing. Conversely, the SNE stock is significantly depleted with poor prospects of recovery. Stock status was assessed using the University of Maine Stock Assessment Model for American Lobster (UMM, Chen et al. 2005), a statistical catch-at-length model that tracks the population of lobster by sex, size and season over time.

“On behalf of the American Lobster Board, I want to applaud the members of the Technical Committee and Stock Assessment Subcommittee for their exceptional work on the 2020 Benchmark Stock Assessment Report,” stated Board Chair Dan McKiernan from Massachusetts. “This assessment made a notable advancement in considering the impact of changing environmental conditions on lobster population dynamics.”

Extensive research has highlighted the influence of the environment on American lobster life history and population dynamics. Among the critical environmental variables, temperature stands out as the primary influence. Further, its range is experiencing changing environmental conditions at some of the fastest rates in the world. Therefore, considering these environmental influences is vital when assessing the lobster stocks and was a focal point of this stock assessment. Environmental data time series included water temperatures at several fixed monitoring stations throughout the lobster’s range, average water temperatures over large areas such as those sampled by fishery-independent surveys, oceanographic processes affecting the environment, and other environmental indicators such as lobster prey abundance.

Environmental time series were analyzed for regime shifts, which indicate a significant difference in the lobster’s environment and population dynamics from one time period to another. Regime shifts can change a stock’s productivity, impacting the stock’s level of recruitment and its ability to support different levels of catch. Temperature time series were also analyzed to quantify the effect of temperature on survey catchability of lobster and correct trends in abundance estimated from surveys by accounting for temperature-driven changes in catchability through time.

Model-estimated abundance time series were also analyzed for shifts that may be attributed to changing environmental conditions and new baselines for stock productivity. Shifts were detected for the GOM/GBK stock in 1996 and 2009 and one shift was detected for the SNE stock in 2003. The GOM/GBK stock shifted from a low abundance regime during the early 1980s through 1995 to a moderate abundance regime during 1996-2008, and shifted once again to a high abundance regime during 2009-2018 (Figure 1). Conversely, the SNE stock shifted from a high abundance regime during



the early 1980s through 2002 to a low abundance regime during 2003-2018 (Figure 2). New reference points were developed to account for the changing regimes.

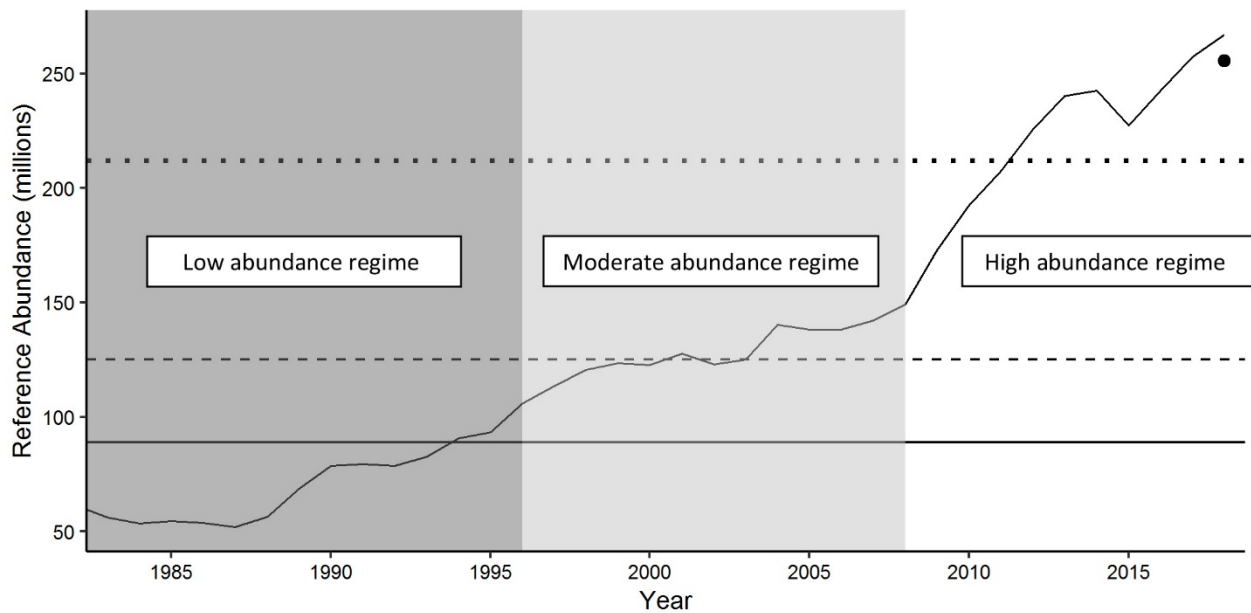


Figure 1. GOM/GBK stock abundance compared to the fishery/industry target (dotted black line), abundance limit (dashed black line), and abundance threshold (solid black line) reference points based on detected low (dark grey period), moderate (light grey period), and high (white period) abundance regimes. The circle is the three-year (2016-2018) average reference abundance.

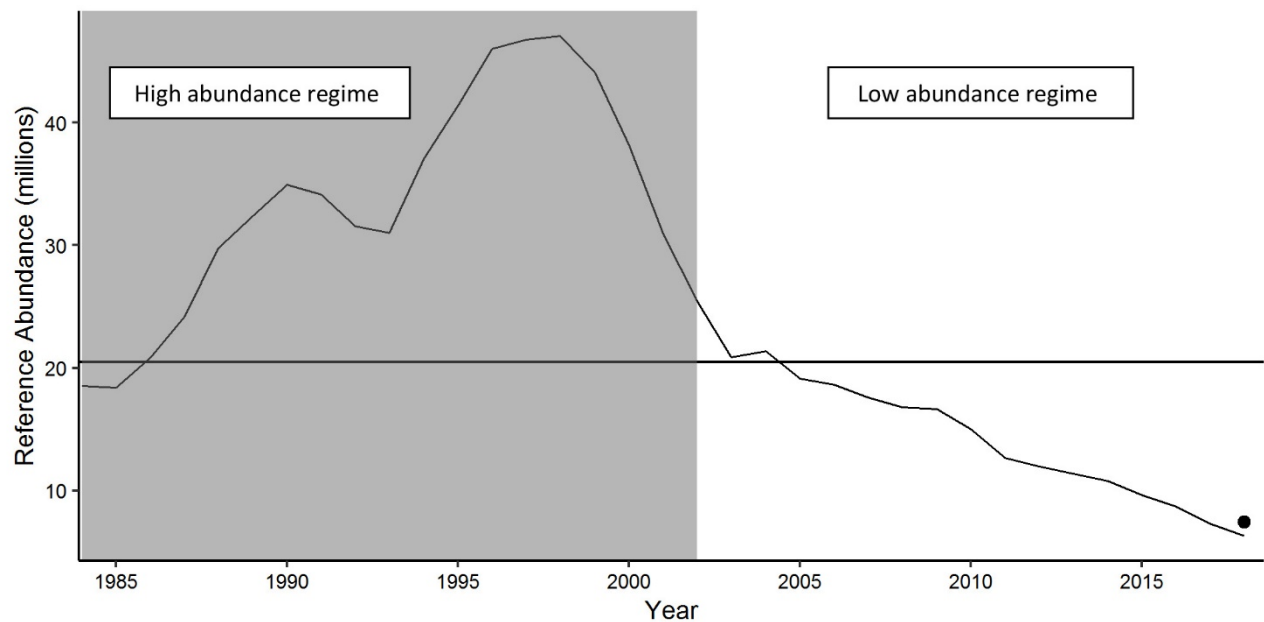


Figure 2. SNE stock abundance compared to the abundance threshold (solid black line) reference point based on detected high (grey period) and low (white period) abundance regimes. The circle is the three-year (2016-2018) average reference abundance.

In this assessment, three reference points are used to characterize stock abundance. The **abundance threshold** is calculated as the average of the three highest abundance years during the low abundance regime. A stock abundance level below this threshold is considered significantly depleted and in danger of stock collapse. This was the only abundance reference point recommended for the SNE stock due to

its record low abundance and low likelihood of reaching this threshold in the near future. The **abundance limit** is calculated as the median abundance during the moderate abundance regime. Stock abundance that falls below this limit is considered depleted because the stock's ability to replenish itself is diminished. The **fishery/industry target** is calculated as the 25<sup>th</sup> percentile of the abundance during the high abundance regime. In this case, when abundance falls below this target, the stock's ability to replenish itself is not jeopardized, but it may indicate a degrading of economic conditions for the lobster fishery.

Two reference points are used to evaluate the fishing mortality condition of the stocks. The **exploitation threshold** is calculated as the 75<sup>th</sup> percentile of exploitation during the current abundance regime. The stock is considered to be experiencing overfishing if exploitation exceeds the exploitation threshold. The **exploitation target** is calculated as the 25<sup>th</sup> percentile of exploitation during the current abundance regime.

Based on these reference points, the GOM/GBK stock is not depleted and overfishing is not occurring. The average abundance from 2016-2018 was 256 million lobster which is greater than the fishery/industry target of 212 million lobster. The average exploitation from 2016-2018 was 0.459, below the exploitation target of 0.461.

The SNE stock is significantly depleted and overfishing is not occurring. The average abundance from 2016-2018 was 7 million lobster, well below the abundance threshold of 20 million lobster. The average exploitation from 2016-2018 was 0.274, falling between the exploitation threshold of 0.290 and the exploitation target of 0.257.

Stock indicators were also used as an independent, model-free assessment of the lobster stocks. These indicators are based strictly on observed data and are free from inherent assumptions in the population dynamics models. GOM/GBK stock indicators showed similar results to the assessment model, with increasing abundance and distribution of recruits and larger-sized lobster over time. However, abundances of young-of-year (YOY) lobster have been negative or neutral since the 2015 stock assessment and YOY abundance appears particularly poor in the southwestern areas of the stock. Recent research has indicated lobster larvae may be settling in habitat outside that covered by current surveys, but these trends are concerning and need to be further researched. Exploitation generally declined through time to its lowest levels in recent years. Fishery performance indicators were generally positive in recent years with several shifting into positive conditions around 2010. New stress indicators were developed for this assessment, including shell disease prevalence and the number of annual days with temperature equal to or above 20° C. These indicators show relatively low stress, but indicate some increasingly stressful conditions through time, particularly in the southwest portion of the stock.

Indicators for the SNE stock also showed similar results to the assessment model, with decreasing abundance and distribution of all life stages to low levels in recent years. All indicators averaged below their time series medians since the 2015 assessment and many have averaged below the 25<sup>th</sup> percentile. Mortality indicators based on exploitation rates were variable across surveys, and fishery performance indicators have generally shown deteriorating performance in recent years. The stress indicators point toward similar negative conditions in the stock's environment, including unfavorably warm waters and the manifestation of a stressful environment through high shell disease prevalence.

Combined, these indicators reflect the SNE stock's very poor condition and continuing recruitment failure.

The American Lobster Board accepted the Benchmark Stock Assessment and Peer Review Report for management use, adopted the new reference points as recommended by the assessment, and committed to considering management responses to the assessment findings at its next meeting in February 2021. In addition, the Board intends to continue development of Addendum XXVII, which was initiated in 2017 to proactively increase resilience of the GOM/GBK stock but stalled due to the prioritization of Atlantic right whale issues.

A more detailed overview of the stock assessment, as well as the Benchmark Stock Assessment will be available on the Commission website, [www.asmfc.org](http://www.asmfc.org), on the American Lobster webpage under stock assessment reports. For more information, please contact Caitlin Starks, Fishery Management Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org) or 703.842.0740.

###

PR20-22

### ***Meeting Summary***

After reviewing and accepting the 2020 American Lobster Benchmark Stock Assessment and Peer Review for management use, the American Lobster Management Board considered several additional items: a report on data collection requirements for 2021, a report on the electronic tracking pilot program, and the annual Fishery Management Reviews (FMP) for Lobster and Jonah crab.

Staff provided a report on the data collection requirements under Addendum XXVI for which implementation had been delayed from January 1, 2019 to January 1, 2021 in order to incorporate the elements into all reporting platforms. Over the past several months, a Lobster Data Elements Work Group has met weekly to develop definitions for the remaining data elements to ensure consistency in state and federal lobster-only reporting. Specifically, the Work Group recommended changes to federal collection of five effort level and gear characterization data points after the lobster-only permit holders begin reporting via federal VTRs. These include number of trap hauls, number of traps in the water by area, traps per trawl hauled, number of buoy lines by area, and total number of buoy lines. The Board forwarded a recommendation to the Interstate Fishery Management Program Policy Board to send a letter to NOAA Fisheries requesting these changes to VTRs; if accepted, it may be one to two years until implementation.

Next, the Board received a presentation on the results of the electronic tracking pilot program, which was initiated through Addendum XXVI. The project assessed tracking devices from Succorfish, Rock7, and Pelagic Data Systems by placing them on volunteer lobster vessels from Maine and Massachusetts with federal lobster permits from June 2019 to May 2020. Though the devices differed somewhat in features and performance, they all were able to deliver vessel positions and detect individual trap hauls. Cellular based systems were both lower in cost and permitted faster ping rates than satellite systems. Recognizing the critical need for electronic tracking to characterize spatial and temporal effort of the lobster fishery, the Board supported an expanded pilot project and future work on data integration and hardware testing. The Board Chair and several other members volunteered to produce a white paper describing the need for this information, which will be presented at the next meeting.

Finally, the Board considered the American Lobster FMP Review for the 2019 fishing year, and the Jonah Crab FMP Reviews for the 2018 and 2019 fishing years. No management concerns were raised for lobster, however, for the past three years New York has been unable to implement two required measures for Jonah crab: regulations to limit the directed trap fishery to lobster permit holders only, and the 1,000 crab bycatch limit for non-trap and non-lobster trap gear. The Board approved the FMP Reviews, state compliance reports, and *de minimis* requests for both species, and also made a recommendation to the ISFMP Policy Board to send a letter to New York regarding its implementation of Jonah crab measures.

For more information, please contact Caitlin Starks, Fishery Management Plan Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org) or 703.842.0740.

### ***Motions***

**Move to accept the 2020 American Lobster Benchmark Stock Assessment and Peer Review for management use.**

Motion made by Mr. Borden and seconded by Mr. Keliher. Motion passes by unanimous consent.

**Move to adopt the following reference points as recommended in the 2020 benchmark assessment for the GOM/GBK stock:**

- **Abundance reference points: Fishery/industry Target, Abundance Limit, and Abundance Threshold (212 million lobsters, 125 million lobsters, and 89 million lobsters, respectively)**
- **Exploitation Reference Points: exploitation threshold and exploitation target (75th and 25th percentiles of annual exploitation estimates during the current abundance regime)**
- **And for the SNE stock:**
- **Abundance Threshold for the SNE stock (20 million lobsters)**
- **Exploitation Reference Points: exploitation threshold and exploitation target (75th and 25th percentiles of annual exploitation estimates during the current abundance regime)**

Motion made by Dr. McNamee and seconded by Mr. Kane. Motion adopted by unanimous consent.

**Move to recommend to the ISFMP Policy Board a letter be sent to New York regarding the implementation of Jonah crab measures.**

Motion made by Mr. Keliher and seconded by Mr. Borden. Motion passes by unanimous consent, with one abstention from New York.

**Move to approve the Lobster FMP Review for the 2019 fishing year, state compliance reports, and *de minimis* status for DE, MD, and VA.**

Motion made by Ms. Patterson and seconded by Mr. Kane. Motion passes by unanimous consent.

**Move to approve the Jonah Crab FMP Reviews for the 2018 and 2019 fishing years, state compliance reports, and *de minimis* status for DE, MD, and VA.**

Motion made by Ms. Patterson and seconded by Mr. Borden. Motion adopted by consent.

## ATLANTIC MENHADEN MANAGEMENT BOARD (OCTOBER 20, 2020)

### Press Release

### ASMFC Atlantic Menhaden Board Approves TAC for 2021-2022

The Atlantic Menhaden Management Board (Board) approved a total allowable catch (TAC) of 194,400 metric tons (mt) for the 2021 and 2022 fishing seasons, which represents a 10% reduction from the 2018-2020 TAC level. The 2021-2022 TAC was set based on the ecological reference points (ERPs) approved by the Board in August, and reaffirms the Board's commitment to manage the fishery in a way that accounts for the species role as a forage fish.

"This TAC represents a measured and deliberate way for this Board to move into the realm of ecosystem-based management," said Chair Spud Woodward of Georgia. "The TAC strikes a balance between stakeholder interests to maintain harvest on menhaden at recent levels, while also allowing the ERP models to do what they are intended to do."

Based on projections, the TAC is estimated to have a 58.5% and 52.5% probability of exceeding the ERP fishing mortality (*F*) target in the first and second year, respectively. The TAC will be made available to the states based on the state-by-state allocation established by Amendment 3 (see accompanying table for 2021 and 2022 based on a TAC of 194,400 mt).

In determining which level to set the TAC, the Board also considered recent updates to the fecundity (*FEC*) reference points, and current stock condition. According to the latest assessment results, the 2017 estimate of fecundity, a measure of reproductive potential, was above both the ERP *FEC* target and threshold, indicating the stock was not overfished. A stock assessment update is scheduled for 2022 which will inform the TAC for 2023 and beyond.

For more information, please contact Max Appelman, Fishery Management Plan Coordinator, or Toni Kerns, ISFMP Director, at [mappelman@asmfc.org](mailto:mappelman@asmfc.org) or [tkerns@asmfc.org](mailto:tkerns@asmfc.org), respectively.

2021-2022 ATLANTIC MENHADEN QUOTAS			
		Metric Tons	Pounds
TAC		194,400	428,578,637
1% Set Aside*		1,944	4,285,786
TAC After Set Aside		192,456	424,292,851
STATE	ALLOCATION	QUOTA (MT)	QUOTA (LBS)
ME	0.52%	995	2,194,080
NH	0.50%	962	2,121,582
MA	1.27%	2,453	5,407,708
RI	0.52%	996	2,196,488
CT	0.52%	993	2,188,342
NY	0.69%	1,330	2,931,091
NJ	10.87%	20,925	46,131,966
PA	0.50%	962	2,121,464
DE	0.51%	986	2,174,821
MD	1.89%	3,634	8,011,402
PRFC	1.07%	2,066	4,554,267
VA	78.66%	151,392	333,761,875
NC	0.96%	1,840	4,056,588
SC	0.50%	962	2,121,464
GA	0.50%	962	2,121,464
FL	0.52%	997	2,198,250
TOTAL	100%	192,456	424,292,851

\*1% of the TAC is set aside for episodic events, the remaining TAC is allocated to the states per the provisions of Amendment 3. Quotas may be adjusted pending final 2020 landings and the redistribution of any relinquished quota.

###

PR20-23

### **Motions**

**Move to approve the Ecological Reference Point (ERP) fecundity target and threshold, which correspond with the fishing mortality (*F*) ERPs approved in August 2020, for the management of Atlantic menhaden. The ERP fecundity target and threshold are to be defined as the equilibrium fecundity that results when the Atlantic menhaden population is fished at the ERP *F* target and threshold respectively.**

Motion made by Ms. Fegley and seconded by Mr. Rhodes. Motion carries without objection.

### **Main Motion**

**Move to set the total allowable catch (TAC) at 176,800 metric tons for 2021 and 187,400 metric tons for 2022 which are the levels associated with a 50% probability of exceeding the ERP fishing mortality target, respectively.**

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

### **Motion to Substitute**

**Move to substitute to set a TAC of 194,400 metric tons for 2021 and 2022.**

Motion made by Ms. Meserve and seconded by Ms. Ware.

### **Motion to Amend**

**Move to amend the substitute motion to set a TAC of 194,400 metric tons for 2021 and 187,400 metric tons for 2022.**

Motion made by Dr. Davis and seconded by Mr. Estes. Motion fails (6 in favor, 12 opposed).

### **Motion to Substitute**

**Move to substitute to set a TAC of 194,400 metric tons for 2021 and 2022.**

Motion made by Ms. Meserve and seconded by Ms. Ware. Motion carries (12 in favor, 6 opposed).

### **Main Motion as Substituted**

**Move to set a TAC of 194,400 metric tons for 2021 and 2022.**

Motion carries (13 in favor, 5 opposed). Roll Call: In Favor – ME, NH, MA, NY, NJ, PA, DE, MD, VA, PRFC, SC, NOAA Fisheries, USFWS; Opposed – RI, CT, NC, GA, FL.

## **SOUTH ATLANTIC STATE/FEDERAL FISHERIES MANAGEMENT BOARD (OCTOBER 20, 2020)**

### **Press Release**

#### **ASMFC South Atlantic Board Approves Atlantic Cobia Addendum I**

The Commission's South Atlantic States/Federal Fisheries Management Board approved Addendum I to Amendment 1 to the Interstate Fishery Management Plan for Atlantic Migratory Group Cobia. The Addendum modifies: (1) the allocation of the resource between the commercial and recreational sectors, (2) the methodology to calculate the commercial trigger for in-season closures; and (3) and commercial and recreational *de minimis* measures.

The Addendum changes the allocation of the resource between the recreational and commercial fisheries from 92% and 8% respectively to and 96% and 4% respectively. The change was primarily based on new recreational catch estimates that resulted from changes in survey methodology by

the Marine Recreational Information Program. The new catch estimates were, on average, about two times higher than previously estimated, impacting the allocation between the two sectors. In considering the new allocation percentages, the Board took into account the increase in the recreational catch and the harvest levels of the commercial fishery in recent years. The new commercial allocation allows the fishery to operate at its current level with some room for landings to increase as the stock range expands further north.

The Addendum also modifies the calculation of the commercial trigger, which determines when an in-season coastwide commercial closure occurs. The approved trigger is set up to provide states with enough time to close the fishery via their administrative processes without exceeding the quota.

Changes to *de minimis* measures, which are applied to states with relatively small commercial or recreational harvest, include adjusting the commercial allocation set aside and recreational regulations. For *de minimis* measures, the Addendum establishes a commercial *de minimis* set aside of 4% of the commercial quota with a maximum cap of 5,000 pounds to account for potential landings in *de minimis* states not tracked in-season against the quota. States that are *de minimis* for their recreational fisheries may choose to match the recreational management measures implemented by an adjacent non-*de minimis* state (or the nearest non-*de minimis* state if none are adjacent), or limit its recreational fishery to 1 fish per vessel per trip with a minimum size of 33 inches fork length (or an equivalent total length of 37 inches).

States are required to implement the new measures by January 1, 2021. For more information, please contact Savannah Lewis, Fishery Management Plan Coordinator, at [slewis@asmfc.org](mailto:slewis@asmfc.org) or 703.842.0740.

### ***Meeting Summary***

The South Atlantic State/Federal Fisheries Management Board met to consider approval of Atlantic Cobia Draft Addendum I (see above press release); review the spot and Atlantic croaker traffic light analyses (TLA) and resulting management triggers; and review and approve annual FMP Reviews, state compliance reports, and *de minimis* requests for red drum, Atlantic croaker, and Atlantic cobia.

### **Spot and Atlantic Croaker Traffic Light Analyses**

The Chairs of the Spot and Atlantic Croaker Technical Committees (TC) presented the results of the annual TLAs for spot and Atlantic croaker. The TLA assigns a color (red, yellow, or green) to categorize relative levels of indicators on the condition of the fish population (abundance metric) or fishery (harvest metric). For example, as harvest or abundance increased relative to its long term mean, the proportion green in a given year will increase. The Board annually evaluates amounts of red against threshold levels to potentially trigger management action. In 2019, the TLA triggered for both spot and Atlantic croaker at the 30% level, or a moderate level of concern. Staff presented the resulting management responses outlined in Addenda III for Spot and Atlantic croaker. For both species, non *de minimis* states are required to institute a 50 fish bag limit for their recreational fishery, and non *de minimis* states must reduce commercial harvest by 1% of the average state commercial harvest from the previous 10 years. States with more restrictive measures in place are encouraged to keep them. The Board discussed the implementation timeline for states to make the required management changes. State implementation plans are due to the TC by February 12, 2021, with the Board meeting to occur by webinar the week of March 15, 2021, to approve the plans.



## **Annual Fishery Management Plan Reviews**

Staff presented annual FMP Reviews for red drum, Atlantic croaker, and Atlantic cobia. The Board considered *de minimis* requests from states for the three species, and approved all annual FMP reviews, state compliance reports, and *de minimis* requests. *De minimis* requests were approved for the red drum fisheries in New Jersey and Delaware. For Atlantic croaker, *de minimis* requests were approved for the recreational and commercial fisheries of New Jersey, and the commercial fisheries for Delaware, South Carolina, Georgia, and Florida. For Atlantic cobia, *de minimis* requests were approved New Jersey, Delaware, PRFC, and Maryland, and the commercial fishery for Georgia.

For more information, please contact Savannah Lewis, Fishery Management Plan Coordinator, at [slewis@asmfc.org](mailto:slewis@asmfc.org) or 703.842.0740.

## **Motions**

### **Main Motion**

**For Issue 1 recreational and commercial allocation, move to approve option C, 96% recreational and 4% commercial allocation.**

Motion made by Mr. Gary and seconded by Mr. Cimino.

### **Motion to Substitute**

**Move to substitute to approve option B, 97% recreational and 3% commercial allocation.**

Motion by Mr. Haymans and seconded by Mr. Bell. Motion fails (3 in favor, 7 opposed, 2 abstentions).

### **Main Motion**

**For Issue 1 recreational and commercial allocation, move to approve option C, 96% recreational and 4% commercial allocation.**

Motion made by Mr. Gary and seconded by Mr. Cimino. Motion carries (8 in favor, 2 opposed, 2 abstentions).

**For Issue 2 commercial trigger, move to approve option B, the new commercial trigger recommended by the Technical Committee.**

Motion made by Mr. Geer and seconded by Mr. Bell. Motion carries by consent.

**For Issue 3 commercial *de minimis* set aside move to approve option F, to account for potential landings in *de minimis* states not tracked in-season against the quota, 4% of the commercial quota or 5,000 pounds cap, whichever is less, would be set aside and not accessible to non-*de minimis* states.**

Motion made by Mr. Cimino and seconded by Mr. Bell. Motion carries (11 in favor, 1 abstention).

**For Issue 4 recreational *de minimis* size limit, move to approve option C, a recreational *de minimis* state may choose to match the recreational management measures implemented by an adjacent non-*de minimis* state (or the nearest non-*de minimis* state if none are adjacent) or limit its recreational fishery to 1 fish per vessel per trip with a minimum size of 33 inches fork length (or the total length equivalent, 37 inches).**

Motion made by Mr. Geer and seconded by Mr. Bell. Motion carries.

**Move to approve Addendum I to Amendment 1 to the Atlantic Cobia FMP as amended today.**

Motion made by Mr. Bell and second by Mr. Geer. Motion carries without opposition.



**Move to approve the 2020 FMP Reviews, state compliance reports, and *de minimis* requests for red drum, Atlantic croaker, and Atlantic cobia.**

Motion made by Mr. Batsavage and seconded by Mr. Estes. Motion carries by consent.

## **EXECUTIVE COMMITTEE (OCTOBER 21, 2020)**

### ***Meeting Summary***

The Executive Committee met to discuss a number of issues, including the FY20 Audit; Management & Science Committee (MSC) recommendations regarding improvements to Advisory Panel (AP) and public input process and Pennsylvania's participation on the Atlantic Menhaden Management Board. The following action items resulted from the Committee's discussions:

- FY20 Audit – The Audit was reviewed by the Administrative Oversight Committee (AOC) and forwarded to the Executive Committee with a recommendation for approval. The motion to approve passed unanimously.
- Staff provided an update on future Annual Meetings, with plans to hold the 80<sup>th</sup> Annual Meeting in Long Branch, NJ in mid-October of 2021. Future Annual Meetings will be conducted in North Carolina (2022), Maryland (2023), and Delaware (2024).
- The Executive Committee received a progress report on the MSC recommendations regarding AP and the public input process. Staff has made progress on the public input portion of those recommendations, including posting presentations on documents currently out for public comment on the Commission's YouTube channel and webpage (e.g. Black Sea Bass Draft Addendum XXXIII) to increase the opportunities available to stakeholders to understand the issues and submit public comment. Staff will be working on an example survey of a draft management document to further facilitate public input and will consider possible improvements to the AP process early next year.
- Mr. Beal provided an update on the status of the Pennsylvania's membership on the Atlantic Menhaden Management Board. The Commission's guiding documents limit Pennsylvania's participation to diadromous species management activities. However, with the Atlantic Menhaden Board's recent adoption of ecological reference points formalizing the management linkages between striped bass and menhaden, there may be a sound argument for allowing Pennsylvania to remain on the Atlantic Menhaden Management Board. Staff will continue working with the Commission's Executive Committee to flesh out the details on Menhaden Board membership.

For more information, please contact Laura Leach, Director of Finance and Administration, at [lleach@asmfc.org](mailto:lleach@asmfc.org) or 703.842.0740.

### ***Motions***

**On behalf of the Administrative Oversight Committee, move acceptance of the FY20 Audit.**

Motion made by Spud Woodward. Motion passed unanimously.

***Press Release***

**ASMFC Horseshoe Crab Board Sets 2021 Specifications  
for Horseshoe Crabs of Delaware Bay Origin**

The Commission's Horseshoe Crab Management Board approved the harvest specifications for horseshoe crabs of Delaware Bay origin. Under the Adaptive Resource Management (ARM) Framework, the Board set a harvest limit of 500,000 Delaware Bay male horseshoe crabs and zero female horseshoe crabs for the 2021 season. Based on the allocation mechanism established in Addendum VII, the following quotas were set for the States of New Jersey, Delaware, and Maryland and the Commonwealth of Virginia, which harvest horseshoe crabs of Delaware Bay origin:

	<b>2021 Delaware Bay Origin Horseshoe Crab Quota (no. of crabs)</b>	<b>2021 Total Quota**</b>
<b>State</b>	<b>Male Only</b>	<b>Male Only</b>
Delaware	162,136	162,136
New Jersey	162,136	162,136
Maryland	141,112	255,980
Virginia*	34,615	81,331

\*Virginia harvest refers to harvest east of the COLREGS line only

\*\* Total male harvest includes crabs which are not of Delaware Bay origin.

The Board chose a harvest package based on the Delaware Bay Ecosystem Technical Committee's and ARM Subcommittee's recommendation. The ARM Framework, established through Addendum VII, incorporates both shorebird and horseshoe crab abundance levels to set optimized harvest levels for horseshoe crabs of Delaware Bay origin. The horseshoe crab abundance estimate was based on data from the Benthic Trawl Survey conducted by Virginia Polytechnic Institute (Virginia Tech). This survey, which is the primary data source for assessing Delaware Bay horseshoe crab abundance, does not have a consistent funding source. Members of the Delaware and New Jersey U.S. Congressional Delegations, with the support of NOAA Fisheries, have provided annual funding for the survey since 2016.

For more information, please contact Caitlin Starks, Fishery Management Plan Coordinator, at 703.842.0740 or [cstarks@asmfc.org](mailto:cstarks@asmfc.org).

###

PR20-25

***Meeting Summary***

The Horseshoe Crab Management Board met to set specifications for the 2021 fishing season for horseshoe crab of Delaware Bay origin (see above press release); receive a progress update on revisions to the Adaptive Resource Management (ARM) Framework; consider approval of the Fishery Management Plan (FMP) Review and state compliance for 2019; and consider a nomination to the Horseshoe Crab Advisory Panel.

During the discussion on the 2021 specifications, the Board recognized a decline in the abundance estimate resulting from the 2019 Virginia Tech Trawl Survey. The Board requested further investigation into potential causes of the decline, and comparison to the composite abundance index that was

developed from other available surveys when there was insufficient funding to run the Virginia Tech Trawl Survey.

Additionally, the Board considered a progress update on ongoing revisions to the ARM Framework. At the Board's direction, the ARM Subcommittee has been working on incorporating horseshoe crab population estimates from the Catch Multiple Survey Analysis (CMSA) model used in the 2019 Benchmark Stock Assessment into the ARM Framework, updating scientific information for horseshoe crab and red knots, moving the model to a new software platform, improving model structure, and updating the red knot population model. The ARM Subcommittee will meet for a second Assessment Workshop in early 2021, and is expected to present the complete ARM Framework to the Board in August or October 2021 after peer review.

The Board also reviewed the FMP Review and state compliance reports for the 2019 fishing year. All states' regulations were found to be consistent with the FMP and *de minimis* requests were granted to the Potomac River Fisheries Commission, South Carolina, Georgia, and Florida. The Board noted some concern related to increased biomedical mortality in 2019, and tasked the Technical Committee with evaluating the impact of recent biomedical mortality levels on the stocks.

Finally, the Board appointed a new member to the Horseshoe Crab Advisory Panel: Christina Lecker, a biomedical representative from Virginia. For more information, please contact Caitlin Starks, Fishery Management Plan Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org) or 703.842.0740.

#### ***Motions***

**Move to select harvest package 3 (500,000 male-only crabs) for 2021 horseshoe crab bait harvest in Delaware Bay.**

Motion made by Mr. Nowalsky and seconded by Mr. Miller. Motion approved by consent.

**Move to approve the FMP Review for the 2019 fishing year, state compliance reports, and *de minimis* status for Potomac River Fisheries Commission, South Carolina, Georgia, and Florida.**

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

**Move to appoint Christina Lecker to the Horseshoe Crab Advisory Panel.**

Motion made by Mr. Geer and seconded by Mr. Bell. Motion approved by consent.

#### **SPINY DOGFISH MANAGEMENT BOARD (OCTOBER 22, 2020)**

#### ***Press Release***

### **ASMFC Spiny Dogfish Board Sets Quotas for 2021-2023 Fishing Seasons**

The Commission's Spiny Dogfish Management Board approved a commercial quota of 29.6 million pounds for the 2021/2022 and 2022/2023 fishing years (May 1–April 30). The quotas are consistent with the measures recommended to NOAA Fisheries by the Mid-Atlantic Fishery Management Council (Council). State-specific allocations are provided in table below.

### Spiny Dogfish State Allocations (in pounds) for the 2021-2023 Fishing Seasons

	Northern Region (ME-CT)	NY	NJ	DE	MD	VA	NC
Possession Limit	6,000	To be specified by the individual southern region states					
Allocation	58%	2.707%	7.644%	0.896%	5.92%	10.795%	14.036%
2021/22	17,144,556	800,413	2,259,728	264,866	1,749,935	3,191,020	4,149,062
2022/23	17,144,556	800,413	2,259,728	264,866	1,749,935	3,191,020	4,149,062

\* Any overages in the above quotas will be deducted from that region's or state's quota allocation in the subsequent year. Similarly, any eligible rollovers from one season can be applied to that region's or state's quota allocation the following year.

Although the Board had previously set multi-year specifications for 2019-2021, in December 2019 the Council approved a new Risk Policy with the intent that 2021/2022 specifications would be revised to reflect the new policy. As such, the Council's Scientific and Statistical Committee (SSC) recommended increasing the acceptable biological catch (ABC) for 2021 from 35.4 million pounds to 38.6 million pounds. Based on this revised ABC recommendation, the Council approved a commercial quota of 29,559,580 pounds, which is an 8% increase compared to the previously set 2021/2022 quota. The Council also voted to extend these same specifications to the 2022 fishing year to align with the timing of the 2022 research track assessment. The Board works cooperatively with the Council in managing the spiny dogfish fishery in order to have consistency in state and federal waters. Neither the Board nor the Council recommended trip limit changes but the Council has plans in 2021 to conduct socioeconomic analyses of potential trip limit changes.

The Commission's actions are final and apply to state waters (0-3 miles from shore). The Mid-Atlantic and New England Fishery Management Councils will forward their recommendations for federal waters (3 –200 miles from shore) to NOAA Fisheries Greater Atlantic Regional Fisheries Administrator for final approval.

For more information, please contact Toni Kerns, ISFMP Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org) or 703.842.0740.

###

PR20-26

#### **Motions**

**Move to revise the 2021/2022 fishing year spiny dogfish commercial quota to 29,559,580 pounds and to set the 2022/2023 fishing year quota at 29,559,580 pounds.**

Motion made by Mr. Reid and seconded by Mr. Kane. Motion passes by unanimous consent.

**Move to nominate Ms. Meserve as Vice-chair of the Spiny Dogfish Board.**

Motion made by Ms. Ware and seconded by Ms. Patterson. Motion passes by unanimous consent.

### **ATLANTIC STRIPED BASS MANAGEMENT BOARD (OCTOBER 22, 2020)**

#### **Meeting Summary**

The Atlantic Striped Bass Management Board met to consider approving state implementation plans for circle hook measures, which are required by Addendum VI; receive a Technical Committee (TC)

report on release mortality in the recreational fishery; and review the first draft of the Public Information Document (PID) for Amendment 7.

The intent of the circle hook provision is to reduce release mortality when fishing with bait in recreational striped bass fisheries. All state proposals included final (or proposed) regulatory language and a definition for ‘circle hook’ comparable to that cited in Addendum VI. The Plan Review Team (PRT) noted a lot of variation in regulatory language among states, although all the regulations essentially say the same thing. The PRT reiterated concerns previously raised by the Law Enforcement Committee, stressing the importance of all jurisdictions agreeing on standardized regulatory language to improve compliance and enforcement, especially where states share common borders and fishing areas. Addendum VI also provides states flexibility to propose exemptions to mandatory circle hook requirements to address specific needs of the state fishery. Two states (Maine and Massachusetts) proposed exemptions, but the PRT was unable to make a definitive recommendation to the Board regarding exemptions due to limited guidance on what constitutes an acceptable level of flexibility. The Board discussed whether the proposed exemptions would lead to other ‘niche’ exemptions across state fisheries, further weakening enforceability and undermining the intent of the provision. In order to achieve the greatest level of conservation for the resource, the Board approved the state implementation plans, with the caveat that no exemptions to Addendum VI mandatory circle hook requirements will be permitted. Maine and Massachusetts will begin their rulemaking processes to remove exemptions to circle hook measures from state regulation.

The Board reviewed a TC report on release mortality in the recreational fishery, which constitutes a significant proportion of total fishing mortality on the stock. The report highlighted how recreational release mortality is calculated for stock assessments, the factors (data and modeling) limiting the accuracy of those estimates now and in the future, as well as potential management actions the Board could pursue to reduce release mortality in the fishery. Following review, the Board tasked the TC to explore the relative impact of different release mortality rate estimates on stock status, with the TC reporting back to the Board in February. The Board also reiterated the importance of hearing from the public on this issue as part of the adaptive management process within Amendment 7.

Lastly, the Board reviewed the first draft of the PID for Amendment 7. The PID is the first step in the amendment process; it is a broad scoping document intended to solicit stakeholder feedback on any issues concerning the management of the striped bass resource and fishery, and to inform development of the Draft Amendment. The PID highlights nine issues that have already been identified by the Board for consideration in Draft Amendment 7, including fishery goals and objectives, biological reference points, management triggers, stock rebuilding, regional management, conservation equivalency, recreational release mortality, recreational accountability, and the coastal commercial quota allocation. The Board offered a number of changes to the PID, including additions to the ‘statement of the problem’ and questions to the public to help focus stakeholder feedback. The Board will consider approving the PID for public comment in February 2021 at the Winter Meeting after these changes and additions have been addressed.

Finally, the Board appointed Bob Danielson, a recreational angler from New York, to the Striped Bass Advisory Panel. For more information, please contact Max Appelman [mappelman@asmfc.org](mailto:mappelman@asmfc.org), Fishery Management Plan Coordinator, or Toni Kerns [tkerns@asmfc.org](mailto:tkerns@asmfc.org), ISFMP Director, or at 703.842.0740.

## ***Motions***

### **Main Motion**

**Motion to not exempt any state from putting in place the circle hook rules for bait fishing as specified in Addendum VI.**

Motion made by Mr. Fote and seconded by Mr. Abbott.

### **Motion to Substitute**

**Motion to substitute to approve the Addendum VI state implementation plans for circle hooks with the exception of the Massachusetts for hire exemption**

Motion made by Ms. Ware and seconded by Dr. Davis. Motion fails (5 in favor, 8 opposed, 2 abstentions, 1 null).

### **Main Motion**

**Motion to not exempt any state from putting in place the circle hook rules for bait fishing as specified in Addendum VI.**

Motion made by Mr. Fote and seconded by Mr. Abbott. Motion passes (15 in favor, 1 opposed). Roll Call: In Favor – MA, NY, MA, RI, NY, NJ, PA, DE, MD, VA, NC, DC, PRFC, NMFS, USFWS; Opposed – CT.

**Move to nominate to the Atlantic Striped Bass Advisory Panel Bob Danielson from New York.**

Motion made by Ms. Davidson and seconded by Mr. Fote. Motion adopted by consent.

## **ATLANTIC COASTAL COOPERATIVE STATISTICS PROGRAM COORDINATING COUNCIL (OCTOBER 23, 2020)**

### ***Meeting Summary***

The ACCSP Coordinating Council met to elect a new chair and vice-chair and take action on ranked proposals to allocate funding for FY2021. The Council elected John Carmichael (SAFMC) as Chair, and Jason McNamee (RI) as Vice-chair. The Council and staff extended appreciation to Lynn Fegley (MD) for three years of leadership as Chair.

The Council opted to fund the FY2020 proposals as presented by the Advisory and Operations Committees. The Council discussed the increase in the ACCSP administrative grant and tradeoffs for funding across the areas of Partner projects vs. administrative costs, staff vs. contractor approach, and short-term vs. long-term benefits of program and project priorities. The Leadership Team will meet in the coming month to evaluate the administrative grant and carryover funds, and approaches to support coastal initiatives such as the SAFIS Helpdesk. The ACCSP Leadership Team will finalize the administrative grant budget and recommend alternatives for using any carry-over or additional funds to the Coordinating Council for consideration in February.

The Council will address the Operations Committee recommendations on future funding of maintenance projects under the step-down plan at the February Meeting.

The Council received brief highlights on committee and program updates, including completion of the Biological Resilience Project, partner coordination, and meaningful accomplishments in cybersecurity, data collection tools, Data Warehouse, and outreach. For more information, please contact Geoff White, ACCSP Director, at [geoff.white@accsp.org](mailto:geoff.white@accsp.org).

### ***Motions***

#### **Move to elect Mr. Carmichael as Coordinating Council Chair.**

Motion made by Ms. Fegley and seconded by Ms. Lupton. Motion carries by unanimous consent.

#### **Move to elect Mr. Jason McNamee as Vice-chair.**

Motion made by Ms. Patterson and second by Ms. Ware. Motion carries by unanimous consent.

#### **Move to fund the submitted ACCSP proposals as ranked in Average Ranking table of proposals with the exception of the Administrative Grant proposal. That the Leadership Team evaluate a detailed ACCSP Administrative Grant before approving the Administrative Grant. That the funds from savings be brought to the Leadership Team for ranking of priority then back to the Coordinating Council.**

Motion made by Ms. Patterson and seconded by Mr. Bell. Motion approved (18 in favor).

#### **Move to adjourn.**

Motion made by Mr. Bell and seconded by Ms. Patterson. Motion carries by unanimous consent.

### **BUSINESS SESSION (OCTOBER 23, 2020)**

#### ***Meeting Summary***

The Business Session reviewed and approved the 2021 Action Plan, which outlines the Commission's administrative and programmatic activities for next year. The Plan, which is guided by the Commission's 2019-2023 Strategic Plan, will be available on the Commission's website, [www.asmfc.org](http://www.asmfc.org), under Guiding Documents early next week. By unanimous acclamation, the Business Session re-elected Patrick C. Keliher of Maine and A.G. "Spud" Woodward of Georgia the Commission Chair and Vice-chair, respectively. For more information, please contact Robert Beal, Executive Director, at [rbeal@asmfc.org](mailto:rbeal@asmfc.org) or 703.842.0740.

### ***Motions***

#### **Motion to approve the 2021 Action Plan.**

Motion by made by Mr. Anderson and seconded by Mr. Fote. Motion passes.

#### **On behalf of the Nominations Committee, move to nominate Mr. Keliher as Chair of ASMFC effective until the end of the next Annual Meeting.**

Motion made by Mr. Gilmore. Motion passes.

#### **On behalf of the Nominations Committee, move to nominate Mr. Woodward as vice-chair of ASMFC effective at the end of the meeting.**

Motion made by Mr. Gilmore. Motion passes.

### **INTERSTATE FISHERIES MANAGEMENT PROGRAM (ISFMP) POLICY BOARD (OCTOBER 23, 2020)**

#### ***Meeting Summary***

The ISFMP Policy Board met to receive the Report from the Chair and an update from Executive Committee; consider dividing the species managed by the South Atlantic State/Federal Management Board into two new boards; determine the process for setting the 2021 coastal sharks specifications;



discuss a whelk workshop; consider letters from the American Lobster Board and the Atlantic Striped Bass Board; and receive an update on the Horseshoe Crab FMP Review.

Commission Chair Patrick C. Keliher from Maine opened up the Policy Board meeting with his Annual Report to the Commission. The Report will be included in the next issue of *Fisheries Focus* for those interested in reading the report in full. The Chair also presented the Executive Committee Report to the Board (see Executive Committee meeting summary earlier in this document).

Based on the growing number of species under the purview of the South Atlantic State/Federal Fisheries Management Board, the Policy Board agreed to divide its species among two newly created boards: a Coastal Pelagics Board, which will oversee the management of Atlantic cobia and Spanish mackerel, and a Sciaenids Board, which will oversee the management of spot, red drum, black drum, Atlantic croaker, and spotted sea trout. This division will allow each Board to provide the appropriate amount of time and attention to its respective species, without compromising its focus on other species due to time limitations. Additionally, given the expanding ranges of some species, the new Board configuration will allow more northern states to effectively engage on species management programs for which they have a declared interest. As part of the new board structure, the South Atlantic Fishery Management Council be invited to join both Boards to ensure continued collaboration between state and federal management.

The Policy Board agreed to set the 2021 coastal sharks specification via an email vote after NOAA Fisheries has published a final rule. NOAA Fisheries is proposing a January 1 start date for all shark management groups, as well as an initial 36 shark possession limit for large coastal and hammerhead management groups with the possibility of in season adjustments.

Dan McKiernan updated the Board about recent efforts to reinstate a symposium to allow states to share information about whelk science and management. Virginia Sea Grant has offered to fund and facilitate a workshop for the states. While the pandemic significantly slowed planning for the workshop, progress is now being made to host a webinar with the states.

The Policy Board agreed to send two letters on behalf of the American Lobster Board. The first letter is to NOAA Fisheries and will request changes to how data is collected by NOAA for five of the lobster data elements, including (1) number of trap hauls in effort, (2) number of traps in water in effort, (3) traps per trawl in effort, (4) buoy lines in effort, and (5) number of buoy lines in the water (see the Lobster Board meeting summary for details). The second letter is to New York requesting the state implement all of the necessary regulations of the Jonah Crab FMP (see the Lobster Board meeting summary for details). The Chair of the Atlantic Striped Bass Board requested letters be sent to both Maine and Massachusetts detailing required changes with regards to each state's Addendum VI implementation plans given both states' circle hook exemptions were not approved by the Board. Both states agreed it was clear the actions they need to take and a letter was not necessary. The states will update the Atlantic Striped Bass Board at its next meeting of the changes made to their measures to meet the requirements of the FMP.

Lastly, the Board was informed a revised version of the Fishery Management Plan Review for the 2019 Fishing Year will be emailed to the Horseshoe Crab Board, Advisory Panel, and Technical Committees. One of the state compliance reports misreported biomedical collections for the 2019 fishing year. As a result, the total biomedical collections will decrease relative to what was presented to the Board



earlier in the week. An updated version of the FMP Review will be posted to the Commission's website on the Horseshoe Crab webpage.

For more information, please contact Toni Kerns, ISFMP Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org) or 703.842.0740.

***Motions***

**Move to split the South Atlantic State/Federal Fisheries Management Board into a Pelagic Board and a Sciaenid Board.**

Motion made by Mr. Cimino and seconded by Mr. Woodward. Motion passes by consensus.

**Move to approve the 2021 coastal sharks specifications via an email vote after NOAA Fisheries publishes the final rule for the 2021 Atlantic Shark Commercial Fishing season.**

Motion made by Mr. Batsavage and seconded by Mr. Estes. Motion passes by consensus.

**Motion to adjourn.**

Motion made by Mr. Fote and seconded by Mr. Bell. Motion passes.

# CARES Act Funding Disaster Relief

## **\$300 Million to Support U.S. Fishermen and Seafood Industry**

- NOAA Fisheries used multi-year averages of “fishery participants” to estimate total average annual revenues for each state and sector.
- Eligibility for disaster relief from this program requires an economic loss of at least 35% as compared to prior 5-year average.

## **Massachusetts will receive approximately \$27.8 Million (4 Sectors)**

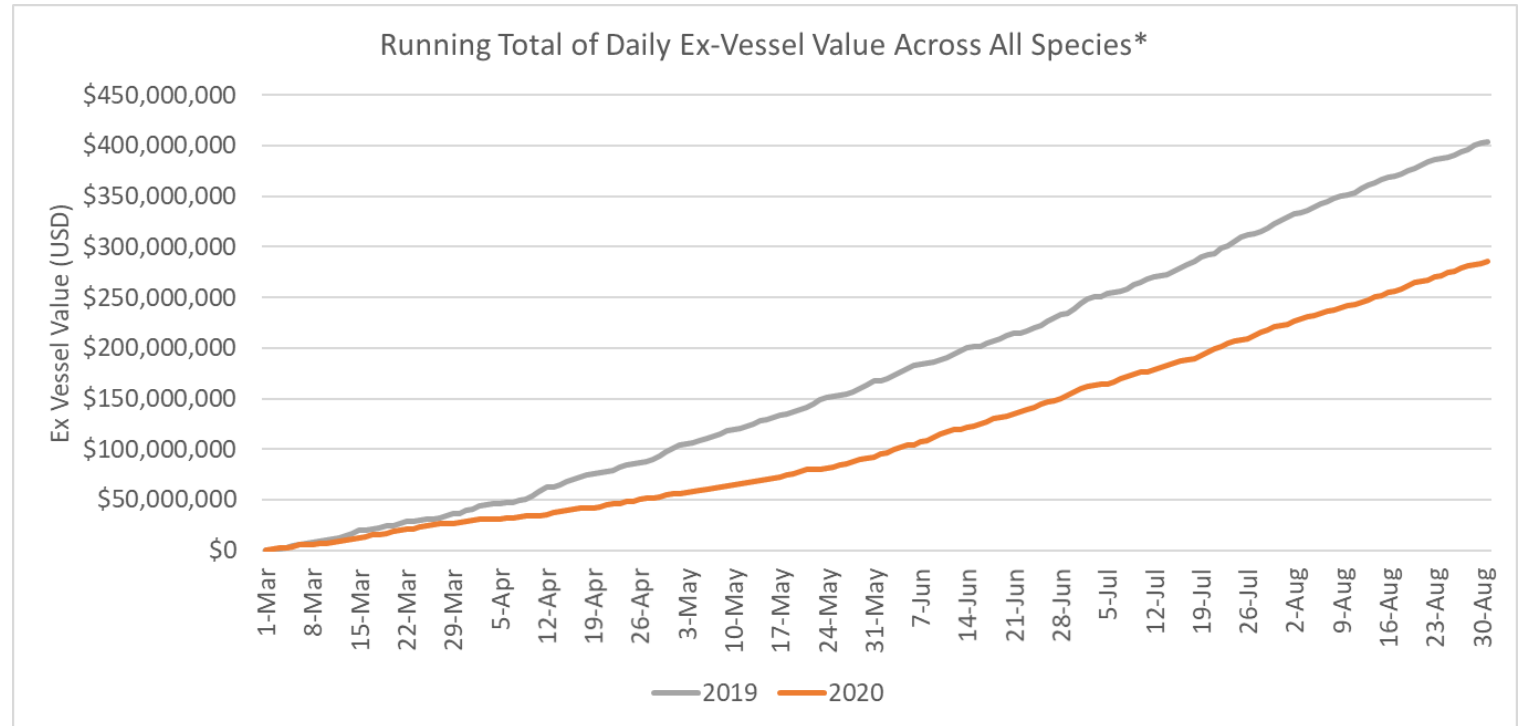
- Seafood Processing 51.2%
- Commercial Fishing and Aquaculture combined 47.3%
- For-Hire (Party and Charter Boats) 1.5%



# Covid-19 Impact

## Significant Losses Across the Seafood Industry

- \$117 million (~29%) reduction in ex-vessel value for March 1 – August 31 compared to the same period in 2019\*
- Species that are served primarily in restaurants, including oysters, lobsters, and bluefin tuna suffered even greater reductions
- For example, in the period March-May the ex-vessel value of oysters was down 70% compared to the previous 5-year average



Data Source: SAFIS Dealer Reports, September 15, 2020

\*Surf clams and ocean quahogs values are not included.



# Update October 7, 2020

## Massachusetts' 2020 CARES Act Fisheries Relief

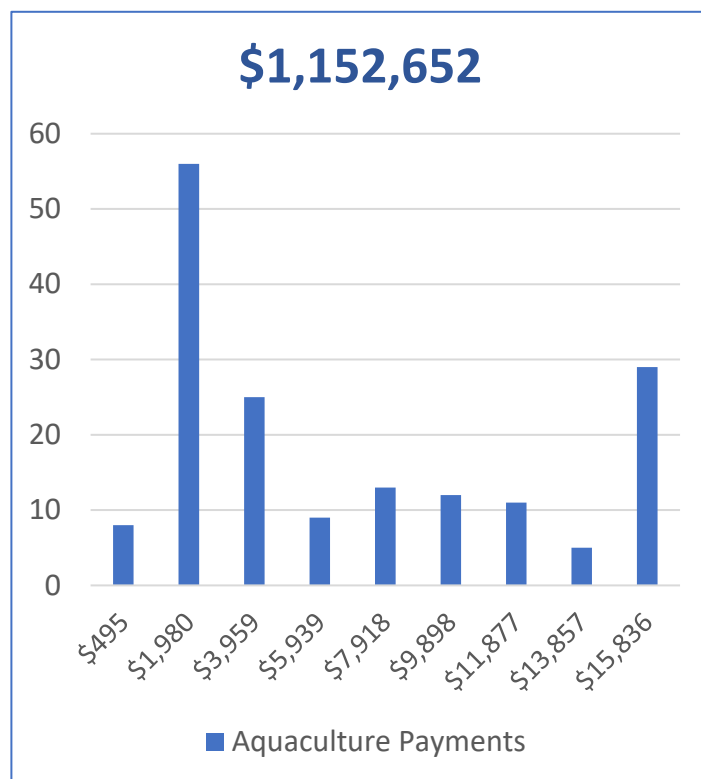
- All Sector Working Groups have met 2 times to finalize requirements of the CARES Act Fisheries Relief Program
- Final Spending Plan submitted to NOAA Fisheries for approval on July 15, 2020
- Spending Plan approved by NOAA Fisheries on July 29, 2020

Sector	Amount	# Eligible submissions	Expected Payment Range	Application Period	Appeals Period
Commercial Fishermen	\$11.8M	2,000+	\$2K-\$14K	August 31 – October 10	Through October 24
Seafood Processors	\$13.8M	113	\$45K-\$358K	DONE: Payments mailed 10.2.20	
Aquaculturists	\$1.2M	168	\$500-\$15K	DONE: Payments mailed 9.29.20	
For-Hire Charter Boats	\$584K	72	\$4.6K-\$9.3K	DONE: Payments mailed on 9.15.20	
For-Hire Head Boats	\$416K	35	\$2K-\$23K	DONE: All payments have been distributed	



# Payouts for Completed Sectors:

## Aquaculture Sector



## For-Hire Sector

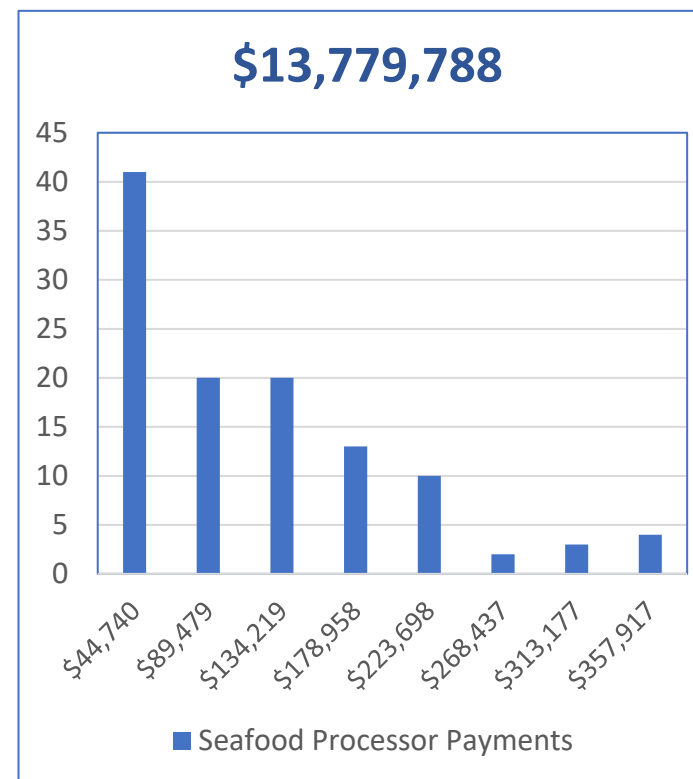
### Charter \$584,000

- Charter Boats had 50 trip minimum and were binned based on vessel size
  - Small (<28'): 19 payments of \$4,672
  - Large (28'+): 53 payments of \$9,344

### Head Boat \$416,000

- Head Boats binned on size and activity. 34 vessels qualified with payments from \$1,432 to \$22,912 with 40% receiving \$14,320

## Seafood Processor Sector



# New Federal Relief Packages (and some private ones)

- Tariff relief: DMF is providing USDA with lists of permitted fishermen and advising USDA about how to obtain verifiable data to validate landings and revenues. USDA is providing fishermen with payments for “tariff” relief to mitigate impacts of foreign (China & EU) tariffs affecting seafood value in 2019. For each species there is a payment rate paid per pound of landings in 2019: lobsters is 50 cents, squids is 20 cents; flounders are 15 cents and tunas at 13 cents. Based on DMF’s calculations, this will result in over \$15 million in direct payments to fishermen.
- Cares relief for Molluscan Aquaculturists: USDA is providing molluscan shellfish farmers with a 10% payment based off their 2019 revenues. Here in MA, this will result in about \$3 million in direct payments to growers because 2019 aquaculture sales by farmers to wholesale revenues were approximately \$30 million.
- Two other (non-federal) small-scale plans are in development for oyster:
  - The first is funded by The Nature Conservancy to buy surplus oysters and place them on established or permitted oyster “reefs” for ecological services. These purchases would be limited to those in nearby locations of the reefs.
  - The second is a private grant organized by Sea Grant & Barnstable County for purchase of “oversized oysters” to go into value added foods (chowders) for the needy.



# Menhaden Permitting Classes

**Class 1 (Limited-Access):** Menhaden endorsement, Inshore Net endorsement, CAP or CAP for Purse Seine endorsement, and Surface Gillnet Permit.

- Possession Limit: Full limit depending on quota utilization
- Areas Allowed to be Fished with Purse Seines: All state waters unless otherwise restricted, including all authorized Inshore Net Areas.

**Class 2 (Limited-Access):** Menhaden endorsement and CAP endorsement; or Menhaden endorsement and CAP – Purse Seine endorsement; Menhaden endorsement and Fish Weir endorsement; or Menhaden endorsement with Surface Gillnet endorsement.

- Possession Limit: Full limit depending on quota utilization
- Areas Allowed to Be Fished with Purse Seines: All state waters seaward of the Inshore Net Areas, unless otherwise restricted.



# Menhaden Purse Seine Permitting Classes Continued

**Class 3 (Open-Access Fishery):** No Menhaden endorsement but possesses a CAP for Purse Seine, CAP, Fish Weir, or Surface Gillnet endorsement.

- Possession Limit: 6,000 lbs
- Areas Allowed to Be Fished with Purse Seines: All state waters seaward of the Inshore Net Areas, unless otherwise restricted.





# Open Access Fishery Issues

**Trip-Limit Compliance:** DMF and OLE receive numerous complaints each year about open access fishery participants exceeding the 6,000 lb daily limit. This can be difficult to enforce due to deck-loading and at sea sales.

- Potential Solutions
  - Require all fish to be stored in totes, barrels, or crates onboard
  - Prohibit over-the-rail sales and transfers at sea

**Purse Seine Net Size for Open Access Fishery:** Currently there is no maximum net size for open access fishery participants. This is inconsistent with the relatively low 6,000 lb trip limit.

- Potential Solution
  - Establish maximum purse seine net dimensions (length & depth) for open access fishery participants



# Transfer of Limited-Entry Fluke, Sea Bass and Tautog Rod & Reel Endorsements

- Rod & Reel Sea Bass and Fluke endorsements have only been transferable, on a one-time basis, to immediate family members if they have been actively fished 4 out of the past 5 years.
- Over the past few years DMF has received an increasing amount of requests to transfer limited-entry rod & reel sea bass and fluke endorsements to non-immediate family members.
- Most of these requests come from permit holders who are aging out of the fishery. In many cases, they are looking to transfer their endorsements to people that have been fishing with them for years.
- During the process of going limited-entry in the tautog fishery, DMF committed to making Tautog endorsements transferable going forward.
- DMF intends to develop a transfer policy for Sea Bass, Fluke, and Tautog endorsements.

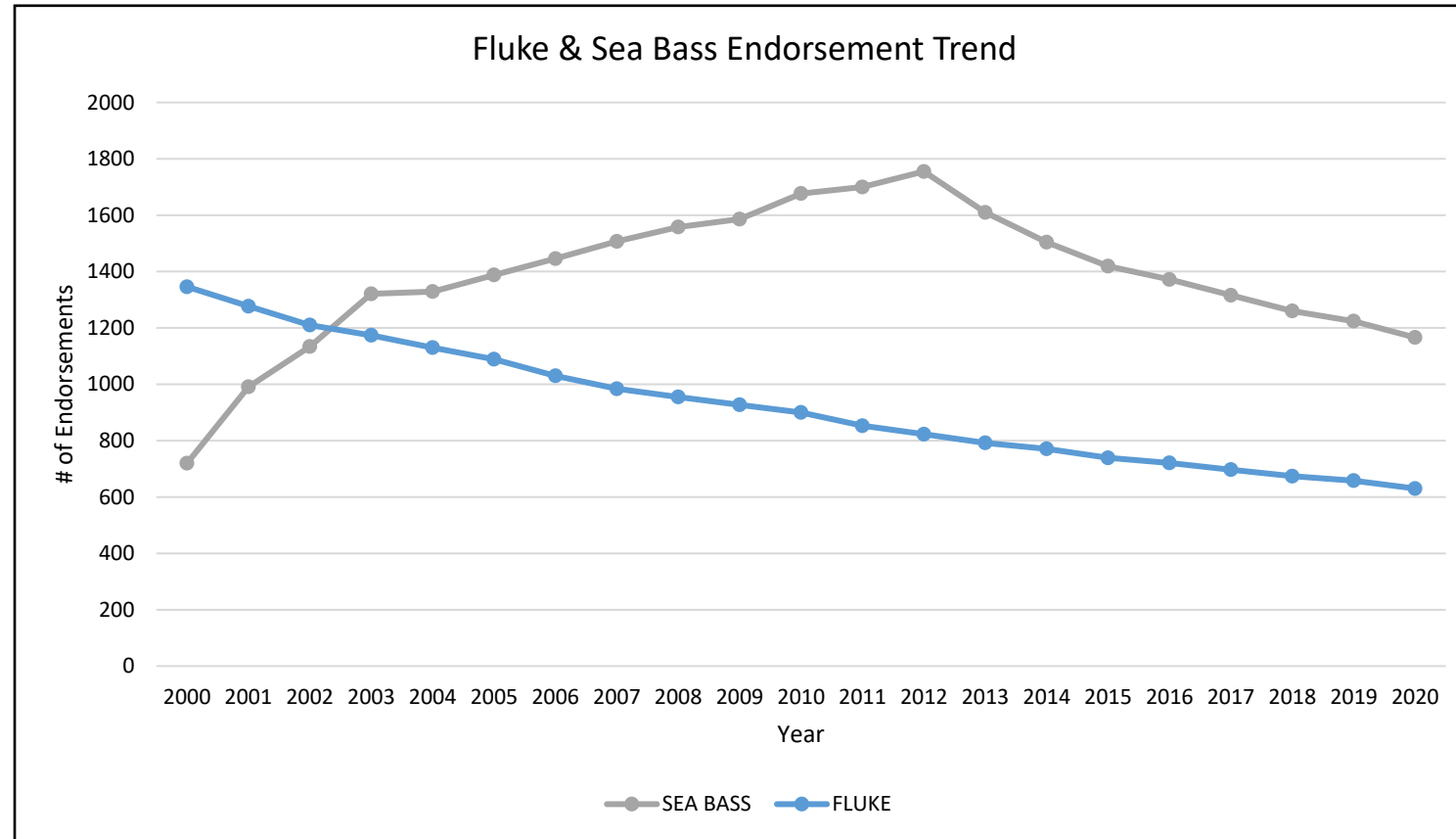


# Status of Endorsements

Endorsement	Endorsement Count	Limited-Entry Year	Median Age
Fluke	630	1999	63
Sea Bass	1,165	2012	59
Tautog	218	2020	54



# Fluke & Sea Bass Endorsement Trend



# Transfer Policy Criteria

*Should there be a minimum landings threshold to be considered “actively fished”?*

- Must have landed and sold at least the equivalent of one trip limit in 4 of the past 5 years

*Should DMF allow bundling endorsements together in a transfer?*

- Endorsements may be transferred individually if that endorsement was actively fished in four of the past five years
- Endorsements may also be transferred together as a bundle if the permit holder has more than one of these three endorsements and at least one of the endorsements has been actively fished 4 out the past 5 years





# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114

p: (617) 626-1520 | f: (617) 626-1509

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Governor

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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: October 23, 2020

SUBJECT: **Pilot Program to Accommodate Possession of Multiple States' Limits of Summer Flounder and Black Sea Bass During Offshore Wintertime Fishery**

#### Proposal

For 2021, I intend to renew the pilot program that allows vessels participating in offshore wintertime (January 1 – April 22) fisheries to possess multiple states' possession limits of summer flounder and black sea bass while offloading in Massachusetts. However, before I move forward and publicly announce this decision and solicit enrollment, I wanted to afford the MFAC an opportunity to provide feedback regarding this program and state any concerns they may have regarding its continuation.

#### Background

In the northeast, summer flounder and black sea bass are typically caught offshore during our cooler months. Unlike scup, where there is a coastwide quota during the offshore wintertime fishery, summer flounder and black sea bass are managed on a state-by-state basis year-round. Therefore, the various state rules – specifically trip limits – apply when landing catches of these species even when the fishery takes place in federal waters. As offshore fishing vessels may hold permits in numerous states to land these species, state specific possession limits create a barrier to these vessels efficiently utilizing their permits and the available quota. Accordingly, some vessels sought the ability to possess multiple states' limits when offloading a trip limit in one state.

Such an allowance became more palatable to DMF with the recent increases to the summer flounder and black sea bass quotas, as such increases diminish potential allocative issues between the inshore and offshore fisheries. Former Director Pierce met with interested parties to discuss such an allowance and tasked staff with working with neighboring states (Rhode Island, Connecticut and New York) to accommodate it. In response, a pilot program was established for 2020 spanning Period I of the summer flounder fishery (January 1–April 22). While the pilot program was initially designed to accommodate summer flounder, I extended it to also include black sea bass in early March. I did this because our state's black sea bass trip limit (100 pounds through March 31, then 0 pounds during the rest of the period) was forcing vessels to offload first in Rhode Island (or another state) before coming to Massachusetts, which extended trip times and reduced efficiency.

The pilot program was seemingly successfully at enhancing the efficiency of the offshore fleet and its continuation is supported by them. A more in-depth analysis will be developed in 2021; however, I offer the following bullets regarding the performance of this program in 2020:

- 22 vessels enrolled in MA's pilot program for 2020. Three of these vessels were homeported in MA and 19 were homeported out of state. All 22 vessels held a permit in RI, with one vessel also holding a NY permit and one vessel holding additional permits in CT and NY. The level of in-state participation in 2020 was likely influenced by the status of those permits previously held by Carlos Rafael.
- The Period I summer flounder fishery is allocated 30% of the annual quota and landed 75% of its annual allocation in 2020. It likely would have landed 100% of its allocation, however, late winter and early spring in this fishery was likely impacted by the pandemic. Over the three years prior to this pilot program, the Period I summer flounder fishery landed only XX% of its annual quota on average. However, this may have also been influenced by increasing the daily landing limit from 500 pounds to 1,000 pounds.
- Given MA's low trip limit for black sea bass during the period, I do not anticipate this pilot program will contribute to a significant increase in wintertime landings for this species. I expect the vast majority (90%+) of the state's quota will remain available to the directed summertime fishery.
- There were zero significant law enforcement incidents related to this program and the Massachusetts Environmental Police support its reimplementation.

#### **Attachment**

Draft Letter of Authorization



# The Commonwealth of Massachusetts

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Commissioner

DANIEL J. MCKIERNAN  
Director

NAME  
DBA  
ADDRESS  
CITY, ST ZIP

DATE

### **Revised Letter of Authorization and Statement of Permit Conditions:**

#### **Wintertime Summer Flounder and Black Sea Bass Pilot Program: Allowance for Vessels to Possess Multiple State Limits**

The Division of Marine Fisheries (DMF) regulates the wintertime Period 1 (January 1 - April 22) summer flounder fishery pursuant to 322 CMR 6.22(2)(c) and 6.22(2)(h) and the wintertime black sea bass fishery pursuant to 322 CMR 6.28(2)(c)(1). These regulations allow commercial fisherman with species specific regulated fishery permit endorsements to possess and land summer flounder and black sea bass in Massachusetts ports subject to the regulated trip limits. The wintertime fishery for these species is principally conducted in federal waters and federal regulations at 50 CFR §648 do not set harvest and retention limits for these species. While many participating vessels hold commercial summer flounder and black sea bass permits in multiple northeast states (e.g., RI, CT, or NY), their possession and offloading is limited by the limits set forth for the state where the fish is being possessed or landed. In turn, this restricts these vessels from possessing aggregate limits for the multiple states in which they are permitted and offloading lawful limits in each state at the conclusion of a trip.

To accommodate additional flexibility and efficiency during the wintertime period, DMF – in cooperation with neighboring states - implemented a pilot program for 2020. This pilot program is being renewed for 2021. Participating vessels are must minimally hold a valid 2021 Massachusetts commercial fisherman permit with a regulated fishery permit endorsement for summer flounder, a federal summer flounder permit, and have an active vessel monitoring system (VMS) installed onboard the vessel. Additionally, if the participant seeks to similarly participate in this program for black sea bass, a DMF-issued regulated fishery permit endorsement for black sea bass and a federal black sea bass permit are required as well.

Once enrolled in the program, participating fishermen are allowed to retain summer flounder and black sea bass taken from federal waters that exceed Massachusetts' trip limits at 322 CMR 6.22(2)(c) and 6.28(2)(c)(1); possess and carry these non-conforming quantities of summer flounder and black sea bass while transiting the waters under the jurisdiction of the Commonwealth for the purpose of offloading in a Massachusetts' port; offload summer flounder and black sea bass in Massachusetts in conformity with the state's commercial limit at 322 CMR 6.22(2)(c) and 6.28(2)(c)(1); return to sea in possession of non-conforming quantities of summer flounder and black sea bass for the purpose of transiting through the jurisdiction of the Commonwealth for landing the remaining fish in other cooperating states.

In accordance with the authority at G.L. c. 130, §80 and 322 CMR §7.01(7), commercial fisherman permit **DMF ID# XXXXXX** issued for use upon the **F/V VESSEL NAME** (X'XX length, Vessel Documentation # XXXXXX and NMFS ID # XXXXXX) is hereby subject to this Letter of Authorization and statement of permit conditions authorizing participation in the 2020 Wintertime Summer



Flounder and Black Sea Bass Pilot Program: Allowance for Vessels to Possess Multiple State Limits. The permit holder and the named vessel are subject to the permit conditions enumerated below:

1. The vessel shall have and have an active vessel monitoring system (VMS) installed and functioning onboard the vessel, consistent with federal regulations at 50 CFR 648.10.
2. During the period of January 1 – April 23, the participant may transit the waters under the jurisdiction of the Commonwealth in possession of summer flounder that do not conform to the state's Period I summer flounder commercial limit at 322 CMR 6.22(2)(c).
3. The weight of summer flounder labeled as intended to be offloaded in Massachusetts shall not exceed Massachusetts' Period I summer flounder commercial limit of 1,000 pounds as set at 322 CMR 6.22(2)(c).
4. During the period of January 1 – March 31, the participant may transit the waters under the jurisdiction of the Commonwealth in possession of black sea bass that do not conform to the state's wintertime black sea bass limits 322 CMR 6.28(2)(c)(1). Beginning on April 1, the retention, possessing and landing of black sea bass in Massachusetts is prohibited.
5. The weight of black sea bass labeled as intended to be offloaded in Massachusetts shall not exceed Massachusetts' wintertime black sea bass limit of 100 pounds, as set forth at 322 CMR 6.28(2)(c)(1).
6. The aggregate sum of summer flounder in the possession of the participant shall not exceed the aggregate summer flounder trip limits of the cooperating states where the vessel is authorized to possess and offload summer flounder.
7. The aggregate sum of black sea bass in possession of the participant shall not exceed the aggregate black sea bass trip limits of the cooperating states where the vessel is authorized to possess and offload black sea bass.
8. All summer flounder catch that is intended to be landed in Massachusetts shall be segregated in some manner from summer flounder intended for other cooperating states. The summer flounder intended to be landed in Massachusetts shall be labeled with the intended wholesale dealer and port in Massachusetts where it will be offloaded.
9. All black sea bass that is intended to be landed in Massachusetts shall be segregated in some manner from all other catch, including black sea bass intended to be landed in other cooperating states. The black sea bass intended to be landed in Massachusetts shall be labeled with the intended wholesale dealer and port in Massachusetts where it will be offloaded. Any black sea bass intended to be offloaded in another cooperating state shall be labeled as such.
10. The participant shall call the Massachusetts Environmental Police (MEP) dispatch at 1- 800-632-8075 at least two-hours prior to entering the Massachusetts' port where the summer flounder and black sea bass is intended to be offloaded. If dispatch cannot be reached, the participant shall contact Major Patrick Moran at 857-202-8391. During this call the participant shall provide MEP with port and facility where they intend to offload the summer flounder and black sea bass, the wholesale dealer they intend to offload the summer flounder and black sea bass to, the estimated time of arrival in port, the estimated time of offloading, the estimated total weight of summer flounder and black sea bass onboard the vessel, the estimated total weight of summer flounder and black sea bass to be offloaded in Massachusetts, and the other cooperating states where they intend to offload the additional summer flounder or black sea bass in their possession.
11. The participant may only offload summer flounder and black sea bass labeled as intended for Massachusetts. The quantity of summer flounder and black sea bass in Massachusetts shall not exceed Massachusetts' Period I summer flounder commercial limit at 322 CMR 6.22(2)(c) or black sea bass wintertime commercial allowance at 6.28(2)(c)(1).
12. All offloading must occur between 0600 hours and 2000 hours.
13. Unless otherwise notified, the participant may offload summer flounder and black sea bass in Massachusetts seven days per week.

14. All summer flounder and black sea bass offloaded in Massachusetts may only be sold, offered for sale or exchanged to a Massachusetts permitted dealer authorized as a primary buyer of finfish who also holds a federal dealer permit.
15. The participant shall not offload any summer flounder and black sea bass in more than one Massachusetts port during any single trip.
16. Unless otherwise authorized by the DMF or the MEP, the participant is prohibited from offloading, selling, or exchanging any summer flounder and black sea bass in Massachusetts that is intended for offloading in another cooperating state and summer flounder intended for offloading in other cooperating states shall remain onboard the vessel while in Massachusetts.
17. The participant, upon leaving a Massachusetts port in possession of summer flounder or black sea bass intended to be offloaded in another cooperating state, shall immediately transit through the waters under the jurisdiction of the Commonwealth and shall not make any additional stops in Massachusetts unless authorized to do so by DMF or MEP.
18. Except as explicitly provided above, this Letter of Authorization and Statement of Permit Conditions does not exempt the participant from any marine fishery laws and regulations of the Commonwealth, including but not limited to those permitting laws and regulations that require a species-specific regulated species permit endorsement to possess and land each species in Massachusetts.
19. This written authorization, authorizations from other participating states to carry non-conforming quantities of summer flounder and black sea bass, and your 2020 Massachusetts' commercial fishing permit and regulated fishery permit endorsement for summer flounder and black sea bass shall be onboard your vessel at all times while participating in this Pilot Program and shall be made available to the Massachusetts Environmental Police upon demand.
20. This Letter of Authorization shall expire once the 25% of the state's 2020 commercial summer flounder quota is taken or on April 22, whichever occurs first.

Violation(s) of any condition or restriction as contained herein or any provision of G.L. c. 130 or 322 CMR, shall result in the immediate revocation of this Letter of Authorization, as well as the potential suspension or revocation of your Massachusetts commercial fishing permit and regulated fishery permit endorsement for summer flounder and black sea bass. Violations of any similar summer flounder and black sea bass regulations or permit conditions in other cooperating states may also result in the immediate revocation of this Letter of Authorization. The Director may amend or rescind this Statement of Conditions at any time.



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Daniel J. McKiernan  
Director

January 1, 2021

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Effective Date