

MARINE FISHERIES ADVISORY COMMISSION

November 8, 2018

DFW Headquarters

Westborough, MA

In attendance:

Marine Fisheries Advisory Commission: Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; William Doyle, Clerk; Lou Williams; Tim Brady; Andrew Walsh; Charles Quinn; and Arthur Sawyer. Absent: Kalil Boghdan.

Division of Marine Fisheries: David Pierce, Director; Daniel McKiernan, Deputy Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Jared Silva; Nichola Meserve; Story Reed; Tracy Pugh; and Steve Wilcox.

Department of Fish and Game: Ron Amidon, Commissioner; and Mary Lee King, Deputy Commissioner.

Massachusetts Environmental Police: Lt. Kevin Clayton.

Members of the Public: Phil Michaud

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called for a moment of silence for those affected by the recent shooting in Thousand Oaks, California.

REVIEW AND APPROVAL OF NOVEMBER 8, 2018 BUSINESS MEETING AGENDA

The Chairman asked if there were any adjustments to the November 2018 business meeting agenda. No comments were made. **Bill Doyle made a motion to approve the November 2018 MFAC business meeting agenda. The motion was seconded by Arthur “Sooky” Sawyer. The motion was approved unanimously.**

REVIEW AND APPROVAL OF SEPTEMBER 13, 2018 DRAFT BUSINESS MEETING MINUTES

Andrew Walsh requested that the discussion towards the end of the Commission Member Comments be revised. He clarified that he was not advocating that DMF and the MFAC overlook economic and market factors when making management decisions, but cautioned that some past decisions designed to improve market price seemed to backfire. Jared Silva stated that he would refine the minutes to reflect that there was some discussion regarding the extent to which management decisions should be made on market factors.

No further comments were made. **Bill Doyle made a motion to approve the September 2018 MFAC business meeting minutes as amended. The motion was seconded by Charles Quinn. The motion was approved unanimously.**

CHAIRMAN'S COMMENTS

The Chairman noted he had attended the annual Atlantic States Marine Fisheries Commission meeting, which was held this year in New York City. He thanked DMF for their work on behalf of the Commonwealth.

COMMISSIONER'S COMMENTS

Commissioner Ron Amidon recently visited Martha's Vineyard and met with members of the Martha's Vineyard Fisherman's Preservation Trust and the Martha's Vineyard Shellfish Group. He reviewed some of the whelk research being done by Shelly Edmundson, the development of the Trust's permit loaning program, and work being done in marine aquaculture. He was also appraised of the challenges facing island fishermen.

Ron was also working with the Division of Marine Fisheries (DMF) and the Division of Ecological Restoration (DER) to address anadromous fish issues. He noted funding is often allocated to restoring rivers and wetlands habitat, but less funding is made available to fish passage projects on rivers where dams and other obstructions still exist. He noted the importance of DMF's fish passage work and was hoping to help form partnerships to increase the scope of funding available for such projects. Director Pierce thanked Commissioner Amidon for his efforts.

DIRECTOR'S COMMENTS

Director David Pierce reminded the Marine Fisheries Advisory Commission (MFAC) that October was National Seafood Month. In honor the Massachusetts Legislature hosted Seafood Day at the State House. The event was put on by the Massachusetts Fisherman's Partnership and was well attended. DMF and its Seafood Marketing Program attended and hosted an informational booth.

David, Ray Kane, Bill Doyle and Story Reed then discussed Massachusetts seafood branding. Story noted that there was growing interest in labeling seafood back to the port and even the harvester. However, there were a number of obstacles - legal and technical – constraining the implementation of such a marketing program.

DMF's Seafood Marketing Commission also met in October. DMF provided the Commission with an update on seafood marketing grant programs. This included a recently completed economic report on spiny dogfish by Josh Wiersma and Mike Carroll. A conclusion of the report was that the current 6,000 pound trip limit for dogfish was reasonable and that increasing or eliminating trip limits may result in market gluts

further deflating the ex-vessel value for this species. This report was provided to the MFAC in October 2018. The report was also forwarded to the ASMFC, as well as the New England and Mid-Atlantic Fishery Management Councils (NEFMC and MAFMC), to help advise the setting of future dogfish trip limits.

The Director raised concerns about federal commercial Atlantic Bluefin tuna management. He reminded the MFAC that the 2017 quota was taken early in the season and left little opportunity for Massachusetts fishermen to target the species as they migrate south through our waters in the fall. In response, DMF actively engaged NOAA's Highly Migratory Species (HMS) office in 2018. However, despite some changes in federal quota monitoring in 2018, there was still little fall fishing opportunity for Massachusetts fishermen. Accordingly, DMF would continue to formally weigh in or HMS (as well as ICCAT) proposals and be even more engaged in tuna management, including working with the MFAC to jointly comment on future proposals.

The NEFMC recently voted in favor of adopting a 12 mile buffer zone to prevent near-shore mid-water trawling for herring. This buffer zone would extend from the US/Canadian border southward, then east around Cape Cod and south again to Long Island. The buffer zone bumped a bit further seaward than 12 miles around the Outer Cape area. David stated that DMF supported this proposal due to concerns about impacts this fishing activity may be having on herring abundance and forage availability. NOAA still had to promulgate the rule, and David expected there would be litigation filed in an attempt to stall or prevent its implementation. However, he was optimistic the rule would be promulgated in the next year.

DMF met with representatives of the surf clam industry. The purpose of the meeting was to discuss a ranging number of issues, including the recent Nantucket Shoals habitat closure in federal waters implemented by the NEFMC. The closure was expected to substantially impact that industry in MA, as many of the clams landed here are harvested in this area. Industry representatives were seeking DMF's advice on potential spatial/temporal exemptions to the closure and the enforcement concerns related to such exemptions.

Sooky Sawyer noted that the surf clam industry started off New Jersey but now seemed to be located off Massachusetts. He was curious if the clam resource had been overfished to the south or if the resource was moving northward.

Deputy Director Dan McKiernan stated that fishing activity had moved north and east in recent years. However, it was debatable whether this was driven by the stock being fished out to the south, if the species was moving northward in response to environmental factors, or some combination of both. Dan added that the most recent stock assessment demonstrated an increase in abundance of surf clams on Nantucket Shoals and Georges Bank, which indicated these clams are becoming more abundant off our shores. As result of this geographic shift in activity and abundance, MA (specifically New Bedford) have become a major port for the surf clam industry.

Dan added that federal surf clam management was complicated by the fact that the resource is managed by the MAFMC. Despite much of the resource being harvested off our coast, MA does not have a seat at the MAFMC. Further complicating this management structure is the fact that the recent Nantucket Shoals habitat closure, which substantially impacts the surf clam fishery, was implemented by the NEFMC under its authority to protect and regulate fishing habitat.

The Director moved on to discuss the new benchmark assessment for lobster being conducted by the ASMFC. He noted an assessment workshop would be held at DMF's facility in New Bedford. The assessment is expected to be finalized in mid-2020.

Sooky Sayer asked if the stock assessment would address both the Gulf of Maine and Southern New England lobster stock. Deputy Director Dan McKiernan stated it would.

The MWRA hosted DMF staff for a tour of the Deer Island sewage treatment plant. Additionally, on November 13, 2018, MWRA would host a meeting to discuss the various impacts related to the sewage treatment plant and the outfall on marine ecology. David stated he would circulate the meeting agenda.

Mike Pierdinock was interested if the MWRA meeting would address the discharge of pharmaceutical drugs found in human waste and the impacts this may have on marine life. He cited studies conducted on salmon in Puget Sound. David stated that there was a presentation scheduled on emerging contaminants such as pharmaceuticals, plastics and endocrine disruptors.

DMF's five-year white shark study has completed its field work. Doug Fraser of the Cape Cod Times recently wrote an article that did a good job at reviewing this research. Now the Division was finalizing a new multi-year research plan. David expected this research plan would have a strong emphasis on using data collected to enhance public safety.

David concluded by mentioning that the new marine fisheries fines and penalties schedule went into effect on November 7, 2018. He thanked his staff, the MA Environmental Police (MEP) and the MFAC for their work in advocating for these changes.

LAW ENFORCEMENT COMMENTS

Lt. Kevin Clayton introduced himself to the MFAC. The Lieutenant oversees the MEP operations on the Outer Cape and Nantucket. His comments first highlighted several recent issues regarding seafood labeling in Boston. He then discussed several recent cases that dealt with river herring poaching in Eastham, as well as tautog and lobster violations. There was one high-profile lobster related incident on the North Shore; he expected this incident would be referred to DMF for an adjudicatory hearing to sanction the commercial fishing permit.

Tim Brady asked if the individual involved in the river herring incident was arrested. Lt. Clayton indicated that he had been.

Sooky Sawyer asked whether charges were made against the dealer involved in the North Shore lobster case. Lt. Clayton stated that he could not divulge details of an ongoing case. However, MEP was working cooperatively with NOAA Enforcement and NOAA Enforcement leading the investigation.

Sooky added that Gloucester area commercial fishermen were very frustrated with the individual involved in the incident, as he is a repeat offender and known poacher. Much of their frustration was due to the fact that he is allowed to continue to fish, and presumably violate lobster conservation regulations, despite his past history and the current charges against him. Sooky and the other local lobstermen hoped the individual would be dealt with swiftly and forcefully.

Dan McKiernan stated that DMF was aware of the current case. He noted that the individual was previously involved in another incident in 2016 and was subject to an adjudicatory proceeding that resulted in a permit suspension. DMF intended to follow up on these recent violations and pursue another adjudicatory proceeding on the permit. Dan noted that while the violations were egregious, it did not meet the necessary thresholds whereby DMF could immediately suspend the permit. However, DMF would pursue a hearing as expeditiously as possible. However, until the hearing was held and a final decision issued, the individual's permit remains valid and he may continue to fish. Dan added that this process takes about six months.

The Lieutenant then moved on to discuss MEP staffing. He stated that two recent hires were currently obtaining field training with the Inland Bureau. MEP was expected to hire an additional 12 officers in the next year. They were currently conducting background checks on the prospective candidates. After that, the new hires would enter the academy in early 2019. Academy training takes up to 26 weeks, after which they would receive conservation training and additional field training. He was hopeful they will be fully active officers in 2020.

Chairman Kane asked Lt. Clayton to confirm that these new hires would increase the total number of officers to 85. Lt. Clayton confirmed that numbers would increase to 85 officers, provided there was no other attrition. Ray was happy to hear that staff levels were increasing, but felt that the size of the force still needed to increase further to meet the needs of the constituents.

Lt. Clayton noted that one of the biggest challenges facing MEP was conducting 48 monthly shellfish growing area inspections, as mandated by the National Shellfish Sanitation Program's model ordinance. He noted that with current staffing levels this was a time consuming task that had a limiting impact on their ability to pursue other matters.

Bill Doyle asked what was involved in shellfish growing area inspections and if this was done in coordination with local shellfish constables. Lt. Clayton stated that MEP officers are required to make a visual inspection of a growing area and inspect any fishing activity. He noted that coordination between MEP and local wardens varied from municipality to municipality and there was no formal state-wide arrangement.

Bill expressed his frustration with the disparate levels of engagement of shellfish constables across municipalities. Dan McKiernan stated that he would have someone from DMF's shellfish program reach out to discuss the relationship between DMF, MEP and local constables on inspections and the minimum requirements of constables.

ACTION ITEM

Winter II Scup Limits

Jared Silva reviewed the Director's recommendation. He noted that the coast-wide scup quota was divided into three periods. Winter I (January – April) and Winter II (October – December) periods are federally managed as most catch of scup occurs offshore in federal waters. The summer period (May – September) is managed at the state level through individual state quotas and regulations. Under the federal FMP, any quota underage during the Winter I period is rolled over into the Winter II period and trip limits are adjust based on the resulting amount of quota available. For 2018, the Winter II quota was set at 3.82 mlbs, but 5.95 mlbs of quota was rolled over from the Winter I fishery to the Winter II fishery, resulting in a Winter II quota of 9.77 mlbs. As a result, NOAA set the Winter II trip limit 28,500 lbs rather than 12,000 pounds.

DMF was recommending MA match the 28,500 lb. federal possession and landing limit. DMF historically adopted the federal limits during the Winter I and Winter II periods to allow vessels to land their lawfully caught fish in our ports. DMF did not expect that adopting these high limits would result in heavy fishing effort in state-waters for a number of reasons (e.g., seasonal availability of scup inshore, large net mesh requirements in state-waters, low ex-vessel value).

The Chairman called for a motion on the Director's recommendation. **Andrew Walsh made to adopt the Director's recommendation to match the federal 28,500 lb possession and landing limit for scup during the 2018 Winter II fishery. The motion was seconded by Sooky Sawyer.**

The Chairman opened the item up for discussion; no comments were made. **The motion was approved unanimously.**

FUTURE PUBLIC HEARING ITEMS

Whelk Gauge Size Increases

Deputy Director Dan McKiernan reviewed the Director's memo on whelk gauge size increases. The proposed schedule increases the gauge width by 1/8" on a biennial

basis beginning in 2019 and concluding in 2029, with a terminal gauge width of 3 5/8". At this terminal gauge width 50% of female whelks would be mature; at present the gauge width does not protect any spawning stock biomass.

Schedule for Whelk Gauge Increases, Corresponding Shell Widths at 50% Retention, and Percent Maturity of Female Whelks at Size						
	2019	2021	2023	2025	2027	2029
Chute Gauge Width	3"	3 1/8"	3 1/4"	3 3/8"	3 1/2"	3 5/8"
Shell Width at 50% Retention	3 3/16"	3 5/16"	3 7/16"	3 5/8"	3 3/4"	3 7/8"
Percent Maturity of Female Whelks	0%	0%	0%	5%	20%	50%

Chairman Kane asked about the timing of rule making, given that new gauges would have to be fabricated for the start of the season in April 2019. Jared Silva expected DMF would go out to public hearing with this proposal in early 2019 with the goal of having the MFAC vote on a final recommendation in February 2019. This would give machine shops about two months to fabricate the requisite gauges. Jared added that the first gauge increase would be from 2 7/8" to 3"; some fishermen may already have a 3" gauge because it was the gauge required in 2015 and 2016 when the parallel method of measurement was used.

Ray then stated that Cape fishermen were very frustrated by recent enforcement incidents involving a local fishermen retaining large numbers of undersized whelks. Dan and Jared stated that an adjudicatory proceeding had been initiated to sanction this individual's permit. They expected a hearing to occur in December 2018.

Andrew Walsh asked about the expected loss of landings resulting from this gauge increases. DMF biologist Steve Wilcox stated that this was difficult to project. First, these animals grow about 1/4" per year, so some animals that are sub-legal at the start of the season will be legal at by the end of the year and by the next gauge increase. Moreover, it is difficult to discern what loss of catch is attributable to the gauge increase, as compared to further stock depletion. However, 2018 sea sampling data indicated that the gauge increase could decrease the weight of landings by about 27% in 2019.

Sooky asked if whelks grow throughout the year or if there is a specific growth period. Steve stated that they grow throughout the year, but most growth occurs during the summer and fall.

Director Pierce expressed his serious concerns about the status of the whelk resource. He stated that DMF's channeled whelk stock assessment was very comprehensive and demonstrated that the resource was overfished with overfishing occurring. He was skeptical that this conservative gauge increase schedule would be sufficient to rebuild the stock. He expected DMF would be looking into other conservation methods in the future and looked forward to engaging industry on their ideas for additional conservation.

Head Boat Compliance

Dan McKiernan stated that the MFAC had formed a sub-committee to address issues pertaining to regulatory compliance onboard head boats. This was driven by recent high profile incidents onboard the Captain Leroy and the Viking Starship. The MFAC sub-committee met in September 2018 and included Mike Pierdinock and Tim Brady, as well as MEP and DMF staff. The sub-committee analyzed methods to improve angler compliance, reduce the burden on operators to monitor anglers, and create an even playing field across operations. Following this meeting, and further discussion on this topic at the September MFAC meeting, DMF developed several regulatory proposals for the MFAC's consideration. The proposals were tailored to the spring-time black sea bass and scup head boat fishery. However, DMF was interested in potentially extending some of these requirements beyond this fishery.

DMF proposed taking the following requirements out to hearing. They would apply only to head boats fishing for black sea bass and scup during the period of May 1 – June 30.

1. Maintain a verifiable passenger list;
2. Issue burlap bags and stringers to individual patrons that are identifiable to a person on the passenger list;
3. Require patrons not co-mingle catch;
4. Mandate patrons segregate their scup from their sea bass from other species; and
5. Prohibit the captain and crew from engaging in any fishing activity other than assisting patrons with their gear and selling any catch to patrons.

Dan stated that based on conversations with head boat operators he expected that these proposals will result in a loss of some business in Massachusetts and some head boat operations will shut down due to a loss of a certain clientele that come here to retain large quantities of fish, even if it means breaking the law. Despite this, Dan thought that DMF could not continue to allow a business model that was fundamentally reliant on non-compliance with the state's conservation regulations. This non-compliance negatively impacted lawful for-hire operators, as well as the rank and file recreational anglers.

Dan added that he was also scheduled to attend a MAFMC workshop on improving compliance in the for-hire industry in mid-November. He reviewed the workshop agenda and noted that DMF and the MFAC were addressing a number of issues that the MAFMC was beginning to consider. He felt it would be a good opportunity to see what other jurisdictions were doing and determine if there were common solutions that could be more broadly adopted by the ASMFC or the Councils.

Ray Kane asked who can be held accountable for a violation on a for-hire vessel. Jared Silva stated that this was ultimately at the discretion of MEP, but MEP had the authority to cite the permit holder, operator and individual angler.

Tim Brady supported DMF's proposals in general. However, he favored a system whereby DMF set minimum standards and head boat operators could have the flexibility to determine how best to comply with these standards.

Dan stated that DMF tried this on a voluntary basis and determined it was preferable to have explicit regulatory mandates. DMF and MEP do not have the resources necessary to adequately review individual compliance plans and determine if they are being complied with. Lt. Clayton agreed and advocated for a simple, broadly applicable standard that would be easy for his officers to enforce.

Bill Doyle stated that the fishing limits are already in place and now the state was moving to micromanage an entire industry because certain businesses are failing to comply. Bill favored a different approach. He thought that before being issued their permits all for-hire operators should sign an affidavit stating that they understand all applicable rules and regulations and that they are responsible for angler compliance on their vessels. Then DMF should hold workshops to educate businesses on best industry practices. If operations are then found in violation of fishing regulations, they would face fines and permit sanctions. He noted that this is what occurs in the oyster industry and seems to be a good model to follow.

Dan appreciated Bill's perspective. He added that DMF intended to hold annual charter/head boat workshops to discuss management, compliance, MRIP and other issues affecting the fleet. However, he noted there was a desire among many in the industry to see a level regulatory playing field that would bring the bad actors into the fold or force them out of the industry.

Mike Pierdinock agreed with Dan. However, he did not think the proposed measures should apply beyond the springtime head boat fleet for black sea bass and scup. He argued the further application of these rules would be an overreach at this time. He noted that his position was that of the various for-hire organizations he is involved.

Chairman Kane also favored an incremental approach. He felt DMF should first focus on the problematic springtime black sea bass and scup fishery, learn from the approach, then apply the successful methods to other fisheries as necessary.

Mike P. asked when DMF anticipated they would hold for-hire workshops. Dan suggested that two or three meetings be scheduled for the early spring covering the various regions (North Shore, South Shore, Cape and Islands). However, he would leave the scheduling of the meetings and the setting of the agenda to Mike Armstrong.

Ray Kane asked when DMF anticipated this item would go out to public hearing. Jared stated it would likely proceed to public hearing in February and a final recommendation would return to the MFAC at their March meeting. This would allow for final rules to be implemented in advance of May 1.

Right Whale Conservation Measures

Deputy Director McKiernan reviewed DMF's two proposals related to right whale conservation.

- The first proposal was to implement a small vessel (<65") speed limit of 10-knots within Cape Cod Bay during March and April; a federal 10-knot speed limit already applies to vessels 65' for the time and area. The purpose of this would be to prevent lethal and sub-lethal ship-strikes during the early spring. At that time, right whales are susceptible to ship-strikes, as they are densely aggregated in the Bay and surface feeding. DMF would then create a legal mechanism to rescind or extend the closure based on the presence of the whales in the Bay.
- The second proposal is to create a mechanism to extend the trap gear closure past April 30 if whales remain in the Bay. Over the past few years, DMF has done this by emergency regulation. It is predictable that whales may remain in the Bay into May in future years, so to reduce the administrative burden of filing emergency regulations, DMF is proposing to adopt a declaratory process to take this action.

With regards to the speed limit, DMF implemented a 10-knot limit on an emergency basis for the period of April 24 – May 15, 2018. At that time, DMF met with the Cape Cod Bay for-hire fishermen to discuss the rule, as they fish for haddock in late-April and May on Stellwagen Bank. Some constituents argued it would put vessels operating out of certain ports at a disadvantage because they would have longer steaming times to the fishing grounds. There was also some concerns about enforcement, as most smaller vessels do not have an AIS to monitor speed, so enforcement would have to occur on the water during MEP patrols.

While empathetic to the concerns of the for-hire fleet, Sooky Sawyer noted that lobstermen have been subject to increasingly stringent regulations to protect right whales over the past 20 years. Accordingly, he did not feel a 10-knot speed limit was much of an imposition given the expensive gear modifications and time-area closures the lobster fishery has faced.

Mike Pierdinock asked if the speed limit would only be in effect when the whales are in the Bay. Dan stated that the proposal was to have the speed limit in effect from March 1 - April 30, but allow the Director to extend or rescind the speed limit based on the presence of whales. If aerial surveys and plankton monitoring were to demonstrate that the whales have migrated out of the Bay and would not return come mid-April, then DMF would have the authority to lift the speed limit. Conversely, if surveys demonstrated the whales would remain in the Bay in early May, the Director would have the authority to extend the speed limit.

Mike P. then added that the for-hire fleet would like to see the speed limit set higher than 10-knots. However, there is an understanding among operators as to why DMF chose the 10-knot limit, and they recognize the need to protect right whales. Mike P. added that the speed limit will put some operations working out of ports deeper in the Bay (e.g., Plymouth and Sandwich) at a disadvantage. Tim Brady agreed with Mike. Tim

added that he could not imagine any legitimate operator would object to having to slow down around feeding right whales.

Tim then asked if any tagging studies were being conducted to better understand whale movement. He suggested such studies could improve management and allow for finer spatial controls (e.g., transit channels). Sooky Sawyer stated that researchers have not been able to develop a tag for right whales. Past tagging experiments have resulted in infections that jeopardize the health of the tagged whale. Dan stated that tagging may give scientists and managers a better idea of how these whales migrate offshore. However, with regards to Massachusetts' waters, right whale behavior is well understood. These whales predictably aggregate to feed on plankton in the waters of Cape Cod Bay during the late winter with numbers peaking in the early spring. They then depart when the plankton counts become diminished. The whales move throughout the Bay and are here in such densities that creating predictable transit channels is not possible.

Ray Kane asked that if DMF extended the trap closure into May in one year, if they could give those days back to the fishermen the following year. Dan stated that was not a possibility. The trap gear closure that exists from February 1 – April 30 is a federal closure promulgated under the Marine Mammal Protection Act and it applies to all commercial fishermen, including those in state-waters. Accordingly, DMF has no ability to shorten this closure. However, the agency may use its own regulatory authority to extend the closure past April 30th if right whales remain in the Bay. Dan noted that the speed limit rule is different and DMF may shorten or extend the period when the speed limit applies at its own discretion because there is not an overarching federal rule.

Dan noted that the right whale population has declined from 450 individuals to 411 individuals over the past few years. Moreover, birth rates have been at low levels in recent years. In response to these dwindling numbers, NOAA is expected to come out with a jeopardy finding under the Endangered Species Act. This will likely prompt additional conservation measures, particularly for the lobster fishery. Accordingly, DMF was proposing to address potential anthropomorphic causes of mortality and injury that may be occurring in our waters.

Dan continued to discuss recent fishing gear entanglements. He speculated that based on the buoy lines found on the whales, these entanglements were not likely a product of the inshore Gulf of Maine lobster fishery, as the rope was too heavy. Instead, they may be coming from the offshore lobster fishery and perhaps Canadian crab fisheries. Dan added that another challenge is that the whales are travelling further north to forage, perhaps in response to changes in oceanographic conditions. This may be taking a greater toll on them physically. Both the oceanographic changes and the more expansive migration may be factors influencing the low birth rates. Moreover, it may be exposing the whales to new fishing gear and boat traffic, increasing the risk of entanglements and shipstrikes.

Lou Williams stated that about 25-years ago he spoke with a leading marine mammal expert at NOAA. Lou recalled that this individual stated that the gene pool this species recovered from was too small and it was inevitable that birth rates would eventually fall and the species would go extinct.

Lou also agreed with Dan that the gear found on whales confirmed that most entanglements were not occurring in the inshore Gulf of Maine lobster and gillnet fisheries. Lou added that these fisheries do not seem to get credit for reducing their entanglements and continued to be lumped in with other fisheries where entanglements remain an issue.

Dan noted it was difficult to confirm where entanglements occur. First, whales may carry gear for long distances before it is observed. So, a whale observed with rope around it in Florida may not have been entangled in Florida fishing gear. Second, a whale may be injured by an entanglement but shed the gear before it is observed, so there is no evidence of where the gear came from. However, the heavier rope being found on entangled whales demonstrates that certain fisheries may be more problematic than others.

Dan added that NOAA will continue to aggressively regulate gear to reduce entanglements, particularly if a jeopardy finding is issued. He opined that this will likely lead trap gear fisheries, particularly the Gulf of Maine lobster fishery, down two paths: (1) buoyless gear; or (2) weak rope. He argued that buoyless gear would likely be a nightmare scenario given that it would require zoning the ocean for certain fishing activities. However, he was somewhat optimistic about recent developments in weak rope gear. Dan, Lou, Sooky, Andrew and Ray further discussed the issues with buoyless gear and weak rope gear.

Mike P. and Lou also speculated about the impacts the MWRA outfall may have on plankton abundance and how this could be influencing the behavior of whales in Cape Cod Bay.

Striped Bass

Mike Armstrong introduced DMF's public hearing proposal regarding striped bass. There are three aspects of this proposal: (1) prohibit gaffing; (2) mandate the use of circle hooks when fishing with natural baits; and (3) allow dealers to import non-conforming sized striped bass caught lawfully in other jurisdictions while our commercial fishery is open. Mike A. addressed the first two proposals and Dan McKiernan addressed the third.

Mike A. stated that several years back DMF went out to public hearing with a proposal to mandate the use of circle hooks when fishing with natural baits. For a number of reasons DMF and the MFAC ultimately did not move a final rule forward and instead decided to pursue angler education. DMF has since conducted an angler education program and is gearing up to conduct extensive outreach on circle hooks this spring. However, Mike A. felt that angler education programs failed to reach the casual angler

and it is these anglers who are likely more prone to gut hooking fish. So, he questioned the continued utility of angler education.

Mike A. also felt there were other factors that made it a good time to reconsider mandating the use of circle hooks. First, early indications about the upcoming benchmark stock assessment have not been as positive as previously anticipated. While Mike A. could not yet opine on whether the stock assessment would demonstrate a need for states to cut fishing mortality, he speculated that the fishery was approaching the maximum fishing pressure the stock can sustain. So new conservation measures would be timely. Second, using the new MRIP estimates, discard mortality is nearly double what it was previously thought to be. The stock assessment uses a 9% discard mortality rate based on work done by DMF in the 1980s with various terminal tackle. Using this rate and the revised MRIP catch estimates, the data suggest that from 2011-2015 MA discarded 13M striped bass per year, of which 1.1M are dead. Mike A. speculated that if the discard mortality rate dropped from 9% to 2% through the mandated use of circle hooks, MA could substantially reduce the number of dead discards. Lastly, in recent years a number of states have mandated the use circle hooks. Among these states is MD; MA and MD are the top two states where striped bass are discarded and make up a substantial amount of the coast-wide discards.

Mike A. thought public comment would be helpful to DMF in crafting a final rule relative to circle hooks. In particular, he thought our constituents would provide valuable feedback on: (1) whether to exempt certain bait rigs (e.g., tube and worm, jigs and rinds); whether to require a minimum hook gap or specific hook configuration; if certain sectors of the fishery (e.g., commercial or for-hire) should be exempt for a circle hook mandate; and if this mandate should be phased in over time to account for existing inventory and improve the understanding of how circle hooks are fished.

Mike Pierdinock generally supported mandating the use of circle hooks. However, he expected that the for-hire fleet would likely object to mandatory circle hook rules. He thought that there may be room to exempt certain sectors of the fishery that target larger fish and have experience properly hooking and handling fish. He suggested that for-hire vessels could be exempt from this provision, specifically if they attend the for-hire workshops DMF was previously discussing.

Mike P. also noted that a circle hook would have to be defined and suggested that may be difficult to do and enforce. Nichola Meserve and Mike A. noted that there is good regulatory language in other jurisdictions.

Mike P. also supported phasing any circle hook mandate in over time. He noted that not only would this help allow tackle shops to sell off existing inventory, but it would also provide time for anglers to become accustomed to using circle hooks.

As for prohibiting the gaffing of striped bass, Mike A. noted that this had come up again this year in response to some observed activity last summer where near legal sized fish were reportedly being gaffed, measured and released dead. It was his opinion that DMF

should have already prohibited gaffing. He added that there are very low limits in both our commercial and recreational fisheries, so they are not meat fisheries whereby gaffing is necessary to conduct efficient fishing activity. With our current low limits, these fish can be handled more carefully and intrusively without an impact on harvest rates. Moreover, telescoping dip nets have already replaced gaffs on many vessels. Lastly, most other states with large striped bass fisheries have already prohibited the practice.

Mike P. stated that he spoke with ME fishermen regarding gaffing. He opined that if they could be reformed to use a dip net, then so could the fishermen in MA.

Tim Brady suggested that attitudes towards gaffing have evolved and gaffing has become a lost art. He agreed with Mike A.'s assessment that more boats are now using dip nets, and most young anglers and deckhands are more comfortable with a dip net. He joked that gaffing is now typically reserved for halibut and balloons.

Lt. Clayton confirmed the anecdotes shared by Mike A. regarding anglers gaffing and releasing fish. Ray Kane stated he had heard similar stories from the commercial striped bass fleet. Ray opined that dip nets are fine for removing fish from the water.

Deputy Director McKiernan then discussed DMF's proposal to allow dealers to import non-conforming sized striped bass caught lawfully in other jurisdictions while our commercial fishery is open.

He explained that MA's fishery typically closes by the end of summer, and as a result non-conforming fish for the Mid-Atlantic enters our markets in the fall and winter. However, 2018 was an unusual year and the fishery remained open and was expected to remain open throughout the rest of the year. So, as the fishery is to remain open, this non-conforming fish is prohibiting from being sold in MA. In response, MA seafood dealers and MD marine fishery officials requested DMF rescind this rule for the remainder of 2018 to allow for this historic commerce to occur. DMF consequently filed an emergency regulation that rescinded this prohibition on non-conforming imported fish for the remainder of 2018.

However, MD was pushing MA (and other states) to allow the importation of this bass into MA while our commercial fishery is open during the summer as well. Dan added that MD was seeking this action not only to sell fish to our consumers, but also to sell fish through MA distributors to markets outside the Commonwealth, as Boston is a major global seafood distribution hub. Also, MD officials noted that MA striped bass are allowed in MD markets year round, even though many of these bass do not conform to the MD maximum size limit.

Dan thought MA had to accommodate this request and allow the importation of this fish year-round. With the tagging program in place, there was not a sufficient conservation argument to prevent the importation of this fish. Accordingly, any argument against lifting the provision would be rooted in economics and preliminary legal opinions indicated that this likely raised dormant commerce clause issues and failure to lift the

rule would likely expose the state to a lawsuit. Dan added that he was advocating other states open markets as well, including those where striped bass is a gamefish (e.g., CT and ME).

Sooky Sawyer asked if MD was the only state requesting this of MA. Dan noted other states, such as VA, may also be interested in seeing MA rescind this regulation and liberalize its markets.

Ray stated he was concerned about how such a rule change would impact the income of MA fishermen. He noted that there were anecdotal reports that once DMF implemented the emergency regulation this fall, the ex-vessel value for striped bass fell.

Bill Doyle stated that the price drop observed this fall was likely in response to demand. October and November have been historically slow months for the seafood industry. October was chosen to be national seafood month largely to pique interest in seafood at this slow market period. Bill added that most fish is being bought and sold on the national market, so while MD fish may not be in MA during the MA commercial season it is still on the national market affecting supply.

Dan agreed with Bill's comments on the national market for striped bass. He also reiterated concerns regarding the dormant commerce clause and limiting interstate trade based on factors other than conservation.

Mike P. asked if DMF adopted the 34" commercial minimum size as a conservation measure. Dan stated that was not the case. The 34" minimum size was selected to slow down catch rates in order to keep the fishery open longer and prevent user group conflicts with recreational anglers who tend to catch smaller sized fish.

Mike P. stated that he heard concerns from the recreational community that allowing MD's small fish into MA will result in more small fish being caught and therefore limit the biomass of fish that migrate north and become available to MA anglers. Dan stated that MD's commercial bass fishery is quota managed. So, these fish are being caught by MD fishermen and removed from the biomass regardless of whether or not they may be sold in MA. However, Dan added that the appropriate striped bass minimum size has been a longstanding difference between the Chesapeake Bay states and the Atlantic coastal states

Andrew Walsh asked why DMF was proposing to take any action to liberalize commercial fishery limits given that the state ran an underage of about 15% in 2018. Mike A. stated that this year was likely an anomaly and he was uncertain that DMF should react to one year's worth of data. Jared Silva added that management tools are also in place to liberalize the fishery in-season if we expect that 2019 will shape up to be similar to 2018.

Mike P. asked if this year was an anomaly because there was a change in striped bass effort or abundance. Mike A. speculated it was likely a combination of environmental

factors, forage availability and year class effect. He anticipated that as the 2011 and 2015 year classes age into our commercial fishery, larger fish will be more available. Mike A. noted the impact these large year classes were having on the productivity of our recreational fishery.

Mike P. asked then asked if DMF expected the year class effect would influence the 2019 commercial fishery. Mike A. stated that the 2011 year class may begin to have an effect in 2019, but would really begin to show up in 2020.

Ray Kane agreed with Andrew Walsh. He stated that DMF should consider starting the season a week or two earlier to better ensure the fishery takes the available quota. Andrew and Ray both pointed out that DMF closed the fishery on July 3rd and Labor Day this year and starting the fishery a week earlier would compensate for the loss of holiday fishing.

Additionally, Ray suggested that DMF should take out to public hearing an option to change the sequencing of open fishing days from Monday and Thursday to Monday and Wednesday. Ray noted that while dealers may prefer Thursday as an open fishing day, it aligns with the open fishing days in the black sea bass fishery and may have a limiting effect on commercial rod and reel fishing effort in either or both fisheries.

Dan stated that DMF would draft a public hearing proposal that would consider an earlier start date and trading Thursday for Wednesday as an open fishing day.

DISCUSSION ITEMS

Review of October Public Hearings on Mobile Gear

Jared Silva reviewed the memo provided by the Director to the MFAC. The memo described the five public hearing proposals: (1) modernize the mobile gear closure boundaries by translating existing boundaries into GPS coordinates; (2) formally codify the night fishing prohibition on purse seining for sea herring; (3) clearly allow the use of net strengtheners in the squid fishery and mirror federal rules regarding this gear modification; (4) correct permitting rules related to CAP-Purse Seine and Inshore Net Permits; and (5) recodify and consolidate mobile gear regulations.

Jared stated that DMF received four comments during the public comment period that warranted further discussion with the MFAC before the Director drafted his final recommendation. The comments are as follows:

- DMF should mirror federal rules and explicitly allow the use of chaffing gear on the bottom of the cod end, particularly for the Nantucket Sound fishery.
- DMF should adjust the Cape Cod Bay mobile gear closure coordinates to better reflect the 3 mile line in western Cape Cod Bay that draggers had historically used in lieu of the so-called 1881 line.
- DMF should adjust the North Shore Mobile Gear Closure Area to allow year round access to an area of bottom between Gloucester and Nahant.

- DMF should allow access to the South Shore Mobile Gear Closure area in April. This area is currently open from May – October. Opening this area in April would allow additional scalloping opportunity and would be consistent with the timing of the adjacent Cape Cod Bay closure.

Andrew Walsh supported all four comments. He stated that the chafing gear exemption should apply state-wide and not just in Nantucket Sound. He also asked if DMF were to accommodate the Cape Cod Bay boundary adjustment if they would use GPS coordinates or a 3-mile line boundary.

Jared Silva stated that DMF could amend the regulation either way. However, MEP preferred the use of GPS coordinates and the fisherman requesting this change provided DMF with GPS coordinates that approximated the 3 mile line. Accordingly, DMF would likely favor using GPS coordinates.

Lou Williams agreed with Andrew on the chafing gear proposal, using GPS coordinates to approximate the 3 mile line in western Cape Cod Bay and allowing fishing in April in the South Shore Closure. However, Lou did not support adjusting the North Shore Mobile Gear Closure. He anticipated that year round access to this area would create substantial gear conflicts. Moreover, he recalled the strong pushback against the wintertime opening of an area off Nahant exclusively for scallop dredging, which he had supported.

Sooky Sawyer did not support any liberalizations to the North Shore Mobile Gear Closure.

Review of October ASMFC Meeting

Sea Herring

Director Pierce stated that a request was sent to the ASMFC Executive Committee to increase funding on sea herring spawning sampling to facilitate the development of a management action to establish potential spawning closures on Nantucket Shoals and Georges Bank. David also stated that the Sea Herring Management Board initiated an addendum to strengthen spawning protections in the inshore Gulf of Maine.

Dogfish

Director Pierce stated that the Dogfish Board and NOAA agreed to keep the spiny dogfish trip limit at 6,000 pounds for the 2019 fishing year. He expected that there would be future discussions about increasing or eliminating this trip limit.

Black Sea Bass

Nichola Meserve stated that the Summer Flounder, Scup and Black Sea Bass Board approved a draft addendum for public comment, which seeks to address a number of issues in the recreational management of fluke and black sea bass related to the timing of MRIP data availability, stock redistribution, and equity between state rules. The draft addendum will go to public hearing in MA (Bourne) on November 28 alongside another

previously-approved addendum that would add the ability for federal recreational black sea bass rules to be waived when the states adopt rules attuned to the harvest limit (eliminating the possibility for disparate state and federal rules) and establish a transit zone between RI state-waters around Block Island back to the mainland for non-federal permit holders to have a way to get back to port with legally harvested state waters catch. The Mid-Atlantic Council's companion document also considers adding maximum fish sizes to the potential tool box for all three species, enabling slot limits to be considered for management in the future (the ASMFC plan already has this ability). A working group was also beginning to look at commercial black sea bass quota reallocations due to geographic shifts in the biomass.

NOAA Fisheries indicated at the meeting that it was working on a proposed rule that would hold the 2019 black sea bass commercial quota and recreational harvest limit constant with the 2018 levels. This was a rather remarkable step on NMFS' part because the Board and Council had been forced to recommend 11% cuts based on the advice of its technical advisors, despite indications of an above average 2015 year class in the pipeline. NMFS was undertaking additional analysis of this year class' effect on stock projections in order to justify status quo harvest limits.

Mike P. asked who was advocating for the transit zone. Nichola stated that the transit zone proposal arose based on recreational participants from RI who had been unable in recent years to fish for sea bass in open state waters off Block Island without violating a federal waters closure to land this fish in RI; however, the option had been broadened to consider all three species and both recreational and commercial activity. Mike P. was skeptical and thought this could lead to illegal fishing in the federal zone. There was then some discussion about the transit zone being proposed for sea bass and the opening of the EEZ around Block Island for striped bass.

Lobster

Dan McKiernan stated there was some anticipation that cuts to the herring quota were going to result in the use of new types of bait in the lobster fishery. ME was pushing other states to better control what bait could be used. Their concerns was that certain fish racks, particularly non-native species, may introduce viral, bacterial and parasitic agents that could impact local marine resources. There was then some discussion among MFAC members regarding the use of redfish as bait.

Striped Bass

Mike A. stated that most of the discussion at the Striped Bass Board was about the proposal to open the EEZ around Block Island for striped bass fishing. The Board recommended that NOAA not take any action until after the benchmark assessment is released, as there were concerns about increasing removals.

COMMISSION MEMBER COMMENTS

Charles Quinn spoke briefly about his recent trip to Iceland and conversations he had with fishing industry members there.

Mike Pierdinock was hopeful that the NEFMC would act to keep September and October open to recreational haddock fishing. Mike P. then briefed the MFAC on the upcoming ICCAT meeting in Croatia and stated that his focus would be on big eye tuna management.

Tim Brady expressed concerns about limited fall fishing opportunities for for-hire operations in Cape Cod Bay. He noted that with black sea bass, wolfish, cod and ocean pout all closed, maintaining a viable haddock fishery was necessary. He speculated many for-hire operations would go out of business if the fall haddock fishery were to close.

Andrew Walsh stated that he would like to see the weekly limit for the Period I wintertime fluke fishery reinstated. He noted that there were about 10 boats that would land more than 500 pounds per trip to take advantage of the available quota and strong price. He suggested a bi-weekly limit of 2,000 pounds. Director Pierce stated he did not think he could implement a rule change in time for the 2019 season, but would consider amending the limit for 2020. Andrew suggested that DMF could implement a pilot program and issue letters of authorization, as was done in past years. David reminded the MFAC that he provided a memo last year on why he terminated the pilot program and felt that the logic still stood; if the limit were to be adjusted then it should be done by regulation and subject to public hearings.

Lou Williams stated that there was a law on the books that prohibited the possession and landing of edible crabs take from state-waters during the period of January 1 – April 30. He was interested in seeing this law changed because some lobstermen catch crabs in their traps during this period and it would benefit them to be able to land the crabs. Dan McKiernan noted that this was something DMF could bring up and see if it could be amended in a future legislative session.

PUBLIC COMMENTS

Phil Michaud expressed his support for adjusting the mobile gear closure boundary in western Cape Cod Bay. He noted that the alternative line proposed at public comment follows a gravel-mud contour where there is towable bottom for flounders. He stated that he would prefer using GPS coordinates to a 3-mile line if it was preferable to MEP. Phil also stated that he did not support DMF's proposal to make the GE owner-operator for dragnets and noted that dragger operations are much different than fixed gear operations where owner-operator controls have been successful.

MEETING DOCUMENTS

- November 8, 2018 MFAC Business Meeting Agenda
- September 13, 2018 Draft Business Meeting Minutes
- Winter II Scup Trip Limit Recommendation
- Memorandum on Increases to the Minimum Gauge for Measuring Whelks
- Memorandum on Proposed Modifications to For-Hire Compliance Regulations
- Memorandum on Proposed Seasonal Vessel Speed Limits in Cape Cod Bay to Protect Right Whales
- Memorandum to Allow Director Declaratory Authority to Extend MA Restricted Area Closure
- Summary of October 2018 Public Hearings on Mobile Gear
- Proposed Changes to Striped Bass Regulations for 2019
- ASMFC Annual Meeting Summary for October 2018

FUTURE MEETINGS

9AM

December 13, 2018

Division of Fish and Wildlife Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

January 24, 2018

Division of Fish and Wildlife Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

March 14, 2018

Division of Fish and Wildlife Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

May 9, 2018

Division of Fish and Wildlife Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

February 14, 2018

Division of Fish and Wildlife Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

April 11, 2018

Division of Fish and Wildlife Field HQ

1 Rabbit Hill Road

Westborough, MA

9AM

June 13, 2018

Division of Fish and Wildlife Field HQ

1 Rabbit Hill Road

Westborough, MA