



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

9:00 AM

December 10, 2020

[Held Virtually Via Zoom](#)

Webinar Link: <https://bit.ly/3g85TI5>

Dial In: 1-929-436-2866

Webinar ID: 865-3954-1169

Webinar Passcode: 222721

1. Introductions and Announcements (9:00 – 9:10)
 - a. Review and Approval of the December 10, 2020 Business Meeting Agenda
 - b. Review and Approval of the October 29, 2020 Draft Business Meeting Minutes
2. Comments (9:10 – 9:30)
 - a. Chairman
 - b. Commissioner
 - c. Deputy Commissioner
 - d. Director
 - e. Law Enforcement
3. Action Items (9:30 – 10:15)
 - a. Review Open Meeting Law Complaint and Approval of Written Response
 - b. Period I Summer Flounder Trip Limit Increase
 - c. Winter I Scup Limits
4. Future Rule Making for Winter 2021 (10:15 – 10:45)
 - a. Petition to Lift Bluefish Strikenet Closure in Eastern Cape Cod Bay
 - b. Update on Protected Species Rule Making Timeline
5. Discussion Items (10:45 – 11:30)
 - a. Review of Law Enforcement Sub-Committee Meeting
 - b. Updates from Joint ASMFC-MAFMC Meeting
 - c. Oyster Fishery Update
 - d. 2021 MFAC Business Meeting Schedule
6. Presentation on Dissolved Oxygen Monitoring in Cape Cod Bay (11:30 – 12:00)
7. Other Business (12:00 – 12:15)
 - a. Commission Member Comments
 - b. Public Comment
8. Adjourn (12:15)

Future Meeting Dates

9AM

January 7, 2021

Zoom Webinar

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

October 29, 2020

Held Virtually via Zoom

In attendance:

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

Division of Marine Fisheries: Daniel McKiernan, Director; Michael Armstrong, Assistant Director; Story Reed; Jared Silva; Nichola Meserve; Kathryn Ford; Julia Kaplan; Bob Glenn; Erin Burke; Jeff Kennedy; Anna Webb; Kelly Whitmore; Melanie Griffin; Tracy Pugh; Derek Perry; .

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

Massachusetts Environmental Police: Lt. Col. Moran and Lt. Matt Bass.

Members of the Public: Gerry O’Neill; Sean Bowen; Patrick Paquette; Helen Miranda Wilson; Beth Casoni; Drew Kolek; and Philip Coates.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the October 29, 2020 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF OCTOBER 29, 2020 BUSINESS MEETING AGENDA

There were no proposed changes to the October 29, 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 SEPTEMBER 24, 2020 DRAFT BUSINESS MEETING MINUTES

There were no proposed changes to the draft September 24, 2020 business meeting minutes. No comments were made.

Ray Kane asked for a motion to approve the September 24, 2020 meeting minutes. Kalil Boghdan made motion to approve the September meeting minutes. Sooky Sawyer seconded the motion. Motion was approved by unanimous consent.

CHAIRMAN'S COMMENTS

Chairman Kane applauded Director McKiernan and Commissioner Amidon for finalizing the appointments for the two new commission members. He then had Commissioner Amidon and Director McKiernan introduce the new MFAC members.

COMMISSIONER'S COMMENTS

Commissioner Amidon welcomed Shelley Edmundson and Bill Amaru to the MFAC. He praised the passion and integrity of the current commission members and stated that he looked forward to working with Shelley and Bill.

DIRECTOR'S COMMENTS

Director McKiernan also extended a welcome to the two new MFAC members. Dan then provided a brief history of the MFAC and an overview of their role in the state's fishery management process. Dan then discussed the relevant experience of the two newest members. Bill Amaru was experienced in most aspects of commercial fishing, having fished inshore and offshore using longlines, gillnets, trawls, sea scallop dredges, and bay scallop dredges. Bill also contributed to conservation engineering initiatives and was awarded a Saltonstall-Kennedy grant to research, test, and promote the use of square mesh. Shelley Edmundson is Executive Director of the Martha's Vineyard Fishermen's Preservation Trust. She holds a Ph.D. in Zoology/Marine Biology from the University of New Hampshire. Her doctoral studies focused on channeled whelks, a species that supports one of the Vineyard's largest commercial fisheries.

The Director then briefly mentioned DMF's Seafood Marketing Program. The Seafood Marketing Steering Committee met on October 14, 2020 and reviewed a number of ongoing projects and initiatives. The Committee expressed their happiness with DMF's work.

The Director then mentioned that the Massachusetts Shellfish Initiative's (MSI) had released its Assessment Committee and Scoping Committee Reports. Dan served as Chair of the MSI Task Force and intended to convene the Task Force in December 2020. The purpose of the upcoming Task Force meeting would be to discuss next steps, including the potential drafting of a strategic plan.

Bill Amaru noted that the MSI reports were extensive documents and asked if they could be summarized or condensed into easily digestible summaries. Dan stated he would work with Jared Silva to determine what options exist.

Dan then moved on to discuss the upcoming permitting season and noted it will most likely be complicated due to the pandemic. DMF expected to have to stagger office schedules and may need to relax renewal and application deadlines due to potential delays in processing applications.

Lastly, DMF's Public Access Program was producing a video documenting the new fishing pier at Deer Island.

LAW ENFORCEMENT COMMENTS

Lt. Matt Bass handled the comments for the Massachusetts Environmental Police (MEP). There were several ongoing cases dealing with tautog and black sea bass non-compliance. One case involved a fisherman that was mixing commercial and recreational limits on the same trip and taking charters out under the authority of his commercial permit to let them take fish in excess of the applicable recreational limits.

Mike Pierdinock and Lt. Bass then discussed the difference in commercial and recreational black sea bass and tautog limits. Mike P. then suggested potentially adopting a system whereby potential patrons could query that status and standing of for-hire operations before booking charters. He thought that Florida had implemented such a system.

Ray Kane asked what actions could be taken to clarify that fisherman cannot fish under their commercial permit during a charter. Lt. Col. Moran suggested that this could be discussed further at the upcoming Law Enforcement Sub-Committee Meeting.

Lt. Bass then discussed certain instances this year where vessel operators lied about coronavirus infections to prevent MEP inspections.

PRESENTATION ON 2020 QUOTA MONITORED FISHERY PERFORMANCE

Story Reed provided the MFAC with a presentation on 2020 quota monitored fishery performance. This covered black sea bass, tautog, striped bass, horseshoe crabs, bluefish, summer flounder, spiny dogfish, and menhaden. Following the presentation, DMF took questions from the MFAC.

Bill Amaru sought clarification on where in the state the commercial menhaden fishery typically occurs and what type of vessels participate in this fishery. Story stated that in recent years the fishery was primarily conducted in Boston Harbor, Salem Sound, Gloucester Harbor and Ipswich Bay. The limited entry fishery was principally comprised of purse seiners and these vessels varied in scale from large-scale operations involving carrier vessels to converted lobster fishing platforms. The open entry fishery was comprised of small-scale purse seiners and surface gillnetters.

Mike Pierdinock asked if the reduction in catch of summer flounder was a product of a lack of biomass or a market issue due to COVID. Director McKiernan, Story Reed and Jared Silva responded to Mike's question. Story stated that effort data is provided through harvester reports and DMF will not be able to audit and analyze these reports until 2021. Jared Silva heard anecdotal reports that effort was down in the inshore summertime trawl fishery. This was evidenced in Period II pilot program participation. However, he was uncertain to what extent the pandemic played a role. Fishermen and

dealers had also informed him that summertime effort was being impacted the lack of large fish in the Sounds, as well as a large abundance of seaweed that was reportedly clogging up nets. Director McKiernan agreed with both Story and Jared. He added that these various factors all influenced the personal and economic decisions and as a result some fishermen may have chosen to pursue other fishing or economic opportunities.

Mike Pierdinock stated that he had heard reports that bluefish were abundant throughout state waters and asked what type of gears harvested bluefish commercially. Director McKiernan indicated that landings typically come from a strikenet fisherman and commercial anglers, with small levels of bycatch potentially occurring in other net fisheries.

Ray Kane asked about the implementation of the commercial tautog tagging program. Story stated there were some complaints about the tagging requirement and some fishermen needed additional clarification on how to affix the tags to the fish. Chairman Kane then asked about compliance. Story was not aware of any instances of non-compliance. Lt. Bass noted one minor instance. He then added that additional education resources, such as a video on how to tag, could improve the program for 2021.

Kalil expressed concern over striped bass and bluefish quota not being met and wanted to know if this was attributable to stock health or fishing effort.

Story stated that fishing effort was generally depressed this year. In the striped bass fishery, the number of active permit holders fishing was thought to be down by about 30-40% compared to last year based on dealer reports. This may be due to a number of factors: fishery economics, the pandemic, and nearshore abundance.

Story noted that the pandemic's impact on fishing effort extended beyond market factors. The striped bass and bluefish fisheries are prosecuted by small boat fishermen who often trailer their vessels to access points close to where fish are aggregated. DMF received reports that due to COVID protocols there was limited access to certain popular launch sites.

Mike Armstrong noted there were several biological and environmental factors affecting the commercial striped bass fishery. First, the stock is not as robust as it was several years ago, as evidenced by the most stock assessment. Additionally, there is a year class effect that is resulting in there being fewer large commercial sized fish in this population. Lastly, larger fish are more metabolically sensitive to warm water and with summertime water temperatures exceeding 70°F in many parts of the state, large fish are likely seeking out cooler waters to the north and east. Director McKiernan added that a federal prohibition restricts the striped bass fishery from occurring in the EEZ. Mike Pierdinock agreed with this assessment and stated that large fish were being found north of Boston and off Block Island.

The discussion then turned to the performance of commercial striped bass fisheries in other coastal states. Nichola stated that RI's commercial rod and reel fishery was on

track to take its quota, but its floating trap fishery was underperforming. Dan and Story contrasted MA's fisheries with other states. MA is an open entry fishery conducted by only rod and reel gear, whereas other states have limited entry schemes, IFQs, and fishermen can take striped bass using a variety of gear types. Chairman Kane asked about the coastal fisheries in Maryland and Virginia. Nichola noted that these coastal fisheries have very small quotas compared to MA, but she could look into the data for an upcoming striped bass sub-committee meeting.

Ray Kane asked about the performance of the striped bass fishery north of Plum Island. Kalil stated that while fishing conditions were good in the area, there was a notable decline in recreational and commercial catch in the region over the past decade.

Mike Pierdinock pointed out the HMS federal group noted they had 50% drop in commercial landings due to COVID across all users.

ACTION ITEMS

Action to Increase Summer Flounder Limits for November and December

At present, 25% of the state's 2020 commercial summer flounder quota remained available. To provide additional access to this quota, DMF was recommending the MFAC vote in favor of increasing the trip limit for November and December from 1,000 pounds to 2,000 pounds. Dan stated this trip limit increase may result in offshore vessels targeting summer flounder or landing summer flounder taken offshore in Massachusetts ports. The Director noted that the public comments received were in opposition to this action and most comments were coming from recreational anglers.

Mike Pierdinock expressed his reservations regarding the recommended action. Specifically, he was concerned about inshore fishing conditions and that inshore and offshore commercial fishing activity may be impacting resource availability for Massachusetts' recreational anglers. Mike P. noted that there is a growing frustration among certain recreational anglers regarding the discrepancy in the minimum size limits between the commercial fishery (14") and the recreational fishery (17"). The abundance of large summer flounder inshore is down and certain anglers believe this is because the commercial fishery is harvesting them before they reach legal size. With summer flounder quota increases pending, Mike P. wanted DMF to further consider the impact increasing commercial catch limits may have on the recreational fishery.

Director McKiernan then discussed how the pandemic may have impacted markets for summer flounder. He speculated that if the late winter and early spring shutdowns did not occur the 2020 quota likely would have been fully utilized.

Bill Amaru expressed concerns regarding the status of the inshore summer flounder fishery. He thought that summer flounder were becoming less abundant in the Sounds during the summertime due to changing environmental conditions. Additionally, fishery participation was waning due to reduced abundance and a number of other constraining economic factors. He anticipated the reason for the 14" commercial minimum size was

likely due to the size selectivity of the trawl gear, but thought it would be worthwhile to further discuss and analyze the discrepancies between the commercial and recreational minimum sizes.

No further comments were made. The Chairman called for a motion. Bill Amaru made a motion to approve winter scup proposal. Kalil Boghdan seconded the motion. Motion was approved 7-1 with Mike Pierdinock voting in opposition.

FUTURE RULE MAKING

New Fixed Gear Regulations Related to Incidental Take Permit Application

The Director, along with Bob Glenn, provided an update on draft fixed gear regulations. DMF was currently in the process of applying to NOAA Fisheries for an Incidental Take Permit (ITP) under the Endangered Species Act. The ITP, if approved, would cover potential takes resulting from interactions between the state's fixed gear fisheries and endangered turtles and whales. An ITP application involves developing a Habitat Conservation Plan (HCP) that takes steps to minimize and mitigate the impacts the activity is having on endangered species. These draft regulations represent the foundation for the state's HCP for right whales.

The proposed regulations include: (1) extending the existing February 1 – April 30 commercial trap gear closure in Cape Cod Bay and east of Cape Cod to all state waters; (2) adopting a closed season for recreational trap gear; (3) expanding the January 15 – April 15 gillnet closure in Cape Cod Bay to include waters along the south shore; (4) requiring trap fishermen fish weak rope with a 1,700 pound breaking strength; (5) establishing a maximum buoy line diameter of 3/8" for commercial trap fishing and 5/16" for recreational trap fishing; (6) prohibiting commercial fishermen using vessels larger than 29' feet from fishing single lobster traps (effective January 2022); and (7) capping the maximum number of seasonal lobster licenses issued annually at 150. DMF anticipated holding virtual public hearings in early December 2020, returning to the MFAC with a final recommendation in January 2021, and filing final regulations effective in February 2021.

Sooky Sawyer hoped that the weak rope rule was eventually adopted on a coastwide basis and did not become a requirement for Massachusetts only. Bob, Dan, and Sooky then discussed how fishermen would be expected to comply with this weak rope requirement. Bob explained that the rope itself could have a 1,700 pound breaking strength or it could be rigged with a certain number of contrivances that would give it an effective breaking strength of 1,700 pounds. Given the relative shallowness of state-waters, Bob did not expect that state-waters gear would need to be rigged with more than three contrivances.

Lt. Bass was concerned regarding the disparity in gear configuration regulations across jurisdictions, particularly Massachusetts' waters and the adjacent federal zone. He understood this was a result of MA having to differentiate itself from other jurisdictions

as part of its ITP application, but noted that many fishermen are permitted to fish in both state and federal waters and disparate rules could create unnecessary confusion.

Bill Amaru asked if DMF could quantify the extent to which 3/8" diameter buoy line was currently being fish. Bob Glenn noted that DMF does not collect this data. However, based on his interactions with industry he speculated that the vast majority of buoy lines being fished inshore are 3/8" diameter or less. Bob noted that in addition to a harm mitigation tool, this also served as a gear marking requirement. A 3/8" maximum diameter buoy line would help differentiate gear being fish in Massachusetts state waters from the larger diameter rope typically fished offshore or in Canadian fisheries. Bill then echoed Sooky's sentiments that some of these proposed gear modifications should eventually be required on a coastwide basis.

Codifying Prohibition on Atlantic Bluefin Tuna Purse Seining

Jared Silva reviewed DMF's proposal to rescind its regulations governing the bluefin tuna purse seine fishery in favor of a strict prohibition on the activity. Dating back to the 1970s, DMF permitted and regulated the bluefin tuna purse seine fishery in state-waters. Since the early 2000s, DMF conditioned all remaining permits to prevent this activity from occurring. At this time, all previously issued limited entry permits have expired and no permits are available for renewal. Accordingly, it was sensible to rescind the outdated purse seining regulations and instead enact an outright prohibition on the activity.

Rescinding Circle Hook Exemptions for Recreational Striped Bass Fishing

Mike Armstrong discussed the history of DMF's recreational striped bass circle hook regulation. Beginning in 2020, DMF mandated that all recreational anglers fishing for striped bass with whole or cut natural bait were to use circle hooks. Exemptions were provided for anglers onboard for-hire vessels and anglers fishing with artificial lures with bait affixed (e.g., tube and worm). This rule went into effect one-year prior to the coastwide mandate, as the ASMFC is requiring all states implement a circle hook mandate for their striped bass fishery in 2021. At its October 2020 meeting, the ASMFC's Striped Bass Board finalized the criteria for the coastwide mandate. The Board determined that on a coastwide all recreational anglers using whole or cut natural bait when fishing for striped bass were to use circle hooks. Due to interest in having uniform rules across jurisdictions, exemptions were not authorized. Accordingly, DMF now has to revise its regulations and rescind the exemptions that were in place for 2020.

Mike Pierdinock thanked DMF for advocating for these exemptions. However, he was disappointed with the ASMFC's final decision. Specifically, he was frustrated that this effectively limited the tools fishermen could use to target striped bass even when there was little expected additional conservation benefit.

Mike P. then asked if DMF could pursue a conservation equivalency measure for artificial lures and flies with bait attached. Mike A. stated that this was not currently possible. Armstrong added that he was surprised the exemption for artificial lures did

not persist and expected other states would be similarly hearing from frustrated anglers. Director McKiernan agreed. He thought that the ASMFC needed to better define the term natural bait (e.g., is pork rind a natural bait) to enhance regulatory consistency across states.

Tim Brady concurred with Mike Pierdinock's comments. He added that when he sees regulations affecting the types of terminal tackle that may be used, he looks for the science behind it. He would like to see more research on the impact of certain types of terminal tackle on release mortality.

Mike Armstrong discussed a DMF acoustic tagging program that works to monitor discard mortality rates and expected this project could be used to better understand the relative impacts of certain terminal tackle and handling techniques.

DISCUSSION ITEMS

Review of Recent ASMFC, MAFMC, and NEFMC Meetings

Nichola Meserve reviewed the actions of the Atlantic States Marine Fisheries Commission (ASMFC) at both its 2020 annual meeting, held virtually during October 19-22, and in a virtual joint meeting with the Mid-Atlantic Fishery Management Council (MAFMC) on October 7.

As previously discussed, the ASMFC's Striped Bass Board did not approve any exemptions to Addendum VI's recreational circle hook requirement, so MA will need to eliminate its exemptions for the 2021 fishing season. The Board reviewed the Plan Development Team's (PDT) first draft of the Public Information Document for Amendment 7. The PDT would work to incorporate feedback from the Board into the draft Amendment. Nichola expected the draft Amendment would not be approved for public comment until at least February 2021. The draft Amendment will address a range of issues including the biological reference points, rebuilding timeline, use of conservation equivalencies, commercial quotas, and recreational accountability.

The Spiny Dogfish Board approved a 27% increase to the FY21 and FY22 commercial quotas. This followed a similar action by the Mid-Atlantic Council, resulting from the use of their new risk policy that allows for the setting of higher catch limits for stocks that are assessed at or above their biomass targets. No change was made to the Northern Region's 6,000 pound trip limit. More consideration will be given to potentially amending the trip limits after the Mid-Atlantic Council completes a planned socio-economic analysis in 2021.

The Atlantic Herring Board set the Area 1 (Inshore Gulf of Maine) seasonal quota allocations for 2021. These seasonal quota allocations are the same as they were in 2020, with 72.8% being applied to the June – September period and 27.2% being allocated for the October through December period. The Board will set the remaining specifications after NOAA Fisheries publishes its final rule on the NEFMC's recommendations.

The Winter Flounder Board reviewed the results of the 2020 stock assessments for the Gulf of Maine (GOM) and Southern New England/Mid-Atlantic (SNE/MA) stocks. The GOM stock is not experiencing overfishing and its overfished status is unknown; the SNE/MA stock is not experiencing overfishing but is overfished. The overfished determination for SNE/MA represents a change in stock's status. The NEFMC is expected to recommend coastwide specification in December 2020, and in response the Board will set state-waters measures in February 2021.

The Menhaden Board set the 2021 and 2022 total allowable catch (TAC) for menhaden using the newly adopted ecological reference points. This resulted in a 10% reduction to the TAC from the 2020 level. The selection of this TAC was meant to meet the Board's ecosystem management objectives for menhaden while balancing reduction fishery and bait fishery needs. The Board is expected to review state-by-state quota allocations in February 2021, and there is the potential for the Board to consider reallocation.

The Lobster Board reviewed the results of the 2020 lobster stock assessment. The Gulf of Maine/Georges Bank stock is not overfished or experiencing overfishing and remains at near record highs for abundance. The Southern New England stock is significantly depleted though not experiencing overfishing. Considerable work had been performed by the stock assessment team to identify environmental regime shifts and develop corresponding biological reference points. The Board was also updated on efforts to improve the quality and precision of vessel trip report data.

When meeting jointly with the MAFMC, the Bluefish Board approved the range of alternatives for the allocation and rebuilding amendment, such that a document may be approved for public comment at the next joint meeting in February. The Council and Commission also initiated two management actions affecting bluefish, fluke, scup and black sea bass resulting from the "recreational reform initiative." An addendum/framework will consider several strategies to improve the timeliness and stability of setting recreational measures, as well as a harvest control rule approach to management. An amendment will be developed to consider recreational sector separation and catch accounting, with the scoping to occur at the same time as the addendum/framework issues.

Lastly, Nichola reminded the MFAC that the ASMFC/MAFMC public hearing for Massachusetts on the commercial black sea bass reallocation amendment at 6PM on October 29.

Melanie Griffin updated the MFAC with the happenings at the NEFMC. Since the MFAC met in September, the NEFMC finalized Groundfish Amendment 23, Scallop Amendment 21 and Herring Framework 8, and adopted 2021 priorities.

Groundfish Amendment 23 seeks to have 100% observer coverage on all groundfish sector trips for the first four (4) years after implementation. The intent is that federal funding will reimburse 100% of industry cost during this period; if funding is deficient, industry would pay a maximum of 40% coverage. Existing monitoring exemptions for

extra-large mesh continue along with a new exemption for vessels fishing west of 71° 30' west longitude.

Scallop Amendment 21 finalized an 800,000-lb. set-aside for Northern Gulf of Maine (NGOM) vessels with any additional allocation being split among the Limited Access/Individual Fishing Quota vessels (95%) and NGOM vessels (5%). Additionally, the trip limit in Access Areas was increased to 800-lbs for Limited Access/Individual Fishing Quota vessels.

Finally, Atlantic Sea Herring Framework 8 adopted specifications for FY2021-2023 based on the recommended Acceptable Biological Catch (ABC). The FY2021 ABC of 9,483 is approximately 40% less than the current FY2020 ABC. Also, an increased 40,000-lb. herring incidental trip limit in Areas 2 and 3 was adopted and the Area 1B seasonal closure rescinded to optimize access to the mackerel fishery.

Looking ahead to 2021, the NEFMC set several priorities for each of its FMPs. In addition to regular specification setting, a few NEFMC priorities of interest to MFAC members include: (1) continuing consideration for limiting access to the for-hire fishery; (2) incorporating Atlantic cod stock structure work into management and science; (3) sea herring spawning protections for Georges Bank and Nantucket Shoals; (4) continued development of Skate Amendment 5 that addresses limited entry; (5) and the Habitat Committee's work to identify parameters for mobile gear (e.g., sea scallop dredge) access to the Northern Edge Habitat Management Area.

Bill Amaru asked about the groundfish observer program and how the 100% monitoring applies. Melanie clarified that this was for the multi-species groundfish fishery only and there are a number of monitoring exemptions. Melanie stated she would follow up with Bill after the meeting.

Mike Pierdinock asked about how the for-hire black sea bass and Gulf of Maine cod season extensions impacted estimated harvest. Nichola anticipated that preliminary data would not be available until the early winter and added that the pandemic affected MRIP surveying.

Sooky thanked Nichola and the staff for the quota set asides for the menhaden.

CARES Act Fisheries Relief Program Update

The Director provided the MFAC with a presentation on its CARES Act Fisheries Relief Program. At this time, the for-hire, seafood processing, and aquaculture sector programs were complete and payments were made to eligible applicants. The commercial sector's program was still on going. This is because the sector's industry working group preferred a longer application period. Dan anticipated the program would conclude during the first week of November and payments would be made by the middle of the month.

Commercial Menhaden Fishery Issues

Story Reed provided an overview of the state's commercial menhaden fishery and described the different permitting classes within the menhaden fishery. He then went on to discuss several issues that had been brought to DMF's attention regarding how the fishery was conducted this past year. Of specific concern was compliance with the open entry trip limit. To address these issues, DMF was considering adopting new regulations for 2021 affecting the open entry fishery. Potential proposals, which are similar to what exists in Maine, included a maximum purse seine size, volumetric standards for trip limit enforcement, and prohibition on over-the-rail sales and at-sea transfers. DMF would likely discuss this further with the Law Enforcement Sub-Committee.

Draft Policy on Transfer of Black Sea Bass and Fluke Endorsements for Rod and Reel Fishermen

Story presented a draft policy regarding the transfer of black sea bass and fluke endorsements for rod and reel fishermen. Story addressed questions brought up at the previous MFAC meeting about the definition of 'actively fished'. DMF's proposed definition of actively fished for this policy would be that a fisherman must have landed and sold at least the equivalent of one trip limit per calendar year in four of the past five years. Another question raised regarding this draft policy at the MFAC was whether DMF should allow bundling endorsements in a transfer. DMF decided that endorsements may be transferred individually if that endorsement was actively fished or may be transferred together as a bundle if one or more of the endorsements being transferred has been actively fished.

Ray Kane stated that commission members should follow up with Story after the meeting on this matter if they have any further input or questions.

Renewing Period I Summer Flounder Pilot Program

Jared Silva handled the discussion for the Period I Summer Flounder Pilot Program. DMF intends 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. This program would allow fishermen to stay out multiple days at a time. DMF also extended this program to black sea bass and plans to renew that program as well.

MFAC Sub-Committees

The Director stated that DMF would like to reconvene the sub-committees. He added that only four commission members will be allowed in each committee, as having sub-committees with five or more members would constitute a quorum and trigger certain public meeting requirements. Dan confirmed with Jared that the intent is to have the sub-committees meet over the next few months. Jared concurred. Ray Kane appointed commission members to the following sub-committees:

Law Enforcement Sub-Committee: Shelley Edmundson; Bill Doyle; Ray Kane; and Mike Pierdinock

Commercial Striped Bass Sub-Committee: Mike Pierdinock; Kalil Boghdan; Bill Doyle; and Ray Kane

Permitting Sub-Committee: Bill Doyle, Shelley Edmundson, Bill Amaru, and Lou Williams.

Lt. Col. Moran asked Dan if he would like MEP representation at striped bass and permitting sub-committees. Dan stated he would like to have the representation available. Lt. Col. Moran stated he would follow-up after the meeting.

OTHER BUSINESS

Bill Amaru raised concerns regarding time-of-year restrictions on harbor dredging projects. He stated that many towns in Cape Cod are seeking to conduct harbor dredging projects and one of the requirements to permit these projects is to consider the species of fish that are present. This constrains projects to certain time periods and results in towns competing against each other for dredging services. Bill was concerned that the fishery surveys being used to determine the seasonality of projects are outdated and the presence of certain fish species may have changed due to environmental factors. Bill asked for DMF to help assist him on this issue. DMF's Habitat Program leader, Kathryn Ford, briefly addressed this issue. She reviewed the data being used to determine dredging windows and DMF's work to research alternative approaches. Kathryn intended to follow up with Bill after the meeting.

Director McKiernan stated that DMF received a petition regarding the commercial bluefish strikenet fishery. The petitioner was Tom Smith, who was the state's sole strikenet permit holder. He was requesting DMF rescind or temporally amend a longstanding strikenet closure in southeastern Cape Cod Bay, along Billingsgate Shoal. This is a historic closure that was developed in the 1980s to address user group conflicts with the for-hire fleet. DMF was investigating this petition and would follow up with the MFAC at an upcoming meeting.

Kalil Boghdan thanked DMF staff for their continued work on a diversity of fisheries issues. Shelley Edmundson looked forward to starting her tenure on the MFAC. Bill Amaru thanked Melanie Griffin for her work at the NEFMC. Tim Brady thanked DMF staff for their work on the CARES Act and appreciated the time and effort that DMF staff spent working with the MSI to develop the Assessment and Scoping Committee Reports. Mike Pierdinock stated he was now serving as an ICCAT member and as a recreational advisory to ROSA and encouraged MFAC members to reach out to him on any relevant issues they may have.

PUBLIC COMMENTS

Beth Casoni, Executive Director of the MA Lobsterman's Association, requested DMF run a trial Zoom webinar before the upcoming protected species public hearing. Director

McKiernan requested Jared Silva work directly with Beth to accomplish this. The Director stated that this can be accomplished.

Helen Miranda Wilson, of Wellfleet, expressed numerous concerns regarding horseshoe crab fisheries. She requested that the MFAC follow up and better address horseshoe crab conservation. Of specific concern was the impact of the biomedical fishery on the resource, particularly given that the pandemic is likely going to increase the demand for LAL.

ADJOURNMENT

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

MEETING DOCUMENTS

- October 29, 2020 MFAC Meeting Agenda
- September 24, 2020 Draft Meeting Minutes
- Quota Monitoring Update Presentation
- Recommendation to Increase Summer Flounder Trip Limits for November and December, 2020
- Update or Proposed Right Whale Conservation Measures
- Proposal to Amend Atlantic Bluefin Tuna Purse Seining Regulations
- Proposal on Recreational Striped Bass Circle Hook Requirement
- Presentation on Recent ASMFC, MAMFC, and NEFMC Meetings
- ASMFC October 2020 Webinar Summary
- CARES Act Update
- Menhaden Fishery Issues
- Rod and Reel Transfer Policy for Limited Entry Black Sea Bass, Summer Flounder, and Tautog Permit Endorsements
- Period I Winter Fluke Pilot Program Update

UPCOMING MEETINGS

9AM
December 10, 2020
Via Zoom

9AM
January 7, 2020
Via Zoom



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Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: December 4, 2020

SUBJECT: **Review of Recent Petition to Rescind Bluefish Strikenet Closure**

Proposal

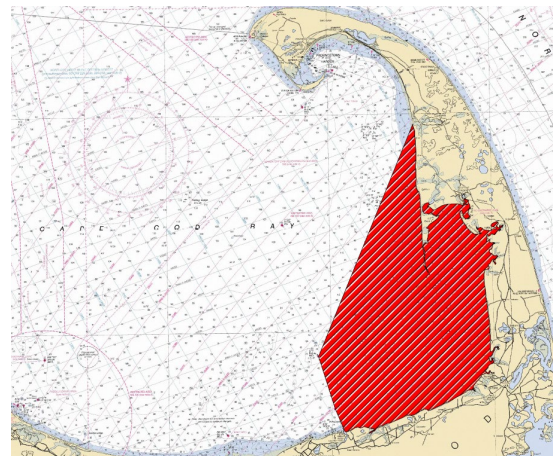
I intend to proceed to public hearing with a proposal to either rescind the year-long closure to bluefish gillnets in southeastern Cape Cod Bay or to amend its temporal length to allow fishing later in the season.

Summary of Petition

322 CMR 6.18(3)(d)(1) establishes a permanent bluefish gillnet closure in southeastern Cape Cod Bay (Fig. 1). This closure encompasses those waters bounded by a straight line beginning at the southern entrance of Pamet Harbor to the #1 buoy on Billingsgate Shoal to the #1 gong of Sesuit Harbor to the east entrance of Sesuit Harbor.

The petitioner was the state's first commercial bluefish gillnetter and is now the sole remaining participant in this fishery. He argues that the closure is outdated and unnecessary given other restrictions on the fishery and seeks to have DMF and the MFAC rescind it to provide more seasonal access to bluefish, if present.

Figure 1.
Permanent Bluefish Strikenet Closure



Background

The commercial bluefish fishery is principally conducted by two gears: rod and reel and another gear referred to by regulation as a "bluefish gillnet". While referred to as a gillnet, this gear is more accurately described as a strikenet. It differs from the traditional sink gillnet gear (typically deployed by groundfish and dogfish fishermen) because rather than being set with anchors and buoys and hauled after passively fishing for a period of time, the bluefish gillnet is deployed more actively by encircling a school of bluefish and being immediately is hauled.

In Massachusetts, the use of this gear is restricted to only those commercial fishermen who hold a limited entry “Bluefish Gillnet” regulated fishery permit endorsement. This limited entry permit endorsement was established back in the early 1980s. This was done to constrain growing effort – and in preparation for the implementation of a federal bluefish FMP that sought to cap commercial catch at 20% of the total (commercial and recreational) catch.

This closure was implemented at a time when the striped bass stock was severely depleted and many recreational interests turned their attention to targeting bluefish. Accordingly, there was also an interest among recreational anglers and charter boat operators to constrain bluefish netting activity. A review of the historical record shows intense debate among user groups where recreational fishing advocates insisted the state limit bluefish harvest to hook-and-line gear only, similar to the state’s striped bass management scheme. However, DMF and the MFAC did not take that action.

Instead, to reduce user group conflicts, DMF and the MFAC established several restrictions on the use of this net gear. This includes the above described closure in southeastern Cape Cod Bay. This was an area where charter boats were actively pursuing bluefish and there was a concern that opportunistic net fishing effort would deplete the resource locally and force struggling for-hire businesses to suffer further. The other rules that were implemented included an active tending requirement, no night fishing, 1,500-ft maximum net size, and 5” minimum mesh size, and these rules were specific to the Southern Management Area¹.

In the nearly 40 years that have followed, much has changed. The commercial bluefish fishery is now managed by an annual quota that is monitored through weekly dealer reporting. Additionally, participation in this net fishery has substantially declined and there is currently only one bluefish gillnet permit holder remaining in the population. Given these factors, it is appropriate to consider amending—or even rescinding—this area closure. This would provide the remaining strikenetter with additional spatial access to the available quota, if bluefish are present in this discrete area of Cape Cod Bay. Because the purpose of the closure was to separate the recreational hook and line fishery from the commercial gillnet fishery, an option for amending the closure (without fully rescinding it) could be to maintain the closure during the late spring and summer period when recreational fishing is at its peak but open the area in the fall, such as after Labor Day, when activity by the recreational fishery drops off substantially.

Attachment

Petition from Tom Smith

¹ The Southern Management Area is defined as, “waters under the jurisdiction of the Commonwealth south of a straight line extending from the east entrance of the Cape Cod Canal through Race Point Light, Provincetown to the marine boundary of the Commonwealth, including all waters of Buzzards Bay, Vineyard Sound, and Nantucket Sound.

From: Tom Smith <bluefish4@comcast.net>

Sent: Tuesday, October 27, 2020 3:07 PM

To: McKiernan, Dan (FWE) <dan.mckiernan@mass.gov>; RAYMOND W KANE <chatenak@verizon.net>

Subject: Cape Cod bay commercial bluefishing

Dear Dan

McKiernan,

My name is Tom Smith, I have been commercially fishing for bluefish mostly in Cape Cod bay since 1981. I am writing to you to ask you respectfully to consider removing the line that separates the southern half of the bay from the northern half that was put in place in the nineteen eighties. When I started the strike net fishery in 1981 I was the only boat, although it was contentious at the start it was mostly due to the fear of the commercial fleet expanding without regulations and the fact the permitting was wide open at the time. Soon though the state stopped issuing the permits and with my help formed a set of regulations that are still in place today, we have a minimum 5 inch mesh size which I believe is the largest on the East coast, also we have no night fishing and most importantly the boat stays with net at all times and not left unattended. In the early nineteen eighties the striped bass fishing was almost non existent and the bluefish were at an all time high due to their cyclic nature, it was inevitable that the charter boats and commercial boats were going to clash as more commercial boats starting to show up in the bay to net bluefish. Unfortunately a couple of the commercial boats at the time were not fishing responsibly and without regard to charter/recreation boats and were setting nets and fishing too close to other boats including using a spotter pilot that would circle the boats. One thing led to another and the charter fleet petitioned the state to divide the bay with an imaginary line separating the two user groups from one another. I personally have never had a problem with other boats and most all of us share information amongst ourselves and use the same radio channel to share bluefish information. Most of the bluefish landings in the early eighties were from the south side of the line which was used to secure the 6 3/4 percent of the bluefish allocation that Massachusetts now has after the federal bluefish management plan was put in place. I have always felt that if it weren't for the action of a couple of rogue gill netters the "line" would have never been discussed. A lot has transpired over the decades since the strike net fishery started in 1981, the gill netters that arrived late into the fishery have all let their permits elapse or simply have died of old age. Striped bass has replaced the bluefish as far as angler preference and younger generations have replaced the old timers, most all of the current fisherman are unaware of any delineation line in the bay. I like to think I have always been a good steward for the strike net fishery and fished in responsible and respectful manner. Although the future looks bright with healthy year classes of small bluefish coming up in the ranks, the fact that we are restricted to a portion of the bay has made it increasingly difficult at times to fulfill the needs of the fish markets and restaurants that rely on us for bluefish, especially as the water cools and the fish head to warmest parts of the bay. Thank you for your time and consideration on this matter. Sincerely, Tom Smith



The Commonwealth of Massachusetts

Division of Marine Fisheries

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Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director
DATE: November 13, 2020
SUBJECT: **Update on New Right Whale Conservation Measures**

At the October 29, 2020 MFAC business meeting, I provided you with a memorandum and briefing on draft amendments to DMF's protected species regulations affecting commercial fixed gear fisheries and recreational lobster and crab trap fisheries. I also speculated on the approximate timeline for rule making. Subsequently, and pursuant to Executive Order 562 (EO562), these draft regulations have been approved by the Executive Offices of Energy and Environmental Affairs and Administration and Finance to proceed to public hearing. Public hearings have been scheduled for 6PM on December 8 and 9, 2020 and the public comment period will conclude at 5PM on December 18, 2020. DMF will then return to the MFAC with a final recommendation at the January 7, 2021 business meeting. Following that meeting, DMF will submit regulations for final EO562 review with the intention of promulgating regulations in early February 2021. This differs slightly from the initial timeline presented at the October 29 business meeting, which had DMF providing a recommendation back to the MFAC at their December 10, 2020 business meeting and promulgating final regulations by late January 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.

To comply with this court order, DMF has begun the work to submit an ITP application. 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. If approved, these regulations will constitute the foundation of the state's HCP for right whales. The ITP application process is lengthy and complicated, and there is uncertainty as to whether or not our application will be successful. However, I think these proposed regulations are substantial conservation measures that strongly support our ITP application.

It is noteworthy that these draft regulatory amendments only affect right whale conservation, whereas the litigation also addressed leatherback sea turtles. This is because right whale conservation measures have

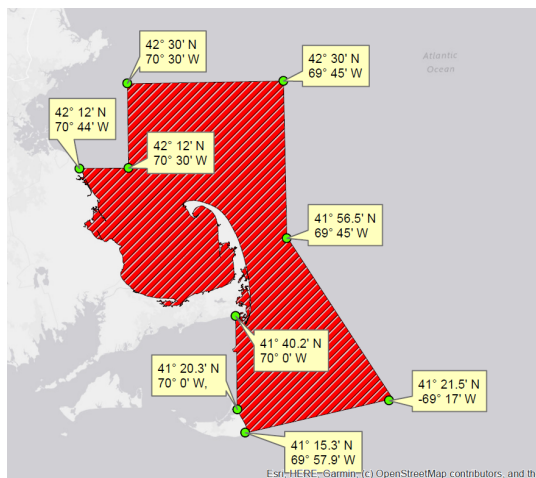
been formulated through the Atlantic Large Whale Take Reduction Team’s ongoing deliberations and NMFS’ upcoming rule making process. Leatherback sea turtle conservation has not had the same level of ongoing management. Accordingly, there are no prescribed management actions for reducing leatherback sea turtle entanglements, nor are there target levels of reductions in takes. As a result, DMF – in collaboration with NOAA Fisheries – will have to analyze current leatherback sea turtle entanglement data and develop potential management options. Future rules affecting leatherback sea turtle conservation may be proposed separately and would be subject to separate rule making.

Overview of Draft Regulations

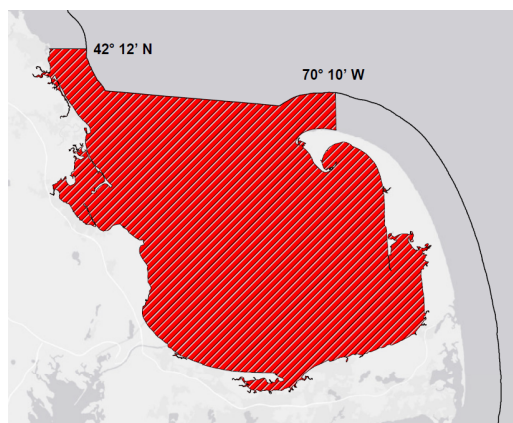
Fixed Gear Closures.

1. **Expand Trap Closure.** The existing February 1 – April 30 Large Whale Seasonal Trap Gear Closure, which occurs north and east of Cape Cod (see map), 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 these waters. This will ensure that Massachusetts’ waters are free of trap gear during a period that corresponds to when right whales seasonally migrate in and out of Cape Cod Bay. This will likely prevent entanglements from occurring.
2. **Conch Pot Fishery.** As the above described closure applies to all trap gear, DMF will adjust the existing December 15 – April 14 conch pot fishery haul-out period so that it continues through April 30.
3. **Recreational Lobster and Crab Trap Fishery.** A new closed season for buoyed recreational lobster and crab trap fishery will be implemented. This closure will be in effect from the Tuesday following Columbus Day through the Friday immediately preceding Memorial Day. This will not apply to unbuoyed gear commonly fished in the Cape Cod Canal, nor the taking of lobsters by divers using SCUBA. This regulation serves two purposes. First, it will likely prevent entanglements from occurring similar to the above described commercial trap gear closure. Second, it provides DMF and MEP with ample time during the late fall and early winter to identify and remove lost or abandoned recreational trap gear prior to the seasonal right whale migration.
4. **Gillnets.** The existing January 1 – 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 between 42°00’ north latitude and 42°12’ north latitude (see map). Effectively, this will close those nearshore waters along the south shore from Gurnet Point in Plymouth to Scituate Harbor. While this area is typically closed to gillnet fishing due to overlapping seasonal groundfish closures and harbor porpoise closures, it may be incidentally opened if the April if the state’s conditional groundfish closure is lifted. The

Existing Large Whale Seasonal Trap Gear Closure



Proposed Jan 1 – May 15 Gillnet Closure



proposed action to close this discrete area will further reduce the potential for right whales to interact or become entangled with gillnets.

Trap Gear Restrictions.

1. Buoy Line Breaking Strength. All commercial trap fishermen will be required to fish buoy lines with a 1,700 pound breaking strength. This may be accomplished by deploying a buoy line that breaks at this specific breaking strength or by rigging the buoy line with certain approved contrivances. The purpose of this rule is reduce harm to right whales if they interact with trap gear by allowing the buoy line to more readily break and potentially prevent an entanglement that results in the whale carrying the gear or buoy line with it.
2. Maximum Buoy Line Diameter. Commercial trap fishermen will be prohibited from fishing buoy lines with a diameter larger than 3/8" and recreational trap fishermen will be prohibited from fishing buoy lines with a diameter larger than 5/16". Inshore trap fisheries typically do not deploy larger diameter buoy lines. Accordingly, this will establish a de facto gear marking system that will differentiate the gear that may be lawfully fished in Massachusetts to heavier gear that may be fished in the EEZ (offshore) or in Canada.
3. Prohibition on Single Traps. Effective January 1, 2022, commercial lobster trap fishermen will be prohibited from fishing single traps onboard vessels with an overall length greater than 29'; all lobster traps fished from vessels with an overall length of 29' or greater will be required to be configured as multiple trap trawls. This is being implemented to reduce the number of vertical lines in the water column, thereby reducing the potential entanglement risk posed to whales. The setting of single lobster traps by any vessel of any size will remain prohibited north of Cape Cod seaward of the three nautical mile line and the Billingsgate exempted area. This rule will not apply to fish pots, conch pots and eel pots.

Seasonal Lobster License. DMF will cap the number of seasonal lobster licenses issued annually at 150. This is not expected to impact current effort. However, it will prevent the proliferation of new fishing activity under this seasonal student lobster permit and consequently cap the potential maximum number of vertical buoy lines deployed by this permit type.

Housekeeping. DMF intends to revise, update, and consolidate regulations as necessary to ensure the regulations are accurate, clear, and readable. This includes an updated purpose and definitions sections to the protected species regulations and consolidated sections regarding gear configurations, vessel interactions with right whales, and maps.

Attachments

Public hearing notice

Draft strikethrough regulations



The Commonwealth of Massachusetts

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Commissioner

DANIEL J. MCKIERNAN
Director

November 13, 2020

Notice of Virtual Public Hearings: New Protected Species Regulations Affecting Trap and Gillnet Fishing

Under the provisions of M.G.L. c. 30A, and pursuant to the authorities found at M.G.L. c. 130 §§ 2, 17(10), 17A, 80 and 104, the Division of Marine Fisheries (DMF) is taking public comment and holding public hearings on proposed amendments to regulations at 322 CMR 6.00, 7.00, and 12.00. These draft regulations are designed to reduce the risk of endangered right whales becoming entangled in fixed fishing gear and reduce the potential harm posed by fixed fishing gear if a right whale interacts with it. The draft regulations are described below:

Fixed Gear Closures

1. Commercial Trap Gear Closure (322 CMR 12.04, 12.08, and 12.11). DMF is proposing to extend the existing February 1 – April 30 Large Whale Seasonal Trap Gear Closure (north and east of Cape Cod) to all waters under the jurisdiction of the Commonwealth.
2. Gillnet Closure in Cape Cod Bay (322 CMR 12.04, 12.08, and 12.12). DMF is proposing to extend the existing January 1 – May 15 gillnet closure in Cape Cod Bay to include those waters shoreward of 70°30' W longitude between 42°00' N latitude (Gurnet Point) and 42°12' N latitude (Scituate Harbor).
3. Fixed Gear Closure Extensions (322 CMR 12.04). DMF intends to retain the regulatory authority to extend the above described fixed gear closures (#1 and #2), or portions thereof, based on the Director's assessment of the documented presence of right whales in Massachusetts waters and if reasonably necessary to prevent the entanglement of right whales in commercial trap gear.
4. Recreational Lobster and Crab Trap Gear Haul-Out Season (322 CMR 6.02). DMF is proposing to implement a new closed season for buoyed recreational lobster and crab trap gear. The closed season would run from the Tuesday following Columbus Day through the Friday preceding Memorial Day.
5. Conch Pot Haul-Out Period (322 CMR 6.12). As the above described commercial trap gear closure (#1) applies to all trap gear, including conch pot gear, DMF is proposing to extend the existing December 15 – April 14 conch pot haul-out period through April 30.

Trap Gear Configuration Modifications and Restrictions

1. 1,700-lb Breaking Strength Contrivance (322 CMR 12.02 and 12.06). DMF is proposing that all vertical buoy lines break when exposed to 1,700 pounds of pressure. This may be accommodated by fishing buoy lines with a 1.7000 pound breaking strength or by rigging the buoy line with a contrivance or multiple contrivances that allows for it to break at that pressure.
2. Vertical Buoy Line Maximum Diameter for Commercial Trap Gear (322 CMR 12.06). DMF is proposing that all vertical buoy lines affixed to commercial trap gear have a diameter not greater than 3/8".

3. Vertical Buoy Line Maximum Diameter for Recreational Trap Gear (322 CMR 12.06). DMF is proposing that all vertical buoy lines affixed to recreational lobster and crab trap gear have a diameter not greater than 5/16”.
4. Prohibition on Single Lobster Traps for Vessels of a Certain Size (322 CMR 12.06). DMF is proposing to prohibit the fishing of single lobster traps onboard vessels with an overall length of 29’ or greater. These vessels will be required to configure their traps as multi-trap trawls. Vessels with an overall length of less than 29’ may continue to fish single lobster traps where authorized; the setting of single lobster traps by any vessel of any size will remain prohibited north of Cape Cod seaward of the three nautical mile line and the Billingsgate exempted area. DMF is proposing that this regulation go into effect on January 1, 2022.

Permitting

1. Cap on Issuance of Seasonal Lobster Permits (322 CMR 7.01). DMF is proposing to cap the annual issuance of seasonal lobster permits for students at 150 permits.

Housekeeping

1. Purpose and Definitions (322 CMR 12.01 and 12.02). DMF is proposing to revise and update the purpose of the state’s protected species regulations so that it better reflects the DMF’s current approach to managing protected species.
2. Conduct Related to Interacting with Right Whales (322 CMR 12.07 – 12.10). DMF is proposing to consolidate the regulations that govern vessel interactions with right whales into one section.
3. Maps (322 CMR 12.04, and 12.08 – 12.12). DMF is proposing to establish a consolidated section of maps relevant to the protected species regulations.
4. Other (322 CMR 6.02, 6.12, 12.03, 12.04, 12.05, 12.06, 12.07). DMF is consolidating and refining regulatory language as necessary to improve the clarity and readability of existing regulations.

Public Comment Period and Public Hearing Schedule

Written public comment will be accepted through 5PM on Friday, December 18, 2020. Please address written comments to Director Daniel McKiernan and submit it by e-mail to marine.fish@mass.gov or by post to the attention of Director McKiernan at 251 Causeway Street, Suite 400, Boston, MA 02114. DMF has also scheduled two virtual public hearings for 6PM on Tuesday, December 8, 2020 and Wednesday, December 9, 2020:

December 8, 2020 (6PM) Login Information:

- [Internet Login](#)
- Call In: 929 436 2866
- Passcode: 509869
- Meeting ID: 894 6836 3614

December 9, 2020 (6PM) Login Information:

- [Internet Login](#)
- Call In: 929 436 2866
- Passcode: 263730
- Webinar ID: 884 8653 2400

Additional Information

All materials, including the rationale for these proposals and the strikethrough regulatory language, may be found on [DMF’s website](#) or may be acquired by contacting Jared Silva by e-mail at jared.silva@mass.gov. Recordings of the public hearings will be published to [DMF’s YouTube channel](#).

Draft Strikethrough Protected Species Regulations at 322 CMR 6.00, 7.00 and 12.00 Affecting Trap and Gillnet Fishing

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 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 1st through April 30th. 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 15th to September 15th 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. 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 interaction between fisheries, vessel activity, and North Atlantic right whales (“right whale”). 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.

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.

~~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.~~

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~~(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 $\frac{1}{3}$ 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 1st through May 15th.~~

(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 1st through April 30th.~~

(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 1st through April 30th, 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.

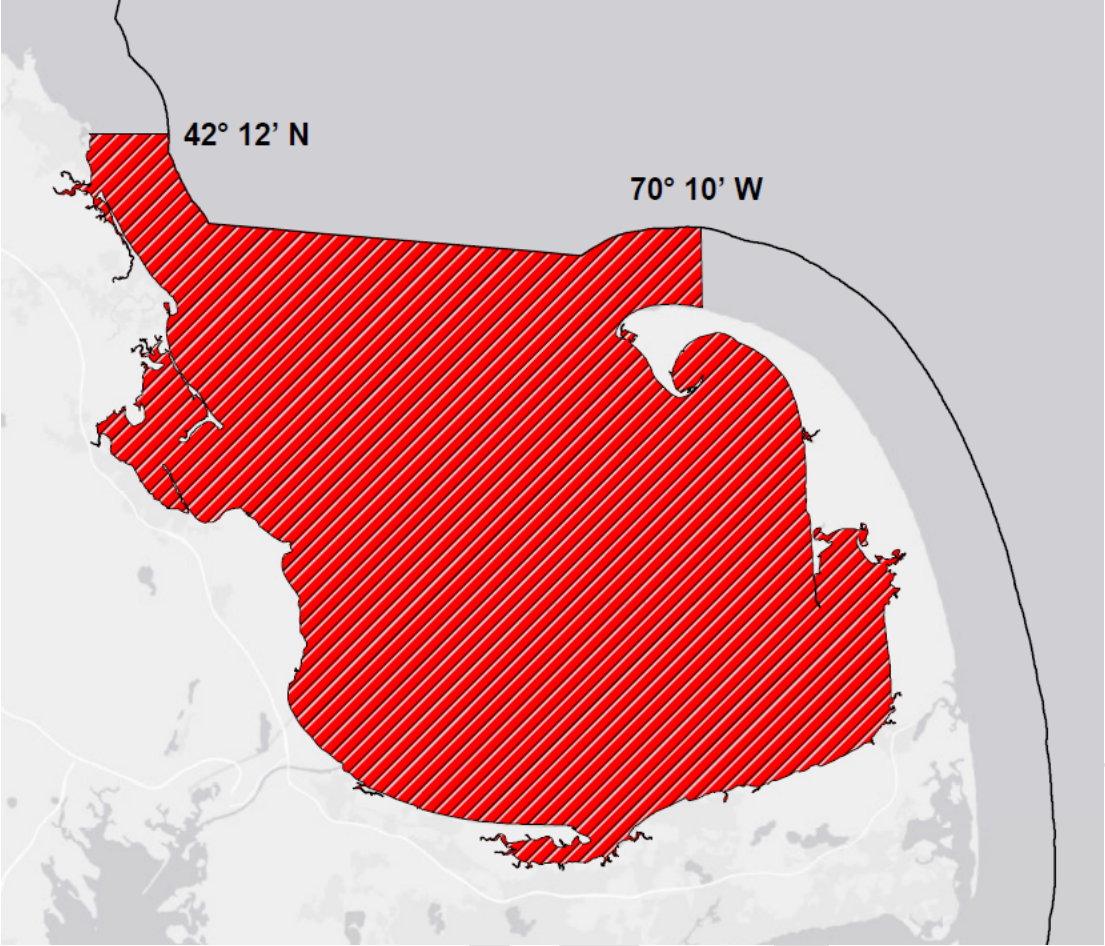
(3) Commercial Fishing Activity and Buffer Zones. It shall be unlawful for any commercial fishing vessel which has completed a haul back, a tow of its gear, or otherwise completed its active fishing operation and is no longer at anchor not to depart immediately from a Buffer Zone upon presence of a surfacing 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.

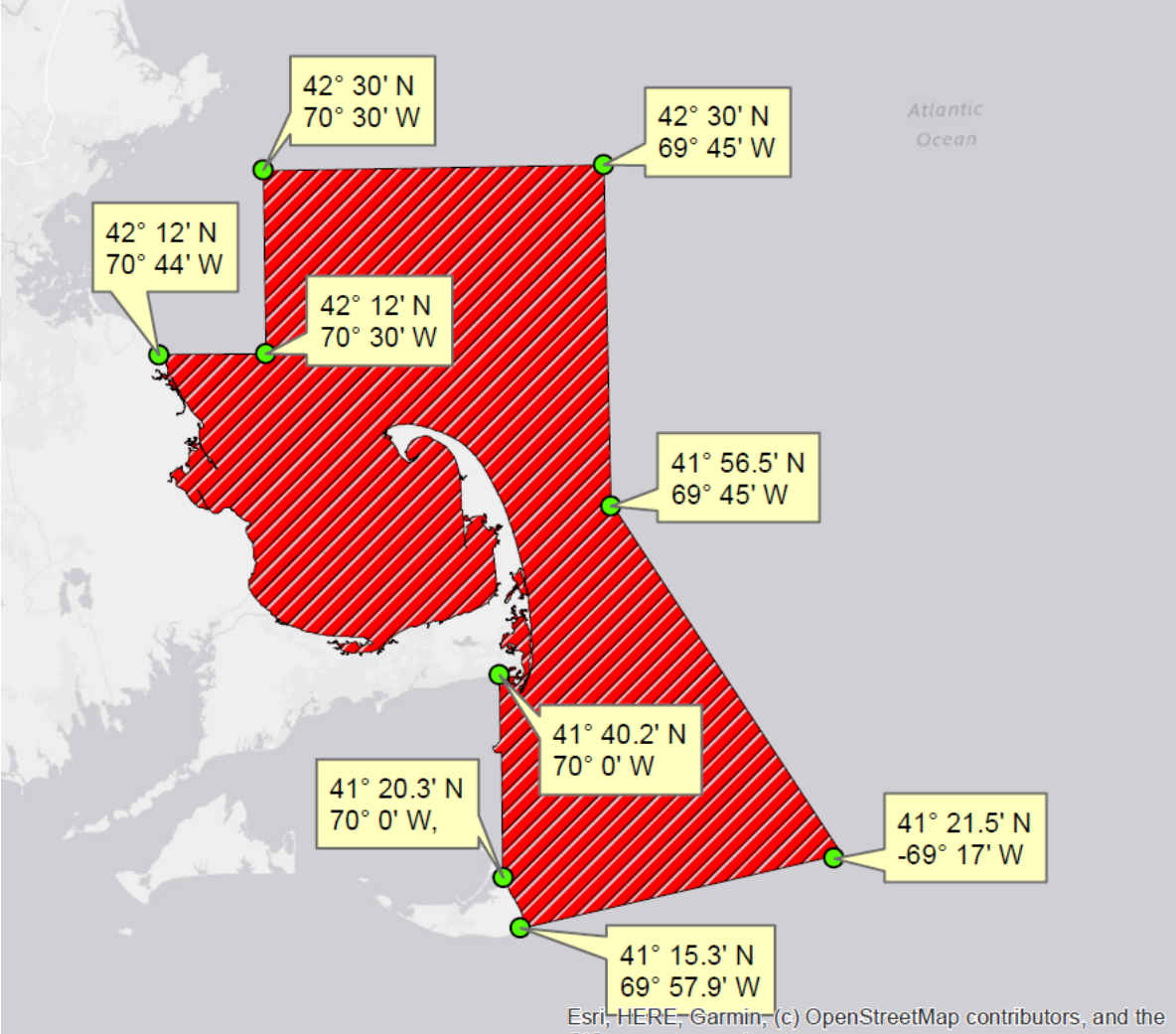
- (4) **Commercial Fishing.** Commercial fishing vessels in the act of hauling back, towing gear or engaged in fishing operations at anchor within a Buffer Zone created by a surfacing right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the 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

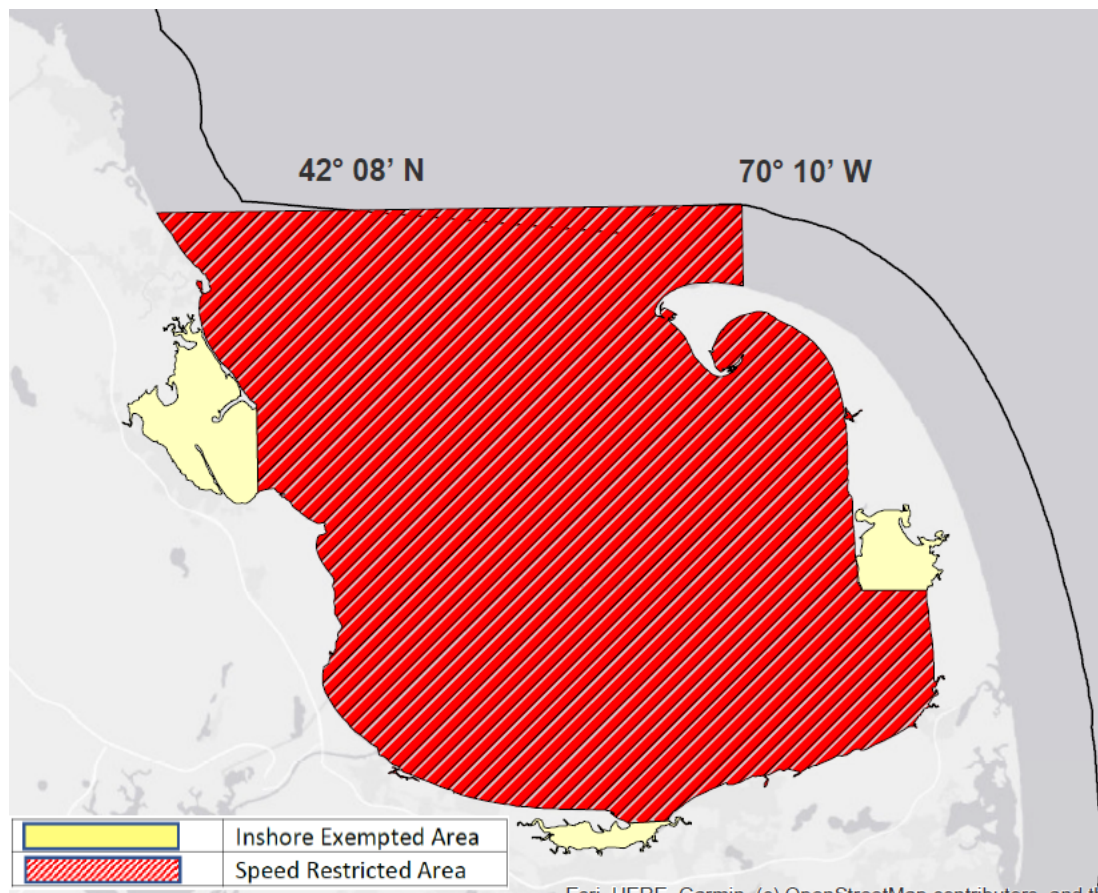
(1) Gillnet Closure to Protect Right Whales in Cape Cod Bay



(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.~~

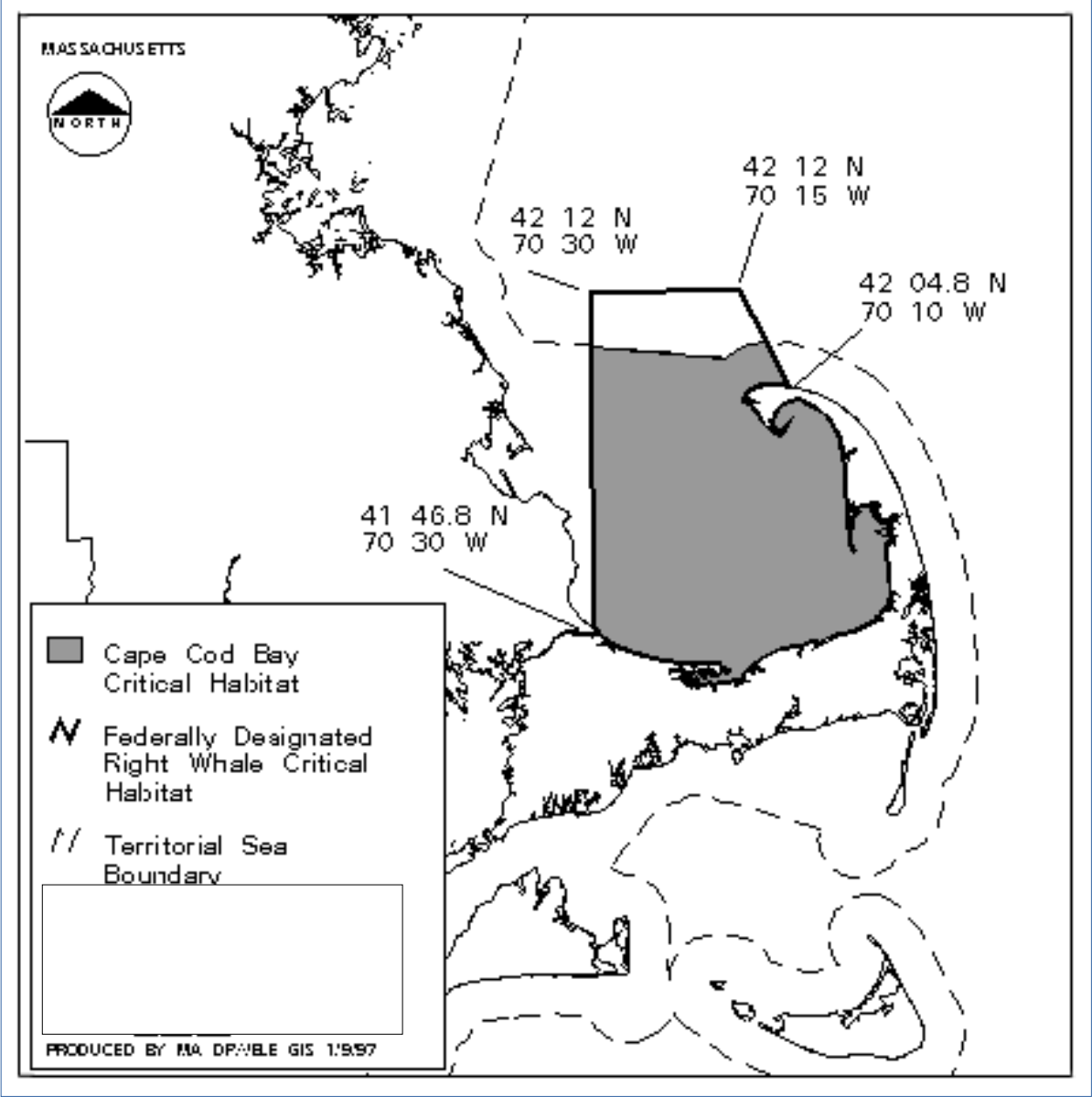
12.11 Large Whale Seasonal Trap/Pot Gear Closure Area

~~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.~~

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12.12: Right Whale Cape Cod Bay Critical Habitat Map

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



DRAFT



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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
THRU: Daniel J. McKiernan, Director
FROM: Jared Silva, Policy Analyst
DATE: December 4, 2020
SUBJECT: Summary of Law Enforcement Sub-Committee Meeting

The MFAC's Law Enforcement Sub-Committee (LESC) met on November 19, 2020. In attendance were Raymond Kane, MFAC Chair; Shelley Edmundson; Bill Doyle; and Michael Pierdinock from the MFAC; Daniel McKiernan; Jared Silva; Story Reed; Julia Kaplan; Nichola Meserve; Jeff Kennedy; and Mike Armstrong of the Division of Marine Fisheries (DMF); and Lt. Col. Pat Moran; Lt. Matt Bass; Lt. James Cullen; and Ofc. Dave Marrocco from the Massachusetts Environmental Police (MEP). Based on the discussion at this meeting, there are several deliverables that DMF intends to follow up with the MFAC on in early 2021. This memorandum summarizes the content of the meetings and the resulting deliverables.

Review of 2020 Quota Managed Species

Canal Compliance

MEP expressed their continued support for DMF's action to close the Cape Cod Canal to commercial striped bass fishing. They noted that activity along the Canal was more manageable this year, although this may have been in part attributable to the pandemic and slower fishing conditions than have been seen in recent years. There were only a few non-compliance incidents and the new regulations resulted in fewer unfounded reports of poaching. MEP also noted many local residents were happy with the impact the new regulations may have had on angler behavior.

Tautog Tagging Program

MEP stated that they encountered only a few non-compliance issues with the new commercial tautog tagging program. However, MEP and DMF did note that some fishermen initially struggled with affixing the tags to the operculum. DMF intends to produce additional education materials to help fishermen in this regard.

Other Issues

MEP continued to encounter instances when certain dual for-hire and commercial permit holders attempt to skirt more restrictive recreational fishing limits during charters by mixing commercial

and recreational fishing trips or claiming that patrons are their commercial crew. While this activity is already prohibited, ways to improve compliance were discussed. DMF is considering having for-hire permit holders sign an affidavit attesting that they acknowledge this activity is illegal. This document will then bolster the administrative record if non-compliance is observed.

DMF and the MEP also received numerous complaints about trip limit compliance in the open-access menhaden fishery. At the October 29, 2020 MFAC business meeting, DMF outlined potential regulatory solutions, including maximum purse seine net sizes, standards for storing catch, volumetric equivalencies for measuring catch, and prohibitions on at-sea transfers and sales. These potential solutions were then vetted by the sub-committee. The maximum net size, catch storage standards, and volumetric equivalencies were generally supported. However, there was hesitance towards prohibiting at-sea transfers and sales. The primary reason for this hesitancy was that certain North Shore lobstermen are reliant on these sales for access to affordable bait. Additionally, there was some discussion about increasing the open access limit, adopting an open access menhaden fishery endorsement, and requiring these permit holders to report more frequently as bait dealers.

Striped Bass Circle Hook Mandate

For 2021, DMF will be required to rescind its recreational striped bass circle hook exemptions for fishermen on for-hire trips and anglers fishing with artificial lures with natural baits attached. With this in mind, there was some discussion about whether striped bass may be retained if caught incidentally when fishing for other species (e.g., bluefish) on non-conforming tackle. At present, the regulation is silent on whether or not recreational fishermen would have to discard such fish. MEP requested DMF more clearly address this when the regulation is amended for this upcoming year.

Removal of Derelict Trap Gear

DMF intends to continue to work with MEP to remove abandoned trap gear during the winter period. DMF was proposing to extend the commercial trap gear closure to all state-waters. If adopted, DMF and MEP will need to make additional efforts to identify and remove the abandoned gear. Additionally, if the proposed recreational lobster closed season is implemented for buoyed gear, MEP and DMF will have a longer window of time identify and remove this abandoned gear before attending to abandoned commercial gear.

Dealers Receiving Untagged Shellfish

DMF highlighted some issues with primary buyers of shellfish accepting untagged lots of shellfish from commercial harvesters. This was becoming increasingly problematic on Cape Cod, where MEP and local constables observed shellfish being harvested from areas closed for management and public health purposes and transported untagged to dealers. It can be inferred that these harvesters were intentionally avoiding tagging requirements so that they could later tag

the product as coming out of open areas when offered for sale. This represents a serious public health concern, as tagging serves as a critical public health recall tool.

DMF and the MEP agreed that this needed to be further addressed at the dealer level. DMF stated its intention to immediately suspend any commercial harvester or dealer permit involved in handling untagged shellfish. Additionally, when 2021 permit renewals are issued, DMF will provide all primary buyers of shellfish with a letter that reiterates its shellfish tagging regulations. Additional educational training may be needed as well.

Whelk Minimum Size Compliance at Harvester and Dealer Levels

DMF discussed the continuing and substantial non-compliance issues surrounding the conch pot fishery for channeled whelk. In recent years, there were several significant minimum size and trap limit violations that produced fines and permit sanctions. This non-compliance remains an ongoing issue and there were several additional incidents this year. There is an interest in enhanced enforcement at the dealer level and DMF potentially taking actions to suspend and revoke dealer permits for violations.

Trap Gear Issues

Surface Markings

MEP stated that lobstermen like to use the “go-deep buoys” because they are more durable, less susceptible to being run over by propellers, and can be easily found with tidal changes. However, when these buoys are fished, the buoy is not commonly marked with sticks and flags, as required by DMF regulations. DMF noted that this issue was discussed with the MFAC in 2019 and further discussions with industry were delayed because of the pandemic. DMF would renew these discussions and determine how to best address this issue.

MEP also expressed an interest in improving trap gear marking. They did not support the continued use of sharpies to mark buoys with permit holder information, as the marker typically washes off. Additionally, they sought a surface marking indicator that would better identify the type of buoyed pot gear (i.e., conch pot, black sea bass pot, scup pot, lobster pot). It was suggested that this could be accomplished by requiring certain colored zip ties be affixed at the eye of the buoy.

Trap Types

There was some conversation regarding having better regulatory definitions for the various pot gears. Improved definitions would help MEP differentiate between black sea bass pots and scup pots and these fish pots and lobster pots. DMF previously investigated this question with fishermen and gear manufacturers. There was not a clear standard that separated one gear from the other beyond the presence of gear specific trap tags and escape vents.

Weak Links

MEP asked for clarification on what constitutes a lawful weak link. DMF stated that it does not maintain a registry of authorized contrivances. This is instead embedded in the Atlantic Large Whale Take Reduction Plan's Supplement B for Weak Links and Anchoring Techniques. States generally favored having the federal government maintain the repository of lawful gear, as NOAA Fisheries is the lead regulatory agency on protected species issues and this would create regulatory uniformity across jurisdictions. DMF also indicated that the proposed weak rope rule (1,700 pound breaking strength) may negate the need for the 600 pound weak link under the buoy.

Enhancing Uniformity of Lobster Management Regulations

V-Notch Standards

There are various MA-specific standards for possessing v-notched lobsters. For LMA1, the standard is "zero-tolerance" meaning that it is unlawful to retain any lobster with any v-shaped notch in its right of center fin. MEP argued that the zero-tolerance standard is nebulous and determining if a v-notch exists is highly discretionary. MEP preferred the $\frac{1}{8}$ " rule, which is used in most other LMAs and asked if this standard could be adopted for LMA1. There was also some discussion about amending the Outer Cape Cod LMA's (OCCLMA) v-notch standard from $\frac{1}{4}$ " to $\frac{1}{8}$ ", as well. If both the LMA1 and OCCLMA v-notch standard moved to $\frac{1}{8}$ " then there would be a uniform rule across all LMAs. The zero-tolerance standard for LMA 1 is a requirement of the ASMFC's American Lobster FMP. In the past, DMF had advocated adopting the $\frac{1}{8}$ " standard for LMA1 to address the enforcement issues described by MEP. However, the change was not supported by Maine, as their fishermen strongly support the zero-tolerance standard. DMF cannot unilaterally adopt a less conservative measure, but would continue to work on this issue through the ASMFC

Maximum Carapace Size

State regulations do not establish a maximum carapace size for lobsters taken from the state-waters portion of the OCCLMA. This creates enforcement challenges for MEP. First, it is not consistent with the federal regulations for this LMA. The federal rules establish a $6\frac{3}{4}$ " maximum size for the federal waters portion of this LMA. Accordingly, there are two separate maximum size standards for OCCLMA lobstermen depending on whether or not they hold a federal permit. Second, it renders it impossible to enforce maximum size standards for any LMA once the primary sale occurs, as all oversized lobsters could conceivably be from state-waters fishermen from the OCCLMA. MEP requested DMF consider adopting a $6\frac{3}{4}$ " maximum size standard for the OCCLMA. This would then become the de facto maximum size standard for dealers, as it would be the largest maximum size among the various LMAs.

Other Business

Recreational Conch Pots

MEP stated there is interest in recreational conch potting, particularly in the Wareham area. This activity is currently prohibited, as DMF regulations require a commercial conch pot permit to set this gear. The recreational harvest of whelks is limited to hand harvest techniques. There was no interest in accommodating a new recreational pot fishery for whelks.

Managing Marine Debris and Derelict Gear

The issue of marine debris and derelict gear is a priority for DMF. There is a lot of confusion surrounding what fishermen can bring in if they come across derelict gear. Going forward, DMF wants to define what marine debris is and what an intact trap is. Writing rules for this will allow for people to take in debris as trash. Law enforcement agreed with this idea; they will need a designated place to bring the gear.

Interstate Wildlife Compact

In recent years, there were several instances of non-resident permit holders violating fishing limits in another state with the presumed intention of eventually selling the unlawfully harvested fish in Massachusetts. An example of this would be if a fisherman is caught violating recreational striped bass regulations in Rhode Island (i.e., size and bag limit), but they also hold a DMF commercial striped bass permit and SAFIS sales in Massachusetts. The obvious implication is that this unlawfully harvested fish was going to be eventually driven into Massachusetts, sold to a Massachusetts dealer, and counted against Massachusetts' quota.

DMF was frustrated by the lack of tools available to take an action the violator's DMF permit because the offense did not occur in Massachusetts. However, an interstate wildlife compact was being considered by the Massachusetts legislator. This legislation was common across states for criminal violations of hunting and freshwater fishing rules. However, DMF and MEP were interested in having something like the compact apply to marine fisheries and extend to administrative permit sanctions.

Sea Bass Trap Limit

Law enforcement wanted to see a reduction in black sea bass pot trap limit. They argued that a 200 trap limit for a 400 pound trip limit encouraged poaching. DMF stated that this was discussed several years back, but it was not supported. However, DMF was currently applying to NOAA Fisheries for an Incidental Take Permit application to cover entanglements of endangered whales and turtles in buoyed gear. It was likely DMF was going to have to take some action to reduce the risk of leatherback turtle entanglements in its fish pot fisheries and reducing trap limits may be necessary.



The Commonwealth of Massachusetts

Division of Marine Fisheries

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Lt. Governor

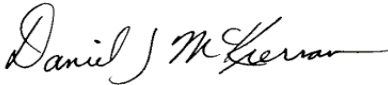
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Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: November 20, 2020

SUBJECT: **Summary of Recent Meeting with Massachusetts' Conch Association**

The Massachusetts Conch Association (MCA) is a newly formed commercial fishing organization. It was formed to represent whelk fishing interests in Massachusetts. According to John Moran, who organized the meeting, the MCA currently has about 30 members and its Board of Directors include John Moran, John Moniz, Eric Moniz, Mike Terrenzi and Gary Yang.

On November 17, 2020, DMF and the Massachusetts Environmental Police (MEP) met virtually with members of the MCA. In attendance were: John Moran, John Moniz, Mike Terrenzi, and Heather Haggerty of the MCA; Bob Glenn, Jared Silva, Story Reed, Tracy Pugh, Steve Wilcox, Julia Kaplan, and myself from DMF; and Lt. Col. Moran from the MEP. The purpose of the meeting was to discuss several items of interest to the MCA including the impacts of COVID-19 on whelk markets, minimum size management and the ongoing gauge increase schedule, and research.

Of specific interest to the MCA was a moratorium on gauge increases beginning in 2021. This would effectively stall the next two gauge increases scheduled for 2021 and 2023, which would bring the minimum gauge width from 3" to 3 1/8" to 3 3/8". They argued that this was necessary to further evaluate size-at-maturity, the socio-economic impacts of gauge increases, and address market impacts from the COVID-19 pandemic.

The MCA informed DMF that they have contracted Dr. James Sulikowski from Arizona State University's School of Mathematical and Natural Sciences to conduct a size at maturity study. The whelks collected for the study came from commercial harvest and were segregated by harvest area - Nantucket Sound, Vineyard Sound, and Buzzards Bay. To conduct this study, Mr. Sulikowski will be using a histological analysis. They noted that the early results showed that most of the samples collected were males. The MCA expects this study to be completed during the late winter or early spring of 2021. This study technique differs slightly from the macroscopic analysis of gonad stage and condition conducted by DMF biologist Steve Wilcox. However, DMF expects the results should be similar; a 2013 histological study of whelks in Buzzards Bay (Peemoeller and Stevens) had nearly identical results to DMF's study.

I indicated that the gauge increases were implemented following two DMF size-at-maturity studies that found 50% size at maturity to be approximately 3 7/8" shell width in the primary harvest area of Nantucket Sound and slightly smaller in Vineyard Sound and Buzzards Bay. The gauge increases by only 1/8" every two years over 10-years until the minimum gauge size is 3 5/8", which corresponds to an

animal with a 3 7/8" shell width. This approach was designed to balance much needed resource conservation with the economics of the industry. The slow, conservative gauge increases are meant to allow the conch fishery to continue to function, albeit at reduced harvest levels, while spawning stock protections are enhanced. However, DMF would review the Sulikowski study when it is released in the future and consider regulatory action if the findings were vastly different than DMF's study.

DMF and MCA then also discussed the COVID-19 pandemic and its impact on the whelk fishery and whelk markets, the CARES Act, and ongoing protected species litigation, particularly as it relates to conch pot fishing and interactions with leatherback turtles. DMF and MEP also raised the issue of large-scale non-compliance with the minimum gauge size and trap limits in the conch pot fishery, which resulted in several adjudicatory proceedings and permit sanctions for two fishermen.

MCA members also highlighted several areas of concern for industry. Fishermen stated that they had to sort through a large number of undersized whelks in their traps and were concerned that this was going to worsen as gauge increases continued. Additionally, there was interest in whether a large biomass of sub-legal sized whelks may impact growth and predation and if it would be counter-productive to conservation objectives to have a commercial fishery primarily harvest sexually mature females (as males do not typically grow as large). In response, there was some discussion of alternative management methods (e.g., quotas), which are potentially more restrictive to the industry. These are issues worth monitoring as gauge increases proceed. I'm particularly interested in potential gear modifications that may reduce the catch of sub-legal animals. This may benefit the fishery both in terms of efficiency and compliance.

Attached

November 17, 2020 MCA Meeting Agenda



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Director

Meeting of DMF & MA Conch Association

November 17, 2020 3:00 pm

Agenda

1. Introductions
2. Director's Comments (McKiernan)
3. Covid-19 Effects on the fishermen, dealers and customers (J. Moran)
4. The size increase for Jan 2021 (J. Moran)
5. Research: past present and future (J. Moran)

Expected Attendees:

Association: John Moran, Eric Moniz, John Moniz, Heather Haggerty, Tom Turner, Mike Terrenzi, and Gary Yang

MA DMF: Dan McKiernan, Bob Glenn, Steve Wilcox, Story Reed, Jared Silva, Julia Kaplan

MEP: Lt. Col. Pat Moran