



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

9:00 AM

April 1, 2020

Held Virtually Via Zoom

Link: <https://zoom.us/j/953521377>

Dial In: 1-929-436-2866; Code:953-521-377#

1. Introductions and Announcements (9:00 – 9:15)
 - a. Review and Approval of the April 1, 2020 Business Meeting Agenda
 - b. Review and Approval of the February 20, 2020 Draft Business Meeting Minutes
2. Comments (9:15 – 9:45)
 - a. Chairman
 - b. Commissioner
 - c. Director
 - d. Law Enforcement
3. Action Items (9:45 – 11:15)
 - a. Recreational Bluefish Limits for 2020
 - b. Recreational Striped Bass Rules
 - c. Commercial Striped Bass Management
 - d. Commercial Menhaden Management
 - e. Commercial Black Sea Bass Management
 - f. Commercial Summer Flounder Management
 - g. Open Entry Commercial Horseshoe Crab Limits for Trawlers
 - h. Sand Lance Possession and Landing Limits
 - i. Sea Herring Management in Area 1A
 - j. Edible Crab Management
4. Final Decision on Permitting Regulation Clarifications (11:15 – 11:30)
5. Discussion of Impacts of COVID-19 on Seafood and Fishing Industry (11:30 – 12:00)
6. Other Business (12:00 – 12:30)
 - a. Update on Local Management of Shellfish Aquaculture
 - b. Commission Member Comments
7. Adjourn (12:30)

Future Meeting Dates

9AM

April 16, 2020

**DFW Field Headquarters
Westborough, MA**

9AM

May 21, 2020

**DFW Field Headquarters
Westborough, MA**

9AM

June 18, 2020

**DFW Field Headquarters
Westborough, MA**

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. Due to constraints imposed by virtually meeting capabilities, public comment will not be accommodated during the April 1, 2020 MFAC business meeting. However, the public may log into the meeting virtually and follow the proceedings.

MARINE FISHERIES ADVISORY COMMISSION

February 20, 2020

DFW Headquarters

Westborough, MA

In attendance:

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

Division of Marine Fisheries: Daniel McKiernan, Acting Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Bill Hoffman; Jared Silva; Nichola Meserve; Story Reed; Melanie Griffin; Cate O’Keefe; and Wendy Mainardi.

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

Massachusetts Environmental Police: Major Pat Moran and Lt. Matt Bass.

Members of the Public: Peter Kelly, Jack Bosch, Alexander Kalife, and Susanne Altenburger.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the February 20, 2020 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF FEBRUARY 20, 2020 BUSINESS MEETING AGENDA

No changes to the February 20, 2020 MFAC business meeting agenda were proposed.

Sooky Sawyer made a motion to approve the draft agenda. The motion was seconded by Bill Doyle. The motion was approved unanimously.

REVIEW AND APPROVAL OF DECEMBER 19, 2019 DRAFT BUSINESS MEETING MINUTES

Chairman Kane asked if there were any amendments to the December 19, 2019 MFAC draft business meeting minutes. No amendments were offered.

Bill Doyle made a motion to approve draft minutes as provided. Sooky Sawyer seconded the motion. The motion was approved unanimously.

PUBLIC COMMENTS

Susanne Altenberger addressed fishing vessel design, energy efficiency and fleet sustainability. She stated that fisheries managers have been narrowly focused on stock assessments and catch limits to build sustainable fisheries. However, they have historically failed to acknowledge how the fleet impacts management and sustainability. She noted that New England's fishing fleet is old, energy inefficient, and not sustainable. Moreover, the regulations governing vessel capacity trap the fleet into this paradigm. She encouraged the MFAC to take on the issue of fleet design as part of their regulatory oversight. Susanne then distributed a report prepared by report prepared by Phil Bogler and Friends Boat Builders titled a "A question of Inept Fishing Regulations versus 21st Century Fleet."

Peter Kelly spoke of a petition he sent to DMF and the MFAC to allow rod and reel anglers a 100 pound black sea bass bycatch allowance during open commercial fluke fishing days. He argued this would help the rod and reel fleet be more profitable and reduce the regulatory discarding of black sea bass. He also supported opening the commercial striped bass fishery on June 1.

DMF's Acting Director Dan McKiernan stated that commercial black sea bass and striped bass regulations were both being addressed at public hearings in March. He encouraged Pete to submit written comment or speak at the upcoming public hearings. These comments would then be considered when drafting final recommendations to the MFAC for their review and approval at their March 25, 2020 business meeting.

Alexander Califf supported Pete Kelly's comments. Alexander also encouraged DMF to allow the transfer of fluke and black sea bass permit endorsements. Chairman Kane stated that the MFAC previously requested DMF review permit transferability rules and the review and analysis was ongoing.

Alex then expressed his concern regarding the loss of his commercial tautog endorsement. He stated that he fished tautog with his father, but they only sold fish on his father's permit. Accordingly, he did not have landings attributable to his permit and his permit was subsequently not renewed for 2020. Dan asked if Alex had submitted an appeal to DMF. Alex stated that he had. Dan explained that DMF was currently reviewing the appeals received and would respond in writing with a final decision.

CHAIRMAN'S COMMENTS

Chairman Ray Kane discussed the recent joint ASMFC and MAFMC meeting regarding commercial and recreational allocations at Massachusetts Maritime Academy. He noted the meetings were well attended. The ASMFC and MAFMC were still accepting public comment and encouraged MFAC members and the public to comment. Nichola Meserve added that the meeting presentation is available on the MAFMC's website.

COMMISSIONER'S COMMENTS

Commissioner Ron Amidon introduced Mark Reil. Mark was recently hired to work as the Department's Director of Legislative Affairs. Mark previously worked for Senator Ryan Fattman and would bring his knowledge and contacts to DFG.

DFG was in the process of procuring a vendor to update DMF and DFW's recreational fishing and hunting permitting programs. Ron was pleased with the progress to date.

On February 5, DFG and DMF staff met with Representative Viera (R – Bourne/Falmouth/Mashpee). The meeting addressed a number of hunting, fishing, and shellfish related issues. Ron noted that Rep. Viera is the co-chair of the Sportman's Caucus and is trying to make the caucus more active and influential. To elevate the importance of the state's fishing and hunting interests, Rep. Viera suggested one of the upcoming spring MFAC and DFW Board business meetings be held at the State House. If the MFAC supported this, Mark Reil would coordinate it with Jared Silva.

Ron then discussed a series of recent and upcoming events. DMF's Saltwater Fishing Derby Awards were presented at the New England Boat Show on February 15. Ron expressed his appreciation for this event and noted how it influenced young anglers. The North American Seafood Expo was scheduled for March 15 through March 17 at the Boston Convention and Exhibition Center. DMF's Seafood Marketing Program was preparing for a "Mass Ave" event to bring attention to Massachusetts seafood businesses. More information would be provided on this event later in the meeting. DFG's State House Day would be held from 12:30 to 2:30 on March 25 in State House (Room 428). Ron anticipated each of the four divisions would provide presentations on their work. Following the presentations, there would be an opportunity to network with legislators and their staff. He encouraged MFAC members to attend.

On the legislative side, DFG staff were anticipating the House Ways and Means budget being released on March 2. Additionally, House Bill 4610 seeks to move the waterfowl coastal hunting shooting setback from 500 feet to 1,500 feet (the initial draft of this bill proposed moving the buffer back to 1,500 yards). This bill was drafted by Rep. RoseLee Vincent (D-Revere/Chelsea/Saugus) to respond to a local waterfowl hunting issue off Revere Beach. MEP worked successfully to address and resolve the issue and the hunting guide involved subsequently passed away. Despite this, the bill appears to have some legislative traction. This has sportsmen concerned about how waterfowl hunting access may be impacted coastwide. Additionally, there are concerns about how this legislation could minimize the role of DFW's Board in developing hunting regulations. Chairman Kane encouraged MFAC members to speak to their legislators on the topic.

DIRECTOR'S COMMENTS

Acting Director Dan McKiernan recently met with EEA Secretary Theoharides to discuss DMF's current challenges and areas of opportunity. Dan focused on MFAC appointments, internal HR issues, and personnel.

Dan then moved on to brief the MFAC on emerging right whale conservation and management related matters. He noted that while the population had declined in recent years due to continued mortality and low birth rates, ten new calves were born in 2019. DMF was again being sued by Richard Max Strahan. The case against DMF focused on how the state's vertical line requirements for trap gear has resulted in right whale and sea turtle entanglements. DMF was working with DFG legal counsel and the Attorney General's office on this litigation. Strahan also sued a number of other parties - and with the exception of the litigation against DMF - the cases were dismissed by a federal judge.

Dan expressed reservations regarding the development of offshore wind in the Gulf of Maine (GOM). Unlike in Southern New England (SNE), the turbines would be floating rather than fixed and as a result fishing activity would likely be prohibited within the arrays. Dan was concerned about how this would impact fixed gear fisheries, particularly the lobster fishery. Spatial data is not readily available regarding where the federal lobster fishery is conducted, and he felt that without a footprint, lobster fishing access may be unnecessarily restricted.

Mike P. stated that at this juncture there was no information regarding where offshore wind energy development would occur in the GOM. He noted that Jeff Kneebone provided helpful studies to document where recreational fishing occurs in response to wind development proposals in SNE. Mike P. supported similar studies be conducted preemptively, but noted that potential wind energy development areas were not yet cited. Dan stated wind development areas had not yet been proposed, in part because the technology was still experimental and development would likely not occur for about five years. Given this time lag, he thought the various fishing industry sectors would benefit from documenting their footprint.

Mike P. then asked about the status of Massachusetts Clean Energy Center grants. Cate O'Keefe stated that decisions had been made regarding which projects would receive awards, but they had not yet been announced. Mike P. asked if there would be multiple awards. Cate stated that the \$1M in funding would be split between four projects.

Lastly, Dan stated that DMF recently hired a digital technology company, Granicus, to improve its e-mail outreach program. DMF previously communicated advisories and public notices through its general e-mail list serve. These e-mails were often filtered as spam. Granicus provides the agency with the ability to do targeted outreach and the e-mails are less frequently filtered as spam. The new outreach system was very effective and this was evidenced in the responses to recent calls for public comment.

LAW ENFORCEMENT COMMENTS

Major Pat Moran greeted the MFAC. He then informed them that Sean Santos had been appointed Colonel. Sean previously worked for the DEA. Major Moran anticipated that

the Colonel may be able to attend the March 25 MFAC business meeting and introduce himself. Commissioner Amidon added that he has been impressed by the Colonel and his hands-on involvement in MEP issues.

On the personnel side, the Major stated three hires had entered into the police academy and were likely to graduate in August 2020. An additional two hires will be entering into the next academy. MEP were also primed to begin the process to hire six additional officers.

Kalil Boghdan asked if these hires resulted in a net gain of new field officers given attrition. The Major stated that once these new hires entered the field, then the ranks would be just over 85 officers. This would be a net gain compared to recent historic lows of around 70 field officers. Ray Kane asked if the MFAC's most recent letter regarding MEP personnel was submitted to Governor Baker; Commissioner Amidon confirmed this.

Lt. Matt Bass stated that wintertime enforcement efforts were focused on the trap gear closure around Cape Cod. DMF, PCCS and MEP were working to remove abandoned and lost gear. Lt. Bass noted that the amount of gear being abandoned and subject to removal was going down over time.

Sooky Sawyer noted that the right whales arrived in Cape Cod Bay earlier than usual this year and expressed a desire to have unfished gear removed from the water earlier in the year due to concerns that this gear may entangle a whale and impact the lobster fishery more broadly. Lt. Bass stated that MEP were considering a year-round program to identify potentially lost or abandoned gear, tag it, and the remove it was not hauled within 30-days. This would facilitate the removal of lost and abandoned gear prior to the winter period when right whales may migrate into the area.

Dan McKiernan asked about the number of traps removed and how many belonged to recreational fishermen. Lt. Bass stated that 169 traps were removed, as well as 56 vertical lines. While only 23 traps were identified as belonging to recreational fishermen, recreational fishermen were responsible for half of the vertical lines. This is because recreational fishermen tend to set more single traps. Dan suggested exploring a recreational fishing season to ensure that recreational lobster gear is more expediently removed.

Lt. Bass stated that on February 27 DMF and MEP were meeting with ACOE regarding striped bass fishing on the Cape Cod Canal. The meeting was expected to focus on concerns regarding how increased fishing effort in the area is leading to a number of public nuisance concerns and illegal fishing activity. Bill Doyle, Kalil Boghdan, and Mike P. were scheduled to attend on behalf of the MEP.

ACTION ITEM

Temporary Lifting of the April State-Waters Groundfish Closure for 2020

Jared Silva reviewed a series of maps of existing closures that affect groundfish fishing activity in the state-waters portion of the Gulf of Maine during April. This includes gear closures affecting gillnets and dragnets, spawning closures for cod and winter flounder, as well as the conditional commercial groundfish closure between Plymouth and Marblehead. This underscored that a number of areas in the region would remain closed to commercial groundfish fishing even if the conditional commercial groundfish closure were to be lifted.

Dan McKiernan then reviewed how the state-groundfish management system exists within the larger federal management system. He noted that the New England states are allocated small quota sub-components (“set-asides”). These set-asides are based on prior landings history for those commercial fishermen who do not have federal groundfish permits. Additionally, these set-asides are not treated as hard quotas. Overages do not result in paybacks directly from the state-only fishery and may be buffered by the underutilization of federal catch limits. As overall catch limits (for the federal and state fisheries) have decreased in recent years, the state-only fishery has come under greater scrutiny. This is because if the state-only fishery exceeds its set-aside - and if that results in overall catch limits being exceeded - then the payback will come at the expense of federal permit holders.

In response to concerns by federally permitted fishermen, DMF adopted a conditional April commercial groundfish closure between Plymouth and Marblehead in 2019. The regulation provides DMF with the authority to lift the closure if an analysis of state-waters landings for the current fishing year (May 1 – April 30) demonstrate that opening the area will not result in exceeding state set-asides or jeopardizing federal conservation objectives (e.g., exceeding overall catch limits).

DMF’s analysis for the current fishing year indicated that the April closure could be lifted. DMF did not anticipate an April opening would result in exceeding the set-aside for GOM cod - the stock of greatest concern. Additionally, while DMF expected the GOM winter flounder set-aside may be exceeded and the haddock set-aside had already been exceeded, the federal catch limits were sufficiently underutilized to ensure overall annual catch limits would not be exceeded.

Sooky Sawyer asked if there would be any changes to the commercial trip limits. Dan indicated that the trip limits would remain status quo.

Mike P. tasked a series of questions regarding the gears targeting groundfish in April, cod catch and discards, and spawning protections.

Dan stated that the primary gears targeting groundfish in state-waters are trawls and gillnets. Bill Hoffman opined that gear restrictions and fishable bottom limited those areas where gillnets and trawls may be fished in MA Bay. With a 6.5” minimum mesh size gillnetters cannot target haddock and will likely fish tiedown gillnets for flounders. Trawlers are quite spatially limited given mobile gear closures and towable bottom and

are likely to fish areas by the state-federal boundary where the bottom is suitable to catch haddock and some flounder.

Regarding cod, Bill stated that cod typically do not begin to migrate into state-waters until the second half of April when the spring spawning cohort begins to aggregate. Dan stated cod would not likely be a target species given the low 200-pound trip limit. Any cod caught in excess of the 200-pound limit would have to be discarded. DMF typically does not sample the state-waters groundfish boats, however, Bill's staff would likely sample trips this April to better understand catch composition in both the gillnet and trawl fisheries.

On the topic of spawning protections, Dan stated that the winter flounder spawning closure and cod spawning closure would remain in effect. This would prohibit fishing on known spawning grounds. However, the adjacent waters would be open, so fish could be caught as they migrate in and out. Bill added that those cod in state-waters in April are likely moving into state-waters to take part in the spring spawning event.

Mike P. then asked about landings monitoring in the state-waters groundfish fishery. Dan noted that this was complicated because of the reporting and permitting system and that the state-waters set-aside is not a hard quota. Based on prior performance, Dan did not anticipate the fishery would exceed its set-aside for cod. However, he thought it was likely the set-aside for GOM winter flounder would be exceeded and the set-aside for GOM haddock was already exceeded. Dan expressed a level of comfort with overutilizing the haddock set-aside given the substantial underutilization of federal ACLs. Dan felt similarly about winter flounder, but added that if an overage occurred it would likely be small (about 10,000 pounds, which is less than 10% of the 130,000 pound set-aside).

Mike P. then asked DMF to further explain the interplay between the overall ACL and state-waters set-aside. Cate O'Keefe explained that NOAA Fisheries sets an ACL for an entire stock. The NEFMC's Multi-Species Groundfish FMP then recognizes that there are state-only fisheries and a small portion of the overall ACL for certain stocks are allocated to them. If the states exceed a set-aside for any stock, but the overall ACL is not exceeded, then it is not considered to be biologically significant for the entire stock. However, if the ACL is exceeded, it impacts the conservation of the stock and the FMP requires a payback from federal catch limits.

Mike P. expressed several points of concern with DMF's recommendation. First, he did not think DMF and the MFAC should vote to knowingly allow the state-waters fishery to exceed its set-aside. Second, he was concerned that our mild winter may lead to early spring cod spawning and an April opening would produce high cod catch and discard rates. Lastly, he was concerned that the April opening and potential exceedance of the winter flounder set-aside in these areas will negatively impact recreational anglers or the ability for recreational anglers to catch winter flounder nearshore in Boston Harbor, Cape Cod Bay, and other areas where recreational fishing may occur. He also felt that the removal of winter flounder in these areas negatively impacts select recreational

anglers who may not have the ability to safely transit beyond nearshore grounds to fish further offshore.

No further comments were made. The Chairman called for a motion. **Bill Doyle made a motion to adopt DMF's recommendation to suspend the conditional April commercial groundfish closure between 42°00'N and 42°30'N west of 70°30'W for 2020. The motion was seconded by Charlie Quinn. The motion was approved 4-1 with Mike Pierdinock voting against the motion.**

In-Season Increase to Period I Summer Flounder Trip Limits

Dan McKiernan explained that the Period I summer flounder fishery is allocated 30% of the annual quota. To date, the accrual of landings had been slow and only 18% of the seasonal allocation had been landed. Accordingly, DMF was proposing to increase the trip limit from 1,000 to 2,000 pounds. This would enhance the supply of seafood reaching the market. Additionally, it would mirror the limit in neighboring Rhode Island. Dan did not anticipate that this change would result in the fishery exceeding its seasonal quota allocation. He noted that the trip limit is reduced to 100 pounds once 25% of the annual quota is caught, which should sufficiently constrain landings. Additionally, dealer reporting in this fishery occurs nightly, so the quota is monitored in near real-time.

Ray Kane asked if this would enhance the landing of fluke in Massachusetts. Jared Silva stated that he expected it would. Jared noted that he spoke with dealers and they indicated the price was currently lower than normal, and the dealer anticipated that given this low price, increasing the weight of fluke that may be landed may incentivize fishermen to target them.

Kalil Boghdan asked about the performance of the Period I fishery to date and if low landings were driven by poor stock conditions. Jared Silva stated that the stock assessment shows the stock to be in good condition. Jared opined that low landings are likely driven by market conditions. Additionally, participation in recent years had been reduced because those vessels previously belonging to Carlos Rafael were not actively fishing.

Sooky Sawyer and Mike Pierdinock expressed some concern about this change impacting the quota available to the summer fishery. Dan reiterated that he did not anticipate that the Period I fishery would exceed its seasonal quota allocation given the safeguards provided by the trip limit trigger and nightly dealer reporting.

No further comments were made. The Chairman called for a motion. **Bill Doyle made a motion to adopt DMF's recommendation to increase the Period I summer flounder trip limits from 1,000 to 2,000 pounds. The motion was seconded by Sooky Sawyer. The motion was approved unanimously.**

DISCUSSION ITEMS

Review of Recent Interstate and Federal Fishery Management Meetings

Dan McKiernan stated that much of the review of recent interstate and federal fishery management meetings would also address 2020 recreational fishing regulations. Accordingly, agenda items 4A and 4B would be addressed together.

Striped Bass

Dan stated that the ASMFC's Striped Bass Board reviewed state conservation equivalency (CE) proposals at the February 2020 meeting. He informed the commission that most coastal states were expected to move forward the 28" to 35" slot limit and not pursue state-specific CEs. However, RI had several CE options approved that would allow for a higher maximum size limit and were taking public comment on these rules. Dan expressed strong concern about potential enforcement and compliance issues that may occur if RI were to adopt a different size limit, as fishermen from MA, CT, NY and RI all fish off Block Island. In turn, this may diminish the likelihood mortality reduction target is hit.

Mike P. stated that the abundance of large fish off Block Island was driving this CE measure and he understood why RI fishermen, particularly their for-hire fleet, would support it. However, he shared Dan's concern regarding enforcement and compliance.

Mike P. then asked how the other northeast states felt about RI's CE proposal. Dan stated that CT did not support it. CT also urged NY to not pursue a CE because it would impact CT's management, as they share the waters of Long Island Sound. Dan noted NY's CE proposal were ultimately voted down by the Board.

Lt. Matt Bass stated that the Block Island fishery presented a commercial striped bass enforcement challenge in MA. In recent years, there were incidents and allegations related to large fish caught recreationally off Block Island being landed and sold in Massachusetts. If RI were to adopt the coastwide slot limit and MA were to increase its minimum size to 35" some of these enforcement challenges would be mitigated. Mike P., Dan and Matt Bass then discussed the differences between the MA and RI commercial minimum sizes.

Nichola Meserve stated that RI was currently taking public hearings on their CE proposals. She listened into a public hearing and opinion was split. Private anglers tended to strongly support the coastwide slot limit, whereas the for-hire fleet supported the CE measures.

With RI currently taking public comment on their CE measures, Dan stated that DMF drafted a comment letter expressing concerns regarding their CE proposal and encouraging them to adopt the coastwide slot limit. This letter was provided to the MFAC for their review. Dan then gauged the MFAC's interest in co-signing the letter with DMF.

The Chairman asked if there were any objections to him co-signing the letter on behalf of the MFAC. No objections were raised. The Chairman then called for a motion in support of the letter. **Sooky Sawyer made a motion to support and co-sign DMF's**

comment letter to RI DEM encouraging them to adopt the coastwide recreational striped bass slot limit of at least 28” up to 35”. The motion was seconded by Bill Doyle. The motion was approved unanimously.

Mike P. asked DMF to cc the MFAC on the letter when it was submitted to RI DEM.

Nichola Meserve added that NJ also had a CE proposal approved that would allow for them to continue their “bonus” program. Dan stated that he was less concerned about the impact of this CE proposal on conservation, enforcement and compliance.

Kalil Boghdan asked if DMF had considered requiring its commercial striped bass program be conducted at point of harvest. Dan stated that all other states with commercial fisheries requiring tagging at point of harvest and noted that these states were able to do this because they have limited entry or IFQ fisheries. Massachusetts fishery is open entry. In recent years, about 5,000 permits are issued and about 1,000 permits are fished. This produces a substantial administrative challenge with regards to issuing tags directly to fishermen. Accordingly, as there are far fewer primary buyers of striped bass, DMF opted to have its tagging program conducted at point of sale.

Kalil asked if DMF would entertain further discussion regarding limiting entry into the striped bass fishery and moving the tagging program to point of harvest. Dan stated that former DMF Director Phil Coates had petitioned DMF to adopt a new control date for use in limiting entry into the commercial striped bass fishery. Dan noted that DMF did not intend to take any action on the petition until a formal Director’s appointment was made. This was because state law provides the DMF Director with discretion over permitting. This petition and other permitting issues will likely be reviewed by a sub-committee of the MFAC this spring or summer, and the full MFAC will be briefed later in the year.

Dan then reviewed the typical procedure for handling a petition. Under normal circumstances, the Director and DMF staff review and analyze a petition. The Director may then determine whether to adopt the petition in part or in whole, modify it, or dismiss it. The MFAC will be provided with the Director’s response to the petition. If the Director determines to proceed with a petition, normal rule making commences. The MFAC will be provided a briefing on the proposed regulation and DMF will take it to public hearing. If the petition deals with the regulation times, sizes, places and manner of taking fish a final recommendation of the Director will be provided to the MFAC for a final vote. If the petition deals with permitting, the Director will brief the MFAC on the final action, but no vote is required.

Bluefish

Nichola Meserve reviewed DMF’s memorandum on 2020 recreational bluefish limits. The AMSFC and MAFMC approved coastwide measures to establish a 3-fish bag limit for private anglers and 5-fish bag limit for anglers onboard for-hire trips for 2020. This was adopted to meet the mandatory 28.56% reduction in coastwide harvest this year. The FMP allows for state-specific CE proposals. However, GA ended up being the only

state to move forward with CE measures. All other states adopted the coastwide. While MA (and other states) considered potentially developing CEs, there was limited support for such alternative management measures given concerns about the status of the bluefish stock, rebuilding, and future constraints to RHLs. DMF was currently taking comment on implementing the coastwide recreational bluefish measures and this would be an item discussed at the upcoming March 2020 public hearings.

Nichola noted how the coastwide measures established disparate bluefish bag limits across the recreational for-hire and private angler fisheries and that this highlighted increasing interest in development of mode-specific regulations in our recreational fisheries. To address this, the ASMFC was beginning to develop a white paper that would identify when it was most appropriate to consider such measures. DMF was also weighing this issue and would prepare a memo for the MFAC's consideration at future meetings.

Menhaden

Nichola stated that the Menhaden Board continued to move towards eco-system based management that would take into account menhaden's role in the ecosystem as a critical forage species. The preferred model merges the single species assessment and the assessment for a small number of other species (e.g., bluefish, striped bass, weakfish and sea herring). This allows the abundance of other bait species and predator species to be considered when assessing menhaden exploitation. A working group was currently reviewing the model and she was hopeful that the Board would be in a position to adopt ecological-based reference points at the May 2020 meeting.

Nichola added that the ASMFC took a conservative approach to menhaden management. The single species reference points used in the current assessment are similar to those reference points developed by the preferred ecosystem-based model.

Mike Pierdinock asked if other models included more robust predation (e.g., pelagic finfish, seals). Nichola stated that the ASMFC reviewed these models. However, they found the results were similar to the preferred model and the preferred model was easy to manipulate. Nichola stated she would forward Mike P. the ASMFC's primer on menhaden ecosystem-based management.

Sooky Sawyer opined that if ecosystem based management is going to be moved forward, it should also consider the impact forage species have on larvae and plankton.

Gulf of Maine Cod and Haddock

Dan McKiernan stated that the recreational Gulf of Maine cod and haddock rules would remain status quo for 2020. However, NMFS was considering adjusting the haddock and cod seasons for April 2021. Mike P. expressed his support for the expected April 2021 recreational groundfish fishing opportunities.

Pending Federal Right Whale Conservation Measures

Dan McKiernan provided a brief summary of the recent (February 18 and February 19) public meetings on pending federal right whale conservation measures. The proposed measures affecting MA commercial lobstermen would focus on buoy line breaking strength, a closure south of Nantucket and minimum trawl lengths for the offshore fishery. Dan expected that NMFS would proceed to public hearing this summer and promulgate final rules by next spring. DMF would then move to enact complementary regulations.

Dan and Sooky Sawyer credited Bob Glenn and Erin Burke for their work on this matter, particularly ensuring MA received conservation credit for the existing Large Whale Season Trap Gear Closure and state rules that allow the closure to be extended into May if the whales remain in state-waters.

Bill Doyle asked whether the new weak rope would break under tidal pressure or wave action. Sooky Sawyer stated that this may occur. However, a number of options to achieve 1,700-pound breaking strength were being reviewed and he was optimistic that fishermen could continue to work with this new requirement.

Dan stated that ropeless trap fishing (i.e., remote buoy release to the surface) was being more frequently discussed as a tool to help conserve right whales. He opined this would inevitably lead to ocean zoning and that ocean zoning efforts would result in substantial reductions in the lobster fishery. This would occur due to a reduced spatial footprint, subsequent cuts to the amount of gear being fishing, and gear conflicts between mobile and fixed gear fishermen.

Commercial Lobster Vessel Tracking Pilot Program

In order for the state of ME to meet interstate commercial lobster reporting mandates, the state was reviewing the feasibility of using cellular devices. Given this, and potential challenges posed by offshore wind energy development and right whale conservation, a pilot program was developed by the ASMFC, ME and MA to review the use of cellular devices for tracking and catch monitoring. Story Reed then provided a brief overview of the program.

Cellular-based tracking devices were being vetted. These devices would collect the data and then transmit it once the device was within cellular service. As data does not need to be transmitted in real-time, satellite technology is not necessary. This makes the devices more affordable and less power intensive than the satellite-based VMS models. Unit costs typically run between \$200 - \$400 with service fees between \$100 - \$600 per year. Story expected the price would be cheaper if purchased fleetwide. He also noted that some devices are solar powered, but the Gulf of Maine was on the northern most range of this capability (especially during the winter) and results have been mixed.

Story then showed how the data can be manipulated into heat maps. One key element that the program is being used for is to determine what ping rates are sufficient to demonstrate when gear is being set and hauled. He noted that if speed data can parse

fishing activity from steaming activity, it could be coded as such and this would allow the heat maps to show where fishing activity is occurring.

Dan felt strongly that the lobster fishery needed to better identify their spatial footprint to meet these future challenges. At present, the spatial understanding of the lobster industry is at the statistical reporting area level. This did not provide sufficiently granular spatial data for managers and industry to address emerging issues that may require surgical spatial management. Dan noted that VMS heat maps were useful for the mobile gear fleet to address wind farm development in Southern New England and monument designations. Similar data would be useful to the lobster fishery to get out ahead of protected species management and wind energy development in the Gulf of Maine.

Sooky Sawyer noted that many federal lobstermen already have VMS on their vessels because they have federal groundfish permits. Accordingly, new device requirements would be redundant for these fishermen. Sooky then added that lobstermen were reluctant to support the installation of these devices because it may attract new effort into areas that are otherwise not fished heavily. This led to some discussion about whether individual trawl lines could be shown given data confidentiality laws.

Mike P. expressed concerns that the spatial data would eventually be used to pigeon-hole certain fishing activities into certain areas. Given the various environmental, ecological, and biological factors that influence the spatial abundance and availability of fish, he was concerned that fishermen would eventually be limited in their ability to fish outside of prescribed zones that were developed based on a historic snapshot. Ray Kane generally agreed with Mike P.'s concerns. However, he felt that fishermen would benefit more from being data rich even if the use of the data was imperfect. Both Mike and Ray agreed that long-term data sets and regulatory flexibility were needed in spatial management.

Seafood Marketing Program Update and Seafood Expo North America

Wendy Mainardi, DMF's Seafood Marketing Program coordinator, provided the MFAC with an update on the program and events at the upcoming Seafood Expo North America.

The Seafood Marketing Steering Committee met back on October 10, 2019 at the State House. This meeting focused on DMF's seafood marketing grant program and the facilitation of a seafood buyers meeting. This meeting also immediately preceded Seafood Day at the State House. This event grew from last year and was held in the Hall of Flags. It was well attended and provided the seafood industry with an opportunity to network with state legislators.

On the topic of the seafood marketing grant program, Wendy indicated that in 2019 DMF funded a small number of longer-term projects and most of which was still on going. At present, DMF was accepting 2020 grant applications related to seafood industry advocacy. The application process was ongoing and the review process would

begin in late-March. In response to public requests for additional transparency, this review process will be open to the public.

DMF would also be participating in the Eating with the Ecosystem program. This will involve DMF working with local chefs at farmer's market to make local seafood more accessible to the public.

Seafood Expo North America was scheduled for the middle of March at the Boston Exhibition and Convention Center. Wendy noted the show's footprint was being consolidated in response to COVID-19 (the show was later cancelled). DMF was working to promote the "Mass Ave" event, which is a cluster of eight local seafood business. Additionally, DMF was facilitating a buyer's meeting and breakfast for Monday, March 16 at Legal's Harborside. Following the buyer's meeting, there would be a walking tour of the Boston Fish Pier. After the walking tour, the group would proceed to the Mass Ave ribbon cutting event at the Expo where the buyers could network with MA seafood businesses. Dan McKiernan indicated that if MFAC wanted to attend the Expo, DMF would cover the costs.

Bill Doyle asked who the buyer's meeting and breakfast would be open to. Wendy indicated that it would be focused on the seafood buyers. She expected the buyers would then network with the MA seafood dealers at the Expo and that those businesses involved in the Mass Ave event would be setting up during the breakfast meeting.

Update on Massachusetts Shellfish Initiative (MSI)

Dan McKiernan provided a brief organization overview. The MSI was designed to provide overarching guidelines, goals, and a strategic plan for the state to maximize the economic, environmental, and social benefits of MA's shellfish resources. Dan serves as the MSI Task Force Chairman.

Over the fall of 2019, four public hearings and a public comment period were held to inform the MSI's objectives. This information was used to develop the recently completed MSI Scoping Committee Report. This report synthesized public comment received and outlined specific action items to be considered in the development of a MSI Strategic Plan. The MSI was also working on an Assessment Committee Report to provide an overview of shellfish resource management in Massachusetts. Dan noted that with personnel losses to the shellfish program over the winter, Jared Silva was now working to facilitate the completion of the Committee Reports and will assist in the drafting of the Strategic Plan.

Mike Pierdinock stated that shellfish industry representatives previously spoke with him regarding the transfer of aquaculture permits and the market impacts of harvest municipally propagated shellfish for commercial purposes. He was curious if these two issues were identified by the MSI. Jared Silva stated that those two issues were identified in the Scoping Committee Report. Dan added that those two issues also need more immediate attention.

Bill Doyle commented that while DMF is involved in the MSI, it is not a regulatory or oversight body and does not replace existing entities like the MFAC and SAP.

Upcoming Public Hearing Docket and Schedule

Jared Silva stated that DMF would be hosting three public hearings in mid-March. The first hearing is scheduled for 6PM on March 10 at Coolidge Middle School in Reading. Then two hearings are scheduled for March 12. The first hearing will begin at 9:30AM at the Tisbury Town Hall and the second hearing will begin at 6PM at the MA Maritime Academy. Jared then quickly reviewed the docket, which included recreational bluefish limits; recreational striped bass limits; commercial striped bass, black sea bass, summer flounder, menhaden, sea herring and horseshoe crab rules; sand lance possession limits; edible crab rules; and permitting clarifications.

Chairman Kane encouraged MFAC members to attend. Dan McKiernan added that the March MFAC business meeting would likely be dominated by final recommendations on these public hearing proposals.

OTHER BUSINESS

Commissioner Amidon suggested that the MFAC support moving a spring business meeting to the State House. Ron and Ray both felt this would help build rapport with legislators and keep marine fisheries issues on their radar. There was some discussion about a potential meeting date. Mark Reil and Jared Silva were tasked with scheduling.

Dan McKiernan indicated that he intended to look into purchasing tablets for the MFAC. He felt this would help better organize MFAC meetings and reduce paper usage.

COMMISSION MEMBER COMMENTS

Bill Doyle asked that future agendas feature an “ongoing deliverables” topic whereby DMF and Commission members could keep the MFAC up-to-date with progress reports on certain initiatives and areas of interest.

Bill noted that he continued his personal investigation into compliance with and enforcement of No Discharge Zones (NDZs). He stated that many whale watch boats discharge their holding tanks when they reach federal waters along Stellwagen Bank. He suggested the MFAC write a letter to the Sanctuary encouraging them to become a NDZ. Dan McKiernan noted that there was a sliver of water between the state-federal boundary outer MA Bay and Stellwagen Bank and vessels could still discharge in the event that discharge was prohibited on the bank. Bill recognized this but felt that it was important to send a message on holding tank discharges. No formal position was taken by the MFAC.

Bill then discussed municipal involvement in aquaculture permitting and regulation. He felt strongly that the state should take a more active role in setting baseline standards

because management disparities between municipalities were too significant and were negatively impacting industry. Bill then made a motion that, “a summary be prepared from an analysis that documents municipal rules, procedures, terms, fees, and responsible municipal management authorities associated with shellfish aquaculture licensing by Massachusetts municipalities...that the topic of municipal rules, procedures, terms, fees, and responsible management authorities associated with shellfish aquaculture licensing be placed on the next MFAC agenda and subsequent agendas until such at time as a vote deciding the direction to be taken.”

Dan McKiernan felt that this was a worthwhile issue for DMF to analyze. He noted that it was also an issue being reviewed and considered by the MSI. However, given other commitments and shellfish personnel deficiencies, he did not think that DMF could reasonably develop such an analysis until the late-spring or early-summer. Bill stated that he could provide an analysis for the next meeting.

Sooky Sawyer asked about Bill’s end goal. Bill stated that he would like to have shellfish aquaculture uniformly regulated and permitted by the state and he’d like to change state law to facilitate this.

The Chairman asked if there was a second for Bill Doyle’s motion. **The motion was seconded by Charlie Quinn. The motion carried unanimously.**

ADJOURNMENT

The Chairman requested a motion to adjourn. **Sooky Sawyer motioned to adjourn the February 20, 2020 MFAC business meeting. The motion was seconded Bill Doyle. The motion was approved unanimously and the meeting was adjourned.**

MEETING DOCUMENTS

- February 20, 2020 MFAC Business Meeting Agenda
- December 19, 2019 MFAC Business Meeting Draft Minutes
- Recommendation to Temporarily Lift April Groundfish Closure in MA Bay for 2020
- Recommendation to Make In-Season Adjustment to Increase Period I Trip Limits for 2020
- Winter 2020 ASMFC Meeting Summary
- MAFMC Scup, Summer Flounder and Black Sea Bass Commercial/Recreational Allocation Amendment Public Information Document
- MAFMC Bluefish Allocation and Rebuilding Amendment Public Information Document
- 2020 Recreational Bluefish Public Hearing Proposal
- Approved Proposals for Striped Bass Management Under Addendum VI
- Letter from NEFMC to GARFO on Gulf of Maine Cod and Haddock Recreational Fishing Measures for Fishing Year 2020
- MSI Scoping Committee Report
- Winter 2020 DMF Public Hearing Notice

FUTURE MEETINGS

9AM
April 1, 2019
Virtual Meeting

9AM
May 21, 2019
DFW Field Headquarters
Westborough, MA

9AM
June 18, 2019
DFW Field Headquarters
Westborough, MA



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

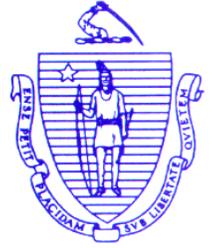
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Commissioner

Mary-Lee King
Deputy Commissioner

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Final Recommendation for 2020 Bluefish Recreational Management**

This memo includes my final recommendations to adjust recreational bluefish bag limits for 2020. To provide context to these decisions, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I recommend that for 2020 the bluefish recreational possession limit be reduced from 10 fish per angler per day to 3 fish per day for anglers fishing from shore or a private vessel; and 5 fish per day for patrons aboard a for-hire vessel during a for-hire trip.

This revision is necessary for compliance with the interstate fishery management plan. These limits were adopted by the Atlantic States Marine Fisheries Commission (ASMFC) as coastwide measures intended to prevent the 2020 recreational harvest limit from being exceeded.

Difference from Public Hearing Proposal

The final recommendation is consistent with the public hearing proposal. Background on the public hearing proposal is described in my February 14 memo to the MFAC, "[2020 Recreational Bluefish Management Proposal for Public Hearing](#)."

Public Comment

The [public hearing notice](#) was issued on February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven on March 10 and 12 occurred as scheduled, while the hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing Coronavirus situation. In response, the comment period was extended two days, until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing Coronavirus situation. The following is a summary of the public comment received:

Possession Limits

Various comments supported the 3- and 5-fish possession limits as proposed to reduce the harvest of bluefish in a consistent manner coastwide and in response to declining resource status. Reasons that individuals opposed these possession limits included: opposition to unequal access within the recreational sector to a public resource (i.e., the mode split); belief that 3 fish is enough for all harvesters for reasons such as that bluefish do not freeze well and few anglers take more than this now; support for more

conservative limits (e.g., 1 fish) to have a meaningful impact on rebuilding the stock; and support for higher limits (e.g., 5 fish across all modes; a larger limit but with minimum and/or maximum size limits; status quo) because the proposed limits were felt to be too conservative for reasons including skepticism of the stock assessment or management's ability to affect stock status. Several comments also supported a vessel possession limit in addition to the per person limit. Several individuals asked for clarity on how the rule applies to for-hire captains and their crew.

Other Measures

Comment on issues not proposed included: support for a minimum size or slot limit to help rebuild the stock or obtain a higher possession limit; and opposition to a minimum size because of how it would affect the snapper and bait fisheries.

Discussion

DMF's options for compliance with the interstate plan were restricted to the 3-and 5- fish limits as adopted by ASMFC as coastwide measures, a conservationally equivalency alternative, or being more restrictive. A review of our state-specific recreational data for bluefish did not lend itself to a conservation equivalency proposal and none was submitted, as described in my February 14 memo.

A more conservative alternative that deserves discussion is a uniform 3-fish limit across all modes. In managing our recreational fisheries, interest in using mode splits to manage the for-hire fleet in a manner that differs from the private angler is becoming increasingly common. It is typically supported by members of the for-hire fleet and is viewed as a tool that may help enhance their business model at a time when catch limits on a number of critical target species are very conservative (e.g., cod, striped bass). However, this practice is likely to frustrate private anglers. As evidenced in the public comment regarding bluefish, private anglers are concerned about equal access and view splitting modes as managing public resources to the benefit of a small number of private businesses. I share this concern and others, such as the ability to use MRIP data to manage at this fine of a scale. For these reasons, this is a topic which deserves its own discussion. To that end, it is the focus of a newly formed ASMFC working group. Additionally, I plan to provide the MFAC with a memorandum on the topic for a discussion at a business meeting later in the year.

In the interim, I am recommending the adoption of the mode-specific possession limits in Massachusetts in recognition of several factors. First, these limits are being adopted coastwide (with the minor exception of Georgia) and our not doing so would put our for-hire fleet at a competitive disadvantage with operators in neighboring states. Second, these limits appear likely to be followed by additional cuts in 2021, given the 2019 preliminary harvest estimate is 16.42 million pounds compared to a projected 2021 recreational harvest limit of 9.48 million pounds. As such, these measures may be part of a progression towards more conservative rules, and given these measures are being adopted coastwide in 2020, I prefer to reconsider the split mode approach at an interstate level in 2021.

Regarding the question about how these limits apply to for-hire captains and their crew, the draft regulatory language taken to public comment and the final proposed regulatory language contained herein are explicit in the 5-fish limit being for paying patrons aboard for-hire vessels. Seeing that the rationale for the higher for-hire limit was to support the marketing of trips and attract patrons, I see no basis for the captain and crew to be assigned the higher trip limit. Other states have taken similar approaches with other species (e.g., Connecticut's higher black sea bass limit for for-hire vessels in the fall is restricted to paying passengers). DMF is inquiring into how other states are approaching this matter with bluefish and may have more to report at your April 1 meeting. The final federal waters language has not been implemented yet, although the draft language appears to grant for-hire captains and crew the higher allowance. I don't see this as overly problematic given that the more restrictive rule (ours) would prevail at landing.

Final Proposed Regulatory Language

6.18: Bluefish Limits (*Pomatomus Salatrix*)

(1) Recreational Bag Limit. ~~No person may catch, land or possess more than ten bluefish per calendar day unless he or she is the holder of a commercial fishermen permit or a dealer permit.~~ It shall be unlawful for any recreational angler to retain, land or possess more than three bluefish per calendar day.

Exception. It shall be unlawful for anglers fishing as patrons onboard a for-hire vessel, lawfully permitted in accordance with 322 CMR 7.01 for carrying paying customers for the purpose of recreational fishing, to retain, land or possess more than five bluefish per calendar day.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

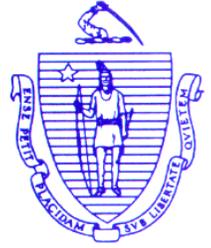
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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Final Recommendation for 2020 Striped Bass Recreational Management**

This memo includes my final recommendations to revise the recreational striped bass management measures for 2020. To provide context to these decisions, I provide a review of how and why these actions differ from the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I am making the following final recommendations regarding striped bass recreational management for 2020:

- Adopt a slot limit of 28” to less than 35”, replacing the 28” minimum size limit (all size limits are in total length as defined in the regulations).
- Amend the state’s existing circle hook mandate to remove the exemption for weighted treble hooks; and allow the targeting of other species with natural bait on a non-circle hook when a striped bass is already in possession.
- Require recreational anglers use a non-lethal device when using a device to remove striped bass from the water.

The first revision is necessary for compliance with the interstate fishery management plan, whereas the second and third are discretionary measures to further reduce recreational discard mortality and improve the conservation of striped bass.

Difference from Public Hearing Proposal

The final recommendation is consistent with the public hearing proposal, with the following exceptions: 1) I am not recommending that the circle hook requirement apply to for-hire vessels for 2020; 2) I am recommending the elimination of only weighted treble hooks from the circle hook gear exemptions rather than all the configurations; 3) I am recommending that the requirement to use a circle hook when using natural bait while in possession of a striped bass be eliminated; and 4) I am recommending that the draft regulatory language’s definition of “non-lethal devices” for the removal of fish from the water not include a reference to specific types of approved and prohibited devices (i.e., boga grips). Background on the public hearing proposal is described in my December 13 memo to the MFAC, [“Proposal to Adjust Recreational Striped Bass Limits and Additional Conservation Measures.”](#)

Public Comment

The [public hearing notice](#) was issued on February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven on March 10 and 12 occurred as scheduled, while the hearing scheduled

for March 12 in Buzzards Bay was cancelled due to the developing Coronavirus situation. In response, the comment period was extended two days, until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing Coronavirus situation. The following is a summary of the public comment received:

Size Limit. Public comment was largely in favor of the proposed slot limit as coastwide measure to end overfishing of the resource. Comment opposed to the slot limit spoke to concerns about increased discarding of large fish (≥ 35 "), the effect on sportfishing derbies, and how the maximize size will turn individuals wanting to keep a "trophy" fish into poachers or encourage the purchase of a commercial fishing permit. There was comment in favor of various alternatives, most of which would not have been approved by ASMFC, while others asked for more conservative rules (e.g., narrower slot, catch & release only, complete moratorium).

Circle Hooks. Public comment that supported changes to our existing circle hook mandate requested that for-hire vessel patrons and/or commercial anglers be included under the mandate, that treble hooks and the snag and drop technique be banned, and that the mandate not apply when targeting other species just because a striped bass has already been retained. Some comment favored the use of only barbless hooks for targeting striped bass. Members of the for-hire industry favored maintaining their exemption from the circle hook requirement.

Use of Non-lethal Removal Devices. Public comment was largely in support of this rule to improve catch and release survival, with additional support for expanding it to all commercial harvest as well. A number of comments expressed concern about the use of Boga or lip grip tools, that while they do not puncture or pierce a fish, were thought injurious enough to decrease catch and release survival.

Other Measures. Comment on issues not proposed included: calls for increased enforcement, especially along the Cape Cod Canal.

Discussion

Size Limit. DMF does not have an option other than the 28" to less than 35" slot limit to maintain compliance with the interstate plan. We supported and continue to support this measure as the best option to reduce recreational removals along the coast in a uniform manner to end overfishing. DMF was vocal in encouraging other states to adopt the standard measure for improved compliance, enforcement, and education of the rules. The discard mortality associated with the imposition of the maximum size is factored into the calculations, and minor compared to the harvest mortality that would occur without the maximum size. While the maximum size will have impacts on fishing derbies and the lawful retention of a trophy fish, the status of the resource and the fishing community's collective desire to rebuild it calls for behavioral changes and an increased conservation ethic.

Circle Hooks and Non-lethal Removal Devices. The other rules within our recreational striped bass proposals for 2020 speak to the same conservation ethic. The circle hook and non-lethal removal mandates are difficult to enforce and instead rely on individual anglers knowing and doing the right thing. Not having rules that are overly prohibitive can encourage compliance, which is why I am recommending that the circle hook mandate not apply when targeting other species after a striped bass has been retained.

Many anglers and members of my staff have spoken up about the observed mortality associated with the use of a weighted treble hook in the snag & drop technique. My recommendation to remove this exemption will necessitate that such bait caught by snagging on a treble hook be transferred to a circle hook before being used to target striped bass. Changing the trajectory of the stock without more draconian measures

will rely on anglers' good will to comply with such rules that are admittedly difficult to enforce on the water. Whether additional revisions to the terminal gear exemptions will be required in 2021 for compliance with the interstate plan's mandate remains to be determined through ASMFC review later this year.

For 2020, I am not recommending a change to the exemption within the circle hook mandate for for-hire vessels, as was suggested in some of the public comment. The future of this rule depends both on ASMFC's acceptance of this exemption later this year as well as the for-hire industry taking an active role in assisting their clients in practicing angling and handling techniques that promote catch and release survival, including voluntarily switching to using circle hooks to target striped bass for catch and release after a keeper has been retained. This is something I'll be paying attention to if our for-hire exemption survives ASMFC review. I did not propose nor am I recommending at this time that the circle hook mandate apply to commercial anglers either. This sector's contribution to total removals is minor; moreover, the focus is on catch and retention rather than catch and release as practiced by many recreational anglers.

I am recommending moving forward with the proposed requirement for recreational anglers to use a non-lethal device when using a device to remove striped bass from the water, as an additional measure to reduce recreational discard mortality. The revision to the draft regulatory language removed the reference to examples of devices that are allowed and prohibited. This was done primarily to remove the reference to Boga Grips, as this is a brand name. We can provide more guidance to anglers on approved devices in outreach materials, with an emphasis on using a net. As already specified in the regulations, commercial anglers are prohibited from gaffing an undersized fish. The need to gaff a fish in the recreational sector is largely eliminated by the fishery's new slot limit; whereas the commercial fishery will continue to target large fish for retention.

Final Proposed Regulatory Language

6.07: Striped Bass Fishery (*Morone Saxatilis*)

(1) Purpose and Scope. Since approximately October 1981 the Atlantic coastal states, through the auspices of the Atlantic States Marine Fisheries Commission (ASMFC), have been developing conservation and management measures to arrest the severe decline in the stocks of striped bass and to manage restored stocks. This cooperative management effort has been successful and as a consequence, the Chesapeake Bay Stock of the Atlantic Coast striped bass resource has been declared recovered as of January 1, 1995.

The following regulations represent the Commonwealth's response to this cooperative and joint coastal state conservation management effort. The objective of 322 CMR 6.07 is to allow controlled sustained recreational and commercial fishing for striped bass pursuant to the provisions of the ASMFC striped bass plan.

322 CMR 6.07 is designed to identify the various user groups, implement conservation and management measures tailored to each group, and collect accurate statistics on striped bass catch levels. Persons intending to fish for striped bass have the option of classifying their activity as recreational or commercial. If a person intends to catch striped bass only for personal consumption and not for sale, that person must have a recreational saltwater fishing permit, and may fish year round, and retain striped bass that measure **at least between 28 inches and less than 35 inches**, but may not retain more than one striped bass within any 24-hour period.

Any person intending to catch and possess striped bass **for the purpose of sale, barter or exchange in excess of the limits and/or sell striped bass so caught** must be fishing under the authority of a commercial permit and a regulated fishery permit for striped bass. However, 322 CMR 6.07 establishes a commercial fishing season that closes upon reaching the commercial catch quota, establishes a minimum commercial size of **34 35 inches**, and requires fish to be sold only to dealers licensed and authorized by the Commonwealth.

Finally, 322 CMR 6.07 allows wholesale and retail dealers to purchase and sell striped bass under certain conditions. To purchase striped bass directly from commercial fishermen, wholesale and retail dealers must be authorized as primary buyers of striped bass and must affix a Striped Bass ID Tag to all striped bass at the time of primary purchase from the commercial fisherman. Striped bass imported into the Commonwealth must be marked with a numbered tag that identifies the state of origin and must be accompanied by documents that verify state of origin. Nonconforming (undersized) striped bass that were caught in the wild may be imported into the Commonwealth provided those fish were legally taken, shipped and meet documentation requirements of the state-of-origin.

(2) Definitions. For purposes of 322 CMR 6.07, the following words shall have the following meanings:

Circle Hook is defined as a fishing hook designed and manufactured so that the barb of the hook is not offset from the plane of the shank and bend and is turned perpendicularly back towards the shank to form a circular or oval shape.

Closed Commercial Fishing Day means any Sunday, Tuesday, ~~Wednesday~~ ~~Thursday~~, Friday and Saturday within the commercial season, as well as any Monday or ~~Wednesday~~ ~~Thursday~~ that falls on July 3rd, July 4th and Labor Day.

Commercial Fisherman means any person who may catch, possess and land striped bass for the purpose of sale, barter, or exchange or keeps for personal or family use taken under the authority of a commercial fishing permit issued by the Director under the authority of 322 CMR 7.01: *Form, Use and Contents of Permits*.

Commercial Quota means the allowable annual Massachusetts commercial harvest of striped bass pursuant to the ASMFC Interstate Striped Bass Management Plan, reduced by any overage incurred in the previous year.

Commercial Season means that period when commercial fishing is allowed beginning on the first open fishing day on or after June 23rd and ending when the quota is reached or on December 31st, whichever occurs first. The commercial season shall be further regulated by open and closed fishing days.

Consumer means any individual who obtains striped bass for personal use, rather than resale.

Dealer means any wholesale or retail seafood dealer permitted by the Director pursuant to M.G.L. c. 130 § 80 and 322 CMR 7.01(3): *Dealer Permits*.

Director means the Director of the Division of Marine Fisheries, 251 Causeway Street, Suite 400, Boston, Massachusetts 02114.

For-hire Vessel means any vessel that holds a for-hire permit, issued in accordance with M.G.L. c. 130, § 17C and 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, that is carrying paying customers for the purpose of recreational fishing.

Gaff means a pole with a hook on the end that is used to lift a fish out of the water and onto a vessel or the shore.

High-grading means the discarding of a smaller legal-sized fish (previously captured and retained) in favor of a larger legal-sized fish.

Land means to transfer or attempt to transfer the catch of striped bass from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any striped bass onboard to tie-up to any pier, wharf, dock, or artificial structure.

Non-Lethal Device means any tool used in the removal of striped bass from the water or assist in the releasing of striped bass from the water that does not pierce, puncture, or otherwise cause invasive damage to the fish that may result in its mortality.

Open Commercial Fishing Days means Mondays and **Wednesdays Thursdays** within the commercial season, **excluding Labor Day**, when commercial fishermen may harvest or attempt to harvest striped bass. Open fishing days shall not apply to any Monday or **Wednesday Thursday** that falls on **July 3rd or July 4th. July 3rd, July 4th and Labor Day.**

Person means any individual, firm, corporation, association, partnership, club, bar, restaurant, supermarket, food warehouse, or private body.

Primary Buyer means any dealer authorized by the Director, pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.07: *Dealers Acting as Primary Buyers*, to purchase striped bass directly from a commercial fisherman.

Primary Purchase means the first commercial transaction by sale, barter or exchange of any striped bass after its harvest.

Recreational Fisherman means any person who harvests or attempts to harvest striped bass for personal or family use, sport or pleasure, and which are not sold, traded or bartered.

Recreational Fishing means the non-commercial taking or attempted taking of striped bass for personal or family use, sport, or pleasure and which are not sold, traded or bartered.

Striped Bass ID Tags means the lockable, single-use, tamper evident, and non-transferable tags issued by the Director to Primary Buyers for affixing to striped bass. Striped Bass ID Tags are imprinted with the species, year, state, and unique identification number traceable to the Primary Buyer to whom they are issued.

Total Length means the greatest straight line length in inches as measured on a fish with its mouth closed from the anterior most tip of the jaw or snout to the farthest extremity of the tail. For fish with forked tails, the upper and lower fork may be squeezed together to measure the tail extremity.

(3) Regulated Fishery Permit. The following special permit shall be required:

(a) A commercial fisherman shall have issued to him or her by the Director a regulated fishery permit for striped bass, in addition to any other permits required by the Massachusetts General Laws, in the following categories:

1. resident; and
2. non-resident.

(b) A striped bass regulated fishery permit authorizes the named individual and/or a commercial fishing vessel to engage in the harvest, possession, and landing of striped bass for commercial purposes in compliance with 322 CMR 6.07, 7.01: *Form, Use and Contents of Permits* and 7.04: *Commercial Fisheries Control Date*.

(c) A striped bass regulated fishery permit shall be valid only during the striped bass commercial season as provided for in 322 CMR 6.07(4)(b).

(d) A striped bass regulated fishery permit shall be carried by the holder at all times when catching, taking, possessing or selling striped bass, and shall be displayed forthwith on demand of any Environmental Police officer or other official authorized to enforce 322 CMR 6.07.

(e) All persons must apply for or apply to renew their striped bass regulated fishery permit endorsement by the last day of February in the effective permitted fishing year.

(4) Commercial Management Measures. For purposes of conservation and management of the resource the following measures shall apply to commercial fishermen who harvest, catch or take, and/or sell, barter or exchange, or attempt to sell, barter or exchange any striped bass:

(a) Massachusetts commercial striped bass harvest will be limited annually by the commercial quota less any amount deducted to compensate for the previous year's overage.

(b) Commercial fishermen may fish for striped bass only during the commercial season and open fishing days within said season beginning on the first open fishing day on or after June 23rd and ending when the commercial quota is taken or on December 31st, whichever occurs first.

(c) Commercial fishermen engaged in commercial fishing for striped bass may not possess striped bass less than **34 35** inches in total length. If the number of striped bass aboard a vessel is greater than the number of fishermen, then all striped bass in possession must be greater than **34 35** inches in total length, and all fishermen must be commercially permitted as described in 322 CMR 6.07(3). Striped bass less than **34 35** inches in total length shall be returned immediately to the waters from which taken.

(d) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2) ~~(a), (c), (d) or (e)~~ and on the registered vessel listed on the permit, may not possess, land, offer for sale or sell more than 15 striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2). This limit applies to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of individual commercial striped bass regulated fishery permit endorsement holders onboard or the number of trips taken in a day.

(e) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Individual or Rod and Reel permit, issued in accordance with 322 CMR 7.01(2) ~~(h), (i) or (j)~~, or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2) ~~(a), (c), (d) or (e)~~, while fishing from shore or any location other than the registered vessel listed on the permit may not possess, land, offer for sale or sell more than two striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2). This limit applies to the individual fisherman whether fishing from shore or a vessel, regardless of the number of commercial striped bass regulated fishery permit endorsement assigned to the individual fisherman or the number of trips taken in a day.

(f) All striped bass which are the subject of a first sale shall be in the round, with the head, body and tail fully intact.

(g) Except as provided for in 322 CMR 6.07(5)(f), no striped bass may be filleted or processed in any manner except by evisceration. In all prosecutions or non-criminal citations issued, mutilation of a striped bass which interferes with or affects a proper or adequate measurement of the fish shall be *prima facie* evidence that the striped bass was or is less than **34 35** inches in total length.

(h) Commercial fishermen shall sell striped bass only to Primary Buyers.

(i) Commercial fishermen shall sell striped bass only during the commercial season and only during the open commercial fishing days within the commercial season.

(j) Commercial fishermen may harvest, catch, or take striped bass by rod-and-reel or handline only.

(k) Commercial fishermen engaged in commercial fishing for striped bass may not fish aboard the same vessel at the same time as recreational fishermen.

(l) In accordance with the Declaration Procedure set forth at 322 CMR 6.41(2), the Director may make in-season adjustments to the commercial fishing limits as established in 322 CMR 6.07(4), including but not limited to the open commercial fishing days and the commercial fishing limits as set forth at 322 CMR 6.07(4)(b), (4)(d) and (4)(e).

~~**(l) Fishing during Closed Commercial Fishing Days. Beginning on June 20th through the end of the commercial fishing season, any commercial fisherman fishing recreationally on a closed commercial fishing day may retain a striped bass provided that all striped bass comply with the recreational fishing limits at 322 CMR 6.07(5). Any striped bass that are 34 inches in total length or greater shall have their right pectoral fin entirely removed immediately upon retention. This requirement shall also apply to all persons on a vessel listed on a commercial fisherman permit with a regulated striped bass fishery permit endorsement and all persons**~~

~~aboard a vessel whenever the holder of a commercial fisherman permit with a regulated striped bass fishery permit endorsement is aboard.~~

(5) Recreational Management Measures. For purposes of conservation and management of the resource the following measures shall apply to recreational fishermen who harvest, catch, take or possess or attempt to harvest, catch, take or possess any striped bass:

(a) ~~Only striped bass measuring at least All striped bass shall be no less than~~ 28 inches ~~in total length and less than 35 inches may be retained.~~ Striped bass measuring less 28 inches ~~in total length or 35 inches or greater in total length~~ shall be released immediately to the waters from which taken. Recreational fishermen shall not mutilate any striped bass in a manner that prevents the accurate measurement of the fish.

(b) Recreational fishermen may retain no more than:

1. one striped bass per day; and
2. may possess no more than one striped bass at any one time.

(c) Recreational fishermen may not sell, barter or exchange any striped bass.

(d) Recreational fishermen may not discard dead striped bass that ~~are measure between at least 28 inches but less than 35 inches in total length. or greater in total length.~~

(e) To prohibit the practice of high-grading as defined in 322 CMR 6.07(2), recreational fishermen may not retain legal-sized striped bass and release said fish in favor of another larger legal-sized striped bass captured subsequently. Any legal-sized fish not immediately released into the water and held by stringer, live-well or another means shall be considered intent to high-grade.

(f) Mandatory Use of Circle Hooks. ~~Effective January 1, 2020, Private recreational anglers fishing for striped bass or in possession of striped bass~~ Recreational fishermen fishing from shore or private vessels shall use circle hooks when fishing with whole or natural baits for striped bass. This shall not apply to any artificial lure ~~or weighted treble hook~~ designed to be trolled, cast and retrieved, or vertically jigged with natural bait attached.

(g) Exceptions for Rules Specific to For-hire Vessels.

1. At-sea Filleting. Operators and crew onboard for-hire vessels permitted under the authority of 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* may fillet or process legal sized striped bass for their recreational customers at sea provided that:

- a. The skin is left on the fillet; and
- b. Not more than two fillets taken from legal striped bass are in the possession of each customer of that trip, representing the equivalent of one fish per angler.

~~2. Sale of Striped Bass from Recreational For-hire Trips. Operators of for-hire vessels, permitted under the authority of 322 CMR 7.10(5): Permit Requirements Applicable to For-hire Vessels, may sell any striped bass caught during a recreational for-hire trip is, provided:~~

~~a. The operator of the for-hire vessel or the vessel holds a commercial striped bass regulated fishery permit endorsement, in accordance with M.G.L. c. 130, § 80 and 322 CMR 6.07(3) and 7.01(4)(a)2.: Limited Entry Regulated Fishery Permit Endorsements:~~

~~b. All catch complies with the recreational fishing management measures at 322 CMR 6.07(5) and prohibitions at 322 CMR 6.07(7).~~

~~e. The striped bass sold complies with the commercial fishing management measures at 322 CMR 6.07(4) and prohibitions at 322 CMR 6.07(7).~~

3. Use of Circle Hooks. Recreational fishermen onboard for-hire vessels permitted under the authority of 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* during for-hire trips are not subject to the provisions set forth at 322 CMR 6.07(5)(f) and therefore are not required to use circle hooks when fishing with whole or cut natural baits.

(6) Dealer Management Measures. For purposes of conservation and management of the resource, the following measures shall apply to any dealer who possesses, sells or offers to sell any striped bass:

(a) Only Primary Buyers shall purchase striped bass directly from fishermen.

(b) Primary Buyers shall report all striped bass purchases from commercial fishermen based on schedules and on forms to be provided by the Division.

(c) Primary Buyers may not purchase or receive from a commercial fisherman any striped bass which is less than ~~35~~ 34 inches in total length.

(d) Primary Buyers may not purchase, receive or possess from a commercial fisherman any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish.

(e) Primary Buyers may not purchase or receive from a commercial fisherman any striped bass during the ~~no-fishing~~ **closed fishing** days within the commercial fishing season.

(f) Primary Buyers may not purchase more than a single commercial trip limit of striped bass from any commercial fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements in the possession of the commercial fisherman.

(g) Dealers may purchase and offer for sale whole striped bass that were caught in the wild and imported into Massachusetts from states where they have been lawfully landed provided that the fish ~~meet or exceed the minimum size~~ **comply with the size limit** for the jurisdiction of origin and are individually tagged with the jurisdiction of origin. If fish are filleted after importation, all containers of fillets shall be accompanied by records describing the jurisdiction of origin, the name of the Massachusetts dealer that processed the fish, the quantity of fillets and the species. A copy of these records shall be kept on the dealers premises for 30 days after processing. Original tags shall remain with the fish or the fish fillets, as required at 322 CMR 6.07(6)(h)2.

(h) Primary Buyers shall tag each striped bass with a Striped Bass ID Tag in accordance with the following provisions:

1. Issuance of Striped Bass ID Tags.

a. The Director shall annually issue Striped Bass ID Tags only to Primary Buyers.

b. The annual quantity of tags issued shall be determined by the Director based on the commercial quota.

2. Use and Disposition of Striped Bass ID Tags.

a. Prior to departing any ramp, pier, parking lot or other location of primary purchase, the Primary Buyer shall affix a Striped Bass ID Tag through the mouth and gills or through the lower jaw of each striped bass and lock the Striped Bass ID Tag into place.

b. Striped Bass ID Tags shall remain affixed through the mouth and gills or lower jaw of any whole striped bass or accompany any processed or filleted striped bass while in the possession of any person for the purpose of re-sale.

c. If a person intends on selling portions of processed or filleted striped bass to a consumer, the tags shall remain on the premise of the seller until all portions are sold to a consumer.

d. Once all portions of a striped bass are sold, a person shall cut the Striped Bass ID Tag into two pieces and discard it.

3. Striped Bass ID Tag Accounting.

1. Within 30 days of a written request by the Director, following the close of the commercial season, the Primary Buyer shall:

a. return all unused Striped Bass ID Tags issued to the Primary Buyer by the Director for that year; and

b. submit a Striped Bass ID Tag Accounting Report, on forms provided by the Director, which documents the disposition of all Striped Bass ID Tags.

2. The Director may restrict a dealer from future participation as a Primary Buyer for failure to return all unused Striped Bass ID Tags or submit the Striped Bass ID Tag Accounting Report in accordance with 322 CMR 6.07(6)(g)3.i.

(7) Prohibitions. It shall be unlawful for:

(a) a recreational fisherman to retain more than one striped bass per day;

(b) a recreational fisherman to possess more than one striped bass at any one time;

(c) a recreational fisherman to sell, barter or exchange or offer to sell, barter or exchange any striped bass;

(d) a recreational fisherman to take or possess any striped bass less than 28 inches **or 35 inches or longer** in total length;

(e) a recreational fisherman to mutilate any striped bass in a manner that prevents the accurate measurement of the fish; such mutilation shall be *prima facie* evidence of a violation of 322 CMR 6.07(7);

(f) a recreational fishermen to discard dead striped bass that ~~are-measure at least 28 inches but less than 35 inches~~ **or-greater** in total length;

- (g) a recreational fisherman to “high-grade” striped bass or to keep striped bass alive in the water by attaching a line or chain to the fish or placing the fish in a live-well or holding car;
- (h) any person(s), whether from shore or onboard a vessel, to possess striped bass in any quantity exceeding one striped bass per person without a commercial striped bass regulated fishery permit and for those striped bass to violate the commercial management regulations at 322 CMR 6.07(4);
- (i) a for-hire vessel, permitted in accordance with 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, during a for-hire trip to retain more than one striped bass for each person onboard;
- (j) a commercial fisherman to sell striped bass to any person other than a Primary Buyer.
- (k) a non-resident commercial fisherman to possess more than one striped bass upon leaving Massachusetts;
- (l) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass without having issued to him or her a valid permit to do so;
- (m) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to catch, take, possess, sell, barter or exchange any striped bass for commercial purposes once the commercial quota is reached and the commercial fishery is closed, or to retain, possess or land more than one striped bass during the closed commercial fishing days;
- ~~(n) a commercial fisherman fishing recreationally, a person fishing recreationally aboard a vessel that is listed on a commercial fisherman permit with a regulated striped bass fishery permit endorsement, or a person fishing recreationally aboard a vessel with a person who holds a regulated striped bass fishery permit endorsement beginning on or after June 20th through the end of the commercial fishing season to retain any striped bass on a closed commercial fishing day that are 34 inches in total length or greater if the right pectoral fin is not entirely removed.~~
- ~~(o) any person to sell a striped bass that has had its right pectoral fin entirely removed.~~
- (n) ~~(p)~~ a commercial fisherman to sell, barter, exchange or attempt to sell, barter, exchange any striped bass during the closed commercial fishing days within the commercial season;
- (o) ~~(q)~~ a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass less than ~~35~~ ~~34~~ inches in total length;
- (p) ~~(r)~~ any commercial fisherman fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) and (e) and onboard the registered vessel listed on the permit, to take, possess, land, offer for sale or sell more than 15 striped bass during a single open commercial fishing day. This shall apply to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard;
- (q) ~~(s)~~ any commercial fisherman fishing under the authority of a Commercial Fisherman Individual or Rod and Reel Permit, issued in accordance with 322 CMR 7.01(2)(h): *Individual*, (i): *Shellfish/Rod and Reel* and (j): *Rod and Reel*, or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) or (e), while fishing from shore or anywhere other than the registered vessel listed on the permit, to take, possess, land, offer for sale or sell more than two striped bass during a single open commercial fishing day. This shall apply to the individual commercial fisherman whether fishing from shore or from a vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard or trips taken in a day;
- (r) ~~(t)~~ a commercial fisherman to fillet or process any striped bass other than by evisceration;
- (s) ~~(u)~~ a commercial fisherman to mutilate any striped bass in such a way as to interfere with or affect a proper or adequate measurement of the fish;
- (t) ~~(v)~~ a commercial fisherman to participate in the primary purchase of any striped bass which is not in the round, or which has had the head or tail removed;
- (u) ~~(w)~~ a commercial fisherman to possess or land striped bass once the Director has determined that 100% of the commercial quota has been reached;
- (v) ~~(x)~~ any Primary Buyer to purchase or receive during a primary purchase any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish;
- (w) ~~(y)~~ any Primary Buyer to purchase or receive from a commercial fisherman any striped bass which is less than ~~35~~ ~~34~~ inches in total length;

- (x) ~~(z)~~ any Primary Buyer to purchase or receive from a commercial fisherman any striped bass after the open commercial season has closed or on any calendar day that is not an open commercial fishing day;
- (y) ~~(aa)~~ any Primary Buyer to fail to report all striped bass purchases from commercial fishermen as prescribed by the Director;
- (z) ~~(bb)~~ any commercial fishermen to harvest, catch, or take striped bass by longlines or tub-trawls;
- (aa) ~~(ee)~~ any vessel rigged for otter trawling, hauling sink gillnets, purse seines, or possessing baited or unbaited longline or tub-trawl gear to possess striped bass;
- (bb) ~~(dd)~~ any wholesale or retail dealer to possess, sell, barter or exchange or offer to sell, barter or exchange any whole striped bass imported into Massachusetts unless such fish so imported is tagged as specified by 322 CMR 6.07(6);
- (cc) ~~(ee)~~ commercial fishermen to discard dead striped bass that are **35 34** inches or greater in total length;
- (dd) ~~(ff)~~ any person to receive during a primary purchase any striped bass unless permitted as a wholesale or retail dealer pursuant to 322 CMR 7.01(3): *Dealer Permits* and authorized as a Primary Buyer pursuant to 322 CMR 7.07: *Dealers Acting as Primary Buyers*;
- (ee) ~~(gg)~~ any person involved in the resale of striped bass to fail to furnish, upon request of the Director or the Environmental Police, receipts documenting the purchase of striped bass;
- (ff) ~~(hh)~~ any person to apply a Striped Bass ID Tag to a striped bass harvested for commercial purposes without being a Primary Buyer;
- (gg) ~~(ii)~~ a Primary Buyer to tag a striped bass with a Striped Bass ID Tag that was not issued to said Primary Buyer by the Director for the current year or that has been defaced or modified in any manner;
- (hh) ~~(jj)~~ any person, other than the original harvester, to possess striped bass or portions thereof for the purpose of sale without the striped bass or portions thereof being tagged in accordance with 322 CMR 6.07(6)(g);
- (ii) ~~(kk)~~ any person to fail to surrender Striped Bass ID Tags to the Director or the Environmental Police upon request;
- (jj) ~~(H)~~ any person to sell, trade, loan or gift or offer to sell, trade, loan or gift to another person any Striped Bass ID Tags;
- (kk) ~~(mm)~~ a Primary Buyer to file a false claim of Striped Bass ID Tag loss for purposes of obtaining additional Striped Bass ID Tags.
- (ll) ~~(nn)~~ a dealer to purchase a striped bass that has had its right pectoral fin entirely removed.
- (mm) **for any recreational angler to use any device other than a non-lethal device to remove a striped bass from the water or assist in the releasing of a striped bass.**
- (pp) ~~for any person gaff a striped bass or attempt to use a gaff to remove a striped bass from the water that is less than 28" total length or~~ for any commercial fisherman fishing on an open commercial fishing day to gaff a striped bass or attempt to use a gaff to remove a striped bass from the water that is less than **35 34" inches** total length.
- (pp) ~~effective January 1, 2020, for any private recreational anglers fishing for striped bass or in possession of striped bass~~ **for any angler fishing from shore or private vessel** to use any type of hook other than a circle hook when fishing **for striped bass** with whole or cut natural baits. This prohibition shall not apply to any artificial lure ~~or weighted treble hook~~ designed to be trolled, cast and retrieved, or vertically jigged with a natural bait attached.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

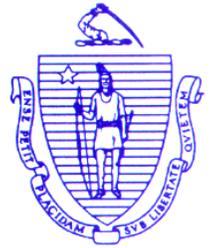
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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Recommendation on Commercial Striped Bass Limits**

This memo includes my final recommendations to revise the commercial striped bass management measures for 2020. To provide context to these decisions, I provide a review of how and why these actions differ from the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I am making the following recommendations regarding the management of the commercial striped bass fishery beginning in 2020:

1. Increase the commercial minimum size from 34” to 35” total length.
2. Rescind the fin clipping rule for commercial fishermen fishing recreationally on closed commercial days and the allowance for for-hire operators to sell unwanted striped bass taken recreationally by their clients on a charter on open commercial days.
3. Adjust the open commercial fishing days from Mondays and Thursdays to Mondays and Wednesdays.

These revisions are intended to improve compliance and fishing performance and enhance the marketability of striped bass with the added benefit of removing complicated rules.

Difference from Public Hearing Proposal

This final recommendation is consistent with the proposal brought to public hearing, with the exception of changing the season’s opening date opening. The public hearing proposal considered opening the season “as early as June 1,” however, I intend to maintain the existing commercial season start date of the first open fishing day on or after June 23. Background on the public hearing proposal is described in my December 13 memo to the MFAC, “Proposed Adjustments to Commercial Striped Bass Limits.”

Public Comment

The [public hearing notice](#) was issued of February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation.

DMF received a diversity of public comment on the state's commercial striped bass proposals at public hearing and in written public comment. The public comments on each proposal are summarized in the bullets below:

- Minimum Size. Comments ranged from support for the status quo 34" minimum size, to support for proposed 35" minimum size, to adopting a lower minimum size or the same slot limit as the recreational fishery. Those who favored a lower minimum size—be it status quo or something different—did so for several disparate reasons. This included not providing commercial anglers with exclusive access to fish measuring 35" and greater; reducing harvest on large female fish; allowing charters the ability to continue to sell fish caught recreationally by their patrons on open commercial fishing days; making the commercial fishery more accessible so that the quota may be harvested; and not wanting to increase regulatory discards. There was also the concern that not having the same size limit as the recreational fishery may encourage recreational anglers to obtain a commercial fisherman permit to retain "trophy" fish that they will no longer be able to keep under the recommended recreational slot limit (28" to less than 35"). Those who supported the increase to the minimum size did so because it would help resolve ongoing enforcement and compliance issues (particularly along the Cape Cod Canal).
- Open Fishing Days. Some commercial fishermen, particularly those hailing from Boston and the North Shore, supported the status quo Monday/Thursday open fishing day schedule. Their support for the status quo was based on personal scheduling preferences and not introducing any change that could potentially alter market conditions. The status quo open fishing days schedule was also favored by a contingent of recreational fishing interests. These recreational anglers argued that spreading out the open days across the week helped to constrain the ability for part-time fishermen to travel to coastal Massachusetts to participate in the commercial fishery.

However, there was also support for the proposed Monday/Wednesday open fishing day schedule. Support was particularly evident among commercial fishermen who also participate in the state's commercial black sea bass fishery because this change would ensure that open commercial fishing days in these fisheries do not overlap. The Monday/Wednesday open fishing day schedule was also favored by one of the more active striped bass buyers because it would better ensure fish can be processed and sold onto the weekend market.

A common comment related to the commercial fishing day schedule was that the current "calendar day" open fishing schedule restricts fishermen from fishing night tides by prohibiting commercial fishing over two consecutive calendar days. There was some support to accommodate this type of activity through a change in the definition of an open fishing day (e.g., 36-hour period) or consecutive open fishing days. Other comments requested more days per week (e.g., adding Sunday back in) or providing compensation in the form of added days for those days lost due to the Independence Day and Labor Day holiday closures. Altering the open fishing days to allow consecutive fishing days would increase enforcement burden and have impacts on seafood dealers who have business plans to receive bass on the discrete days with established days and times.

- Commercial Season Start Date. Comment on the commercial season start date was also split.. Some commercial anglers favored the proposal because it would increase access to allow the quota to be caught and open the fishery when the fish were migrating through state waters and allow the fishery to occur in more southerly waters that striped bass do not prefer during the warmer summer months.

However, some commercial anglers—particularly those from Boston and the North Shore—did not support an earlier start date due to concerns that earlier access would favor harvesters further to the

south, as the fish are typically not as abundant in more northern areas in early June. There was also a contingent of recreational anglers who did not support an earlier start date. These anglers expressed concerns that commercial removals at that time would be targeting the largest female fish and further harm the stock. Additionally, they were concerned about the potential impacts commercial harvest and discards could have on recreational fishing conditions along the coast.

- Other Measures. Comment on issues not proposed included (but was not limited to): reducing the daily possession limit; universally requiring circle hooks and prohibiting the removal of fish from the water with lethal device; requiring the commercial tags to be applied at point-of-harvest; requiring the sale of fish caught under the authority of a commercial permit; limiting entry to commercial fishery; and prohibiting all commercial harvest

Discussion

Minimum Size Recommendation. My recommendation to increase the minimum size from 34” to 35” will segregate the recreational and commercial fisheries and will improve enforcement and compliance. I anticipate this will occur in a number of ways. First, it will make it even more difficult to retain market-sized fish on non-commercial days or by non-commercial fishermen. Second, it will allow for more expedient enforcement of recreational and commercial fishing limits in high effort areas. Third, it will simplify the commercial striped bass regulations by allowing DMF to rescind the fin clipping rule and the allowance for dual for-hire and commercial permit holders to sell catch recreationally taken by their for-hire clients.

This recommendation is also influenced by several other factors. Foremost among them is that it was largely supported by the ad hoc panel of commercial fishermen and dealers assembled in December 2019.

As described in the December 19, 2019 memorandum, the higher minimum sized fish are generally less abundant and are more difficult to catch. Additionally, if DMF were to adjust down its minimum size or adopt a slot limit, it would result in considerable quota reductions because more fish would be removed (Table 1). This could have a negative impact on the overall value of the fishery by lowering the poundage that may be landed annually. A smaller minimum size could also increase daily landings and negatively impact ex-vessel value.

Table 1. Addendum VI Quota Options for 2020 Relative to Potential Commercial Minimum Sizes

Option	Size Limit (TL)	Quota
1	34”	713,246 pounds
2	28”	658,260 pounds
3	35”	735,240 pounds
4	28” to < 35”	454,027 pounds

It is likely true that this change will encourage recreational anglers to obtain a commercial permit to retain “trophy” fish. However, I believe the incentive to obtain a commercial fisherman permit to skirt recreational fishing regulations exists regardless of this recommendation. Under any commercial minimum size limit commercial fishermen may retain striped bass with a total length that exceeds the recreational maximum size; only by adopting the same slot limit for both fisheries would we be able prevent this from occurring and then removals for both fisheries would be concentrated on the same sized fish. Moreover, a commercial fishing permit allows fishermen to retain fish in accordance with the commercial bag limits, which exceed the 1-fish recreational limits on open commercial fishing days. While I view the use of the commercial fishing permit to skirt recreational fishing rules as problematic, I instead prefer to address this issue by thoroughly reviewing our existing permitting regulations and consider the applicability of a provision requiring fish caught under a commercial permit be sold for 2021.

Open Commercial Fishing Days. My recommendation to adjust the open commercial fishing day schedule from Monday/Thursday to Monday/Wednesday is driven by three considerations. First, this action was supported by seafood dealers at the December 2019 ad hoc industry meeting and in public comment. Wednesdays were viewed as a superior landing day to Thursday. This is because it better ensures that product can be purchased, processed and shipped to meet weekend market demand. Moreover, with lower daily catch rates in recent years, the benefit of spreading the commercial fishing days out over the week is likely diminished. Second, if in-season adjustments are necessary to better utilize the quota then we will likely consider adding a third (or fourth) open fishing day later in this season. This will allow DMF to further investigate the benefit of having consecutive fishing days throughout the week to better accommodate night fishing. Lastly, this action will eliminate overlapping commercial black sea bass and striped bass open fishing days. This could enhance quota utilization in both fisheries to benefit the state's seafood economy.

Commercial Season Start Date. I am not recommending any changes to the start of the commercial striped bass season. For 2020, the commercial striped bass season will begin on the first open commercial fishing day on or after June 23. Historically, this is the start of summer (peak tourist) season when the demand for seafood is highest. For this upcoming season, the fishery would open on Wednesday, June 24.

As described in the December 13, 2020 memorandum, the earlier season start date was proposed to provide additional access to the quota and to have the fishery open when large fish are available in our more southern waters where the fish do not set up during the warmer summer months. It was thought that this would offset some potential negative impacts potentially increasing the minimum size would have on retention rates. After a review of public comment, and with consideration towards current uncertain seafood market conditions, I do not support opening the fishery earlier this year. Instead, I favor making in-season adjustments (e.g., adding open fishing days) in order to increase weekly catch rates to harvest the available quota. This will afford DMF a better understanding of 2020 fishery performance, quota availability and market conditions. It would also potentially allow us to investigate having consecutive open fishing days as a means of accommodating night fishing practices.

Final Proposed Regulatory Language

6.07: Striped Bass Fishery (*Morone Saxatilis*)

(1) Purpose and Scope. Since approximately October 1981 the Atlantic coastal states, through the auspices of the Atlantic States Marine Fisheries Commission (ASMFC), have been developing conservation and management measures to arrest the severe decline in the stocks of striped bass and to manage restored stocks. This cooperative management effort has been successful and as a consequence, the Chesapeake Bay Stock of the Atlantic Coast striped bass resource has been declared recovered as of January 1, 1995.

The following regulations represent the Commonwealth's response to this cooperative and joint coastal state conservation management effort. The objective of 322 CMR 6.07 is to allow controlled sustained recreational and commercial fishing for striped bass pursuant to the provisions of the ASMFC striped bass plan.

322 CMR 6.07 is designed to identify the various user groups, implement conservation and management measures tailored to each group, and collect accurate statistics on striped bass catch levels. Persons intending to fish for striped bass have the option of classifying their activity as recreational or commercial. If a person intends to catch striped bass only for personal consumption and not for sale, that person must have a recreational saltwater fishing permit, and may fish year round, and retain striped bass that measure **at least between 28 inches and less than 35 inches**, but may not retain more than one striped bass within any 24-hour period.

Any person intending to catch and possess striped bass **for the purpose of sale, barter or exchange in excess of the limits and/or sell striped bass so caught** must be fishing under the authority of a commercial permit and a regulated fishery permit for striped bass. However, 322 CMR 6.07 establishes a commercial fishing season that closes upon reaching the commercial catch quota, establishes a minimum commercial size of **34 35 inches**, and requires fish to be sold only to dealers licensed and authorized by the Commonwealth.

Finally, 322 CMR 6.07 allows wholesale and retail dealers to purchase and sell striped bass under certain conditions. To purchase striped bass directly from commercial fishermen, wholesale and retail dealers must be authorized as primary buyers of striped bass and must affix a Striped Bass ID Tag to all striped bass at the time of primary purchase from the commercial fisherman. Striped bass imported into the Commonwealth must be marked with a numbered tag that identifies the state of origin and must be accompanied by documents that verify state of origin. Nonconforming (undersized) striped bass that were caught in the wild may be imported into the Commonwealth provided those fish were legally taken, shipped and meet documentation requirements of the state-of-origin.

(2) Definitions. For purposes of 322 CMR 6.07, the following words shall have the following meanings:

Circle Hook is defined as a fishing hook designed and manufactured so that the barb of the hook is not offset from the plane of the shank and bend and is turned perpendicularly back towards the shank to form a circular or oval shape.

Closed Commercial Fishing Day means any Sunday, Tuesday, ~~Wednesday~~ ~~Thursday~~, Friday and Saturday within the commercial season, as well as any Monday or ~~Wednesday~~ ~~Thursday~~ that falls on July 3rd, July 4th and Labor Day.

Commercial Fisherman means any person who may catch, possess and land striped bass for the purpose of sale, barter, or exchange or keeps for personal or family use taken under the authority of a commercial fishing permit issued by the Director under the authority of 322 CMR 7.01: *Form, Use and Contents of Permits*.

Commercial Quota means the allowable annual Massachusetts commercial harvest of striped bass pursuant to the ASMFC Interstate Striped Bass Management Plan, reduced by any overage incurred in the previous year.

Commercial Season means that period when commercial fishing is allowed beginning on the first open fishing day on or after June 23rd and ending when the quota is reached or on December 31st, whichever occurs first. The commercial season shall be further regulated by open and closed fishing days.

Consumer means any individual who obtains striped bass for personal use, rather than resale.

Dealer means any wholesale or retail seafood dealer permitted by the Director pursuant to M.G.L. c. 130 § 80 and 322 CMR 7.01(3): *Dealer Permits*.

Director means the Director of the Division of Marine Fisheries, 251 Causeway Street, Suite 400, Boston, Massachusetts 02114.

For-hire Vessel means any vessel that holds a for-hire permit, issued in accordance with M.G.L. c. 130, § 17C and 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, that is carrying paying customers for the purpose of recreational fishing.

Gaff means a pole with a hook on the end that is used to lift a fish out of the water and onto a vessel or the shore.

High-grading means the discarding of a smaller legal-sized fish (previously captured and retained) in favor of a larger legal-sized fish.

Land means to transfer or attempt to transfer the catch of striped bass from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any striped bass onboard to tie-up to any pier, wharf, dock, or artificial structure.

Non-Lethal Device means any tool used in the removal of striped bass from the water or assist in the releasing of striped bass from the water that does not pierce, puncture, or otherwise cause invasive damage to the fish that may result in its mortality.

Open Commercial Fishing Days means Mondays and **Wednesdays Thursdays** within the commercial season, **excluding Labor Day**, when commercial fishermen may harvest or attempt to harvest striped bass. Open fishing days shall not apply to any Monday or **Wednesday Thursday** that falls on **July 3rd or July 4th. July 3rd, July 4th and Labor Day.**

Person means any individual, firm, corporation, association, partnership, club, bar, restaurant, supermarket, food warehouse, or private body.

Primary Buyer means any dealer authorized by the Director, pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.07: *Dealers Acting as Primary Buyers*, to purchase striped bass directly from a commercial fisherman.

Primary Purchase means the first commercial transaction by sale, barter or exchange of any striped bass after its harvest.

Recreational Fisherman means any person who harvests or attempts to harvest striped bass for personal or family use, sport or pleasure, and which are not sold, traded or bartered.

Recreational Fishing means the non-commercial taking or attempted taking of striped bass for personal or family use, sport, or pleasure and which are not sold, traded or bartered.

Striped Bass ID Tags means the lockable, single-use, tamper evident, and non-transferable tags issued by the Director to Primary Buyers for affixing to striped bass. Striped Bass ID Tags are imprinted with the species, year, state, and unique identification number traceable to the Primary Buyer to whom they are issued.

Total Length means the greatest straight line length in inches as measured on a fish with its mouth closed from the anterior most tip of the jaw or snout to the farthest extremity of the tail. For fish with forked tails, the upper and lower fork may be squeezed together to measure the tail extremity.

(3) Regulated Fishery Permit. The following special permit shall be required:

(a) A commercial fisherman shall have issued to him or her by the Director a regulated fishery permit for striped bass, in addition to any other permits required by the Massachusetts General Laws, in the following categories:

1. resident; and
2. non-resident.

(b) A striped bass regulated fishery permit authorizes the named individual and/or a commercial fishing vessel to engage in the harvest, possession, and landing of striped bass for commercial purposes in compliance with 322 CMR 6.07, 7.01: *Form, Use and Contents of Permits* and 7.04: *Commercial Fisheries Control Date*.

(c) A striped bass regulated fishery permit shall be valid only during the striped bass commercial season as provided for in 322 CMR 6.07(4)(b).

(d) A striped bass regulated fishery permit shall be carried by the holder at all times when catching, taking, possessing or selling striped bass, and shall be displayed forthwith on demand of any Environmental Police officer or other official authorized to enforce 322 CMR 6.07.

(e) All persons must apply for or apply to renew their striped bass regulated fishery permit endorsement by the last day of February in the effective permitted fishing year.

(4) Commercial Management Measures. For purposes of conservation and management of the resource the following measures shall apply to commercial fishermen who harvest, catch or take, and/or sell, barter or exchange, or attempt to sell, barter or exchange any striped bass:

(a) Massachusetts commercial striped bass harvest will be limited annually by the commercial quota less any amount deducted to compensate for the previous year's overage.

(b) Commercial fishermen may fish for striped bass only during the commercial season and open fishing days within said season beginning on the first open fishing day on or after June 23rd and ending when the commercial quota is taken or on December 31st, whichever occurs first.

(c) Commercial fishermen engaged in commercial fishing for striped bass may not possess striped bass less than ~~34~~ **35** inches in total length. If the number of striped bass aboard a vessel is greater than the number of fishermen, then all striped bass in possession must be greater than ~~34~~ **35** inches in total length, and all fishermen must be commercially permitted as described in 322 CMR 6.07(3). Striped bass less than ~~34~~ **35** inches in total length shall be returned immediately to the waters from which taken.

(d) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2) ~~(a), (c), (d) or (e)~~ and on the registered vessel listed on the permit, may not possess, land, offer for sale or sell more than 15 striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2). This limit applies to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of individual commercial striped bass regulated fishery permit endorsement holders onboard or the number of trips taken in a day.

(e) Commercial fishermen engaged in striped bass fishing under the authority of a Commercial Fisherman Individual or Rod and Reel permit, issued in accordance with 322 CMR 7.01(2) ~~(h), (i) or (j)~~, or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2) ~~(a), (c), (d) or (e)~~, while fishing from shore or any location other than the registered vessel listed on the permit may not possess, land, offer for sale or sell more than two striped bass per day on open commercial fishing days, as set forth at 322 CMR 6.07(2). This limit applies to the individual fisherman whether fishing from shore or a vessel, regardless of the number of commercial striped bass regulated fishery permit endorsement assigned to the individual fisherman or the number of trips taken in a day.

(f) All striped bass which are the subject of a first sale shall be in the round, with the head, body and tail fully intact.

(g) Except as provided for in 322 CMR 6.07(5)(f), no striped bass may be filleted or processed in any manner except by evisceration. In all prosecutions or non-criminal citations issued, mutilation of a striped bass which interferes with or affects a proper or adequate measurement of the fish shall be *prima facie* evidence that the striped bass was or is less than ~~34~~ **35** inches in total length.

(h) Commercial fishermen shall sell striped bass only to Primary Buyers.

(i) Commercial fishermen shall sell striped bass only during the commercial season and only during the open commercial fishing days within the commercial season.

(j) Commercial fishermen may harvest, catch, or take striped bass by rod-and-reel or handline only.

(k) Commercial fishermen engaged in commercial fishing for striped bass may not fish aboard the same vessel at the same time as recreational fishermen.

(l) In accordance with the Declaration Procedure set forth at 322 CMR 6.41(2), the Director may make in-season adjustments to the commercial fishing limits as established in 322 CMR 6.07(4), including but not limited to the open commercial fishing days and the commercial fishing limits as set forth at 322 CMR 6.07(4)(b), (4)(d) and (4)(e).

~~(l) Fishing during Closed Commercial Fishing Days. Beginning on June 20th through the end of the commercial fishing season, any commercial fisherman fishing recreationally on a closed commercial fishing day may retain a striped bass provided that all striped bass comply with the recreational fishing limits at 322 CMR 6.07(5). Any striped bass that are 34 inches in total length or greater shall have their right pectoral fin entirely removed immediately upon retention. This requirement shall also apply to all persons on a vessel~~

~~listed on a commercial fisherman permit with a regulated striped bass fishery permit endorsement and all persons aboard a vessel whenever the holder of a commercial fisherman permit with a regulated striped bass fishery permit endorsement is aboard.~~

(5) Recreational Management Measures. For purposes of conservation and management of the resource the following measures shall apply to recreational fishermen who harvest, catch, take or possess or attempt to harvest, catch, take or possess any striped bass:

(a) ~~Only striped bass measuring at least All striped bass shall be no less than~~ 28 inches ~~in total length~~ and less than 35 inches may be retained. Striped bass measuring less than 28 inches ~~in total length~~ or 35 inches or greater in total length shall be released immediately to the waters from which taken. Recreational fishermen shall not mutilate any striped bass in a manner that prevents the accurate measurement of the fish.

(b) Recreational fishermen may retain no more than:

1. one striped bass per day; and
2. may possess no more than one striped bass at any one time.

(c) Recreational fishermen may not sell, barter or exchange any striped bass.

(d) Recreational fishermen may not discard dead striped bass that ~~are measure between at least~~ 28 inches ~~but less than 35 inches in total length. or greater in total length.~~

(e) To prohibit the practice of high-grading as defined in 322 CMR 6.07(2), recreational fishermen may not retain legal-sized striped bass and release said fish in favor of another larger legal-sized striped bass captured subsequently. Any legal-sized fish not immediately released into the water and held by stringer, live-well or another means shall be considered intent to high-grade.

(f) Mandatory Use of Circle Hooks. ~~Effective January 1, 2020, Private recreational anglers fishing for striped bass or in possession of striped bass~~ Recreational fishermen fishing from shore or private vessels shall use circle hooks when fishing with whole or natural baits for striped bass. This shall not apply to any artificial lure ~~or weighted treble hook~~ designed to be trolled, cast and retrieved, or vertically jigged with natural bait attached.

(g) Exceptions for Rules Specific to For-hire Vessels.

1. At-sea Filleting. Operators and crew onboard for-hire vessels permitted under the authority of 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* may fillet or process legal sized striped bass for their recreational customers at sea provided that:

- a. The skin is left on the fillet; and
- b. Not more than two fillets taken from legal striped bass are in the possession of each customer of that trip, representing the equivalent of one fish per angler.

~~2. Sale of Striped Bass from Recreational For-hire Trips. Operators of for-hire vessels, permitted under the authority of 322 CMR 7.10(5): Permit Requirements Applicable to For-hire Vessels, may sell any striped bass caught during a recreational for-hire trip is, provided:~~

~~a. The operator of the for-hire vessel or the vessel holds a commercial striped bass regulated fishery permit endorsement, in accordance with M.G.L. c. 130, § 80 and 322 CMR 6.07(3) and 7.01(4)(a)2.: Limited Entry Regulated Fishery Permit Endorsements.~~

~~b. All catch complies with the recreational fishing management measures at 322 CMR 6.07(5) and prohibitions at 322 CMR 6.07(7).~~

~~c. The striped bass sold complies with the commercial fishing management measures at 322 CMR 6.07(4) and prohibitions at 322 CMR 6.07(7).~~

3. Use of Circle Hooks. Recreational fishermen onboard for-hire vessels permitted under the authority of 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* during for-hire trips are not subject to the provisions set forth at 322 CMR 6.07(5)(f) and therefore are not required to use circle hooks when fishing with whole or cut natural baits.

(6) Dealer Management Measures. For purposes of conservation and management of the resource, the following measures shall apply to any dealer who possesses, sells or offers to sell any striped bass:

(a) Only Primary Buyers shall purchase striped bass directly from fishermen.

(b) Primary Buyers shall report all striped bass purchases from commercial fishermen based on schedules and on forms to be provided by the Division.

- (c) Primary Buyers may not purchase or receive from a commercial fisherman any striped bass which is less than **35 34** inches in total length.
- (d) Primary Buyers may not purchase, receive or possess from a commercial fisherman any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish.
- (e) Primary Buyers may not purchase or receive from a commercial fisherman any striped bass during the **no-fishing closed fishing** days within the commercial fishing season.
- (f) Primary Buyers may not purchase more than a single commercial trip limit of striped bass from any commercial fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements in the possession of the commercial fisherman.
- (g) Dealers may purchase and offer for sale whole striped bass that were caught in the wild and imported into Massachusetts from states where they have been lawfully landed provided that the fish **meet or exceed the minimum size comply with the size limit** for the jurisdiction of origin and are individually tagged with the jurisdiction of origin. If fish are filleted after importation, all containers of fillets shall be accompanied by records describing the jurisdiction of origin, the name of the Massachusetts dealer that processed the fish, the quantity of fillets and the species. A copy of these records shall be kept on the dealers premises for 30 days after processing. Original tags shall remain with the fish or the fish fillets, as required at 322 CMR 6.07(6)(h)2.
- (h) Primary Buyers shall tag each striped bass with a Striped Bass ID Tag in accordance with the following provisions:

1. Issuance of Striped Bass ID Tags.

- a. The Director shall annually issue Striped Bass ID Tags only to Primary Buyers.
- b. The annual quantity of tags issued shall be determined by the Director based on the commercial quota.

2. Use and Disposition of Striped Bass ID Tags.

- a. Prior to departing any ramp, pier, parking lot or other location of primary purchase, the Primary Buyer shall affix a Striped Bass ID Tag through the mouth and gills or through the lower jaw of each striped bass and lock the Striped Bass ID Tag into place.
- b. Striped Bass ID Tags shall remain affixed through the mouth and gills or lower jaw of any whole striped bass or accompany any processed or filleted striped bass while in the possession of any person for the purpose of re-sale.
- c. If a person intends on selling portions of processed or filleted striped bass to a consumer, the tags shall remain on the premise of the seller until all portions are sold to a consumer.
- d. Once all portions of a striped bass are sold, a person shall cut the Striped Bass ID Tag into two pieces and discard it.

3. Striped Bass ID Tag Accounting.

- 1. Within 30 days of a written request by the Director, following the close of the commercial season, the Primary Buyer shall:
 - a. return all unused Striped Bass ID Tags issued to the Primary Buyer by the Director for that year; and
 - b. submit a Striped Bass ID Tag Accounting Report, on forms provided by the Director, which documents the disposition of all Striped Bass ID Tags.
- 2. The Director may restrict a dealer from future participation as a Primary Buyer for failure to return all unused Striped Bass ID Tags or submit the Striped Bass ID Tag Accounting Report in accordance with 322 CMR 6.07(6)(g)3.i.

(7) Prohibitions. It shall be unlawful for:

- (a) a recreational fisherman to retain more than one striped bass per day;
- (b) a recreational fisherman to possess more than one striped bass at any one time;
- (c) a recreational fisherman to sell, barter or exchange or offer to sell, barter or exchange any striped bass;
- (d) a recreational fisherman to take or possess any striped bass less than 28 inches **or 35 inches or longer** in total length;
- (e) a recreational fisherman to mutilate any striped bass in a manner that prevents the accurate measurement of the fish; such mutilation shall be *prima facie* evidence of a violation of 322 CMR 6.07(7);

- (f) a recreational fishermen to discard dead striped bass that ~~are~~ **measure at least 28 inches but less than 35 inches or greater** in total length;
- (g) a recreational fisherman to “high-grade” striped bass or to keep striped bass alive in the water by attaching a line or chain to the fish or placing the fish in a live-well or holding car;
- (h) any person(s), whether from shore or onboard a vessel, to possess striped bass in any quantity exceeding one striped bass per person without a commercial striped bass regulated fishery permit and for those striped bass to violate the commercial management regulations at 322 CMR 6.07(4);
- (i) a for-hire vessel, permitted in accordance with 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, during a for-hire trip to retain more than one striped bass for each person onboard;
- (j) a commercial fisherman to sell striped bass to any person other than a Primary Buyer.
- (k) a non-resident commercial fisherman to possess more than one striped bass upon leaving Massachusetts;
- (l) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass without having issued to him or her a valid permit to do so;
- (m) a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to catch, take, possess, sell, barter or exchange any striped bass for commercial purposes once the commercial quota is reached and the commercial fishery is closed, or to retain, possess or land more than one striped bass during the closed commercial fishing days;
- ~~(n) a commercial fisherman fishing recreationally, a person fishing recreationally aboard a vessel that is listed on a commercial fisherman permit with a regulated striped bass fishery permit endorsement, or a person fishing recreationally aboard a vessel with a person who holds a regulated striped bass fishery permit endorsement beginning on or after June 20th through the end of the commercial fishing season to retain any striped bass on a closed commercial fishing day that are 34 inches in total length or greater if the right pectoral fin is not entirely removed.~~
- ~~(o) any person to sell a striped bass that has had its right pectoral fin entirely removed.~~
- (n) ~~(p)~~ a commercial fisherman to sell, barter, exchange or attempt to sell, barter, exchange any striped bass during the closed commercial fishing days within the commercial season;
- (o) ~~(q)~~ a commercial fisherman to catch, take, possess, sell, barter, exchange or attempt to sell, barter or exchange any striped bass less than ~~35~~ **34** inches in total length;
- (p) ~~(r)~~ any commercial fisherman fishing under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) and (e) and onboard the registered vessel listed on the permit, to take, possess, land, offer for sale or sell more than 15 striped bass during a single open commercial fishing day. This shall apply to the individual fisherman regardless of the number of commercial striped bass regulated fishery permit endorsements held by the individual or number of trips taken in a day and the vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard;
- (q) ~~(s)~~ any commercial fisherman fishing under the authority of a Commercial Fisherman Individual or Rod and Reel Permit, issued in accordance with 322 CMR 7.01(2)(h): *Individual*, (i): *Shellfish/Rod and Reel* and (j): *Rod and Reel*, or under the authority of a Commercial Fisherman Coastal Lobster, Offshore Lobster or Boat Permit, issued in accordance with 322 CMR 7.01(2)(a), (c), (d) or (e), while fishing from shore or anywhere other than the registered vessel listed on the permit, to take, possess, land, offer for sale or sell more than two striped bass during a single open commercial fishing day. This shall apply to the individual commercial fisherman whether fishing from shore or from a vessel regardless of the number of commercial striped bass regulated fishery permit endorsement holders aboard or trips taken in a day;
- (r) ~~(t)~~ a commercial fisherman to fillet or process any striped bass other than by evisceration;
- (s) ~~(u)~~ a commercial fisherman to mutilate any striped bass in such a way as to interfere with or affect a proper or adequate measurement of the fish;
- (t) ~~(v)~~ a commercial fisherman to participate in the primary purchase of any striped bass which is not in the round, or which has had the head or tail removed;
- (u) ~~(w)~~ a commercial fisherman to possess or land striped bass once the Director has determined that 100% of the commercial quota has been reached;

- (v) ~~(x)~~ any Primary Buyer to purchase or receive during a primary purchase any striped bass which has been mutilated in such a way as to interfere with or affect a proper or adequate measurement of the fish;
- (w) ~~(y)~~ any Primary Buyer to purchase or receive from a commercial fisherman any striped bass which is less than ~~35~~ **34** inches in total length;
- (x) ~~(z)~~ any Primary Buyer to purchase or receive from a commercial fisherman any striped bass after the open commercial season has closed or on any calendar day that is not an open commercial fishing day;
- (y) ~~(aa)~~ any Primary Buyer to fail to report all striped bass purchases from commercial fishermen as prescribed by the Director;
- (z) ~~(bb)~~ any commercial fishermen to harvest, catch, or take striped bass by longlines or tub-trawls;
- (aa) ~~(ee)~~ any vessel rigged for otter trawling, hauling sink gillnets, purse seines, or possessing baited or unbaited longline or tub-trawl gear to possess striped bass;
- (bb) ~~(dd)~~ any wholesale or retail dealer to possess, sell, barter or exchange or offer to sell, barter or exchange any whole striped bass imported into Massachusetts unless such fish so imported is tagged as specified by 322 CMR 6.07(6);
- (cc) ~~(ee)~~ commercial fishermen to discard dead striped bass that are ~~35~~ **34** inches or greater in total length;
- (dd) ~~(ff)~~ any person to receive during a primary purchase any striped bass unless permitted as a wholesale or retail dealer pursuant to 322 CMR 7.01(3): *Dealer Permits* and authorized as a Primary Buyer pursuant to 322 CMR 7.07: *Dealers Acting as Primary Buyers*;
- (ee) ~~(gg)~~ any person involved in the resale of striped bass to fail to furnish, upon request of the Director or the Environmental Police, receipts documenting the purchase of striped bass;
- (ff) ~~(hh)~~ any person to apply a Striped Bass ID Tag to a striped bass harvested for commercial purposes without being a Primary Buyer;
- (gg) ~~(ii)~~ a Primary Buyer to tag a striped bass with a Striped Bass ID Tag that was not issued to said Primary Buyer by the Director for the current year or that has been defaced or modified in any manner;
- (hh) ~~(jj)~~ any person, other than the original harvester, to possess striped bass or portions thereof for the purpose of sale without the striped bass or portions thereof being tagged in accordance with 322 CMR 6.07(6)(g);
- (ii) ~~(kk)~~ any person to fail to surrender Striped Bass ID Tags to the Director or the Environmental Police upon request;
- (jj) ~~(ll)~~ any person to sell, trade, loan or gift or offer to sell, trade, loan or gift to another person any Striped Bass ID Tags;
- (kk) ~~(mm)~~ a Primary Buyer to file a false claim of Striped Bass ID Tag loss for purposes of obtaining additional Striped Bass ID Tags.
- (ll) ~~(nn)~~ a dealer to purchase a striped bass that has had its right pectoral fin entirely removed.
- (mm) for any recreational angler to use any device other than a non-lethal device to remove a striped bass from the water or assist in the releasing of a striped bass.**
- ~~(pp) for any person gaff a striped bass or attempt to use a gaff to remove a striped bass from the water that is less than 28" total length or~~ for any commercial fisherman fishing on an open commercial fishing day to gaff a striped bass or attempt to use a gaff to remove a striped bass from the water that is less than ~~35~~ **34** inches total length.
- ~~(pp) effective January 1, 2020, for any private recreational anglers fishing for striped bass or in possession of striped bass~~ **for any angler fishing from shore or private vessel to use any type of hook other than a circle hook when fishing for striped bass with whole or cut natural baits. This prohibition shall not apply to any artificial lure or weighted treble hook designed to be trolled, cast and retrieved, or vertically jigged with a natural bait attached.**



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

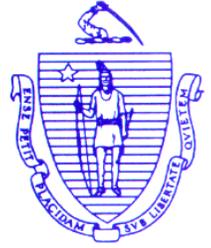
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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Final Recommendation for 2020 Menhaden Commercial Management**

This memo includes a final recommendations to revise the commercial menhaden management measures for 2020. To provide context to these decisions, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I am making the following final recommendations regarding menhaden commercial management for 2020:

- Rescind the limited access fishery’s 95% quota trigger, resulting in a 25,000-lb trip limit from 85%–100% of quota use.
- Replace the 1,000-lb bycatch tolerance allowed after the quota is taken with a 6,000-lb incidental catch and small-scale fishery allowance.
- Adopt new regulations to allow Massachusetts to potentially opt into the interstate FMP’s episodic event quota set-aside afforded to states from Maine to New York.

These revisions are intended to promote full utilization of the state’s menhaden quota, put the Massachusetts fishery on equal footing with other states, and provide access to additional quota when stock conditions warrant.

Final Permitting Rules

I also intend to establish an owner-operator requirement on limited access menhaden permit endorsements. This revision is meant to control potential permit leasing to hired captains with the added benefit of improved compliance. As this affects permitting and will not be filed pursuant to G.L. c. 130 s. 17A, it does not require the approval of the MFAC. However, I’d appreciate the perspective of Commission members before I take action to finalize this rule.

Difference from Public Hearing Proposal

The final recommendation is consistent with the public hearing proposal, apart from adopting a control date. The public hearing proposal included a May 1, 2020 control date for the limited entry fishery, which I will not be taking action to promulgate. Background on the public hearing proposal is described in my December 13 memo to the MFAC, “[Commercial Menhaden Management Proposals for Public Hearing](#).”

Public Comment

The [public hearing notice](#) was issued on February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven on March 10 and 12 occurred as scheduled, while the hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing Coronavirus situation. In response, the comment period was extended two days, until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing Coronavirus situation. The following is a summary of the public comment received:

Quota Management. There was support within the comments from both recreational and commercial stakeholders for the state's menhaden fishery to have rules allowing it to utilize the quota made available to it through the interstate fishery management plan (i.e., our state allocation, the incidental allowance, and the episodic event set-aside). In one instance, this support was conditioned on the access not creating user conflict. Alternatively, there were some comments that supported status quo as it appears to be working well, and other comments to reduce harvest opportunities for menhaden given its ecosystem role. One comment from an angler opposed rescinding the 95% quota trigger because it provides a buffer from exceeding the quota. There were several individuals concerned with any rules that allow harvest to continue after the state's quota is met. Several comments from small-scale purse seiners requested that more of the quota be allocated to lower trip limit periods or that the open access fishery be allowed to continue (at its 6,000-lb limit) after the quota is met to lengthen the seasonal availability of local bait to lobstermen. One commenter felt the incidental/small scale allowance presented an enforcement challenge and did not want to see it increased.

Permitting Measures. While there was no opposition to the owner-operator requirement for the limited entry fishery, there were numerous comments opposing the proposed May 1, 2020 control date. Several of these were from fishermen who had recently made investments into new capital and obtaining a permit transfer to operate in the limited entry fishery, during which there had been no warning about a possible control date. A number of individuals also felt the control date was unnecessary at this time given the limited number of active participants, and instead wanted managers to focus on encouraging the addition of more participation in the fishery, particularly at a lower landing amount that would facilitate the bait staying in the local market and later into the season. A dealer added support for allowing the bait market to stabilize before taking action on a control date and encouraged our providing lobstermen who are newly interested in sourcing their own bait with the opportunity to do so.

Discussion

Quota Management. I continue to support my proposals which will allow our fishery to fully utilize the state's quota allocation granted by the interstate plan (i.e., eliminating the 95% quota trigger) and as a result, provide access to the episodic event set-aside designed to benefit the northeast's fisheries when local resource availability is high. I am not concerned that taking our full allocation will jeopardize the menhaden stock given the conservative coastwide quotas that the ASMFC has been setting and the pending transition to ecosystem-based reference points upon which future coastwide quotas will be predicated. It is in the interest of the Massachusetts fisheries that we make changes to provide access to the episodic event set-aside that Maine, Rhode Island, and New York have utilized to benefit their fisheries. Remember that the set-aside (1%) comes off the coastwide quota before the remainder is allocated to the states, and any overage of the set-aside results in a pound-for-pound reduction of the set-aside in the next year.

The incidental and small-scale fishery allowance is another story, as these landings are made in excess of a state's quota. While they do not count towards the states' quotas, they are monitored; i.e., required to be reported, reviewed annually by ASMFC, and factored into stock assessments. My interest in revising our current 1000-lb bycatch tolerance, which includes a 5% maximum trip weight contribution, is to align with

the interstate plan's provision, which has changed over time to also include small-scale directed harvest. Making the change to eliminate the trip contribution threshold and increasing the allowance to 6,000 lb will support the continued operation of harvesters employing cast nets, surface gillnets, and small scale purse seines at very modest levels to supply their own or local bait needs after the quota is taken. However, I understand the apprehension in the public comment about the excessive way in which the allowance has been used in another state recently and have reservations about making this rule revision should the Massachusetts fishery behave in the same manner. DMF will be monitoring both the Massachusetts and the coastwide landings under the small-scale allowance closely and pursue changes at the state or interstate level if warranted.

Permitting Measures

I agree with the comments that it is premature to adopt a control date for the limited entry fishery. Our current allocation and possible future use of the episodic event set aside provides adequate quota to allow additional harvesters into the fishery. I further sympathize with the individuals who have recently made investments to switch into the menhaden fishery this year. Adopting the owner-operator requirement as proposed will provide some measure of control on new participation, while restricting potential permit leasing and improving compliance in the fishery. Such results have been observed in other fisheries with owner-operator requirements (e.g., lobster, fish pot).

Final Proposed Regulatory Language

6.43: Atlantic Menhaden Management

(1) Purpose. The purpose of 322 CMR 6.43 is to comply with the **Atlantic States Marine Fisheries Commission's** Interstate Fishery Management Plan for Atlantic Menhaden to manage the Atlantic menhaden fishery in a manner that is biologically, economically, socially and ecologically sound, while protecting the resource and those who benefit from it.

(2) Definitions.

Atlantic Menhaden means that species known as *Brevoortia tyrannus* or commonly referred to as pogey or bunker.

Bait Dealer means any person issued a bait dealer permit in accordance with 322 CMR 7.01(3)(g): *Bait Dealer*.

~~**Bycatch means the non-targeted commercial catch and possession of a species.**~~

Commercial Fisherman means any person fishing under the authority of a permit issued in accordance with 322 CMR 7.01(2): *Commercial Fisherman Permits*.

Declare means to file an advisory notification with the *Massachusetts Register* and publish it *via* the Marine Fisheries electronic mailing list and website.

Director means the Director of the Division of Marine Fisheries.

Episodic Events Set Aside means the 1% of the total allowable catch of Atlantic menhaden that is set aside for use by the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York when certain conditions exist as established in the Interstate Fishery Management Plan.

Land means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any fish onboard to tie up to any dock, pier or other artificial structure.

Quota means the Commonwealth of Massachusetts annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers.

Trip means the time period that begins when a vessel departs from any land, pier, wharf, dock or other artificial structure to carry out commercial fishing operations, including the at-sea transfer and transport of fish, and that terminates with a return to any land, pier, wharf, dock or other artificial structure.

(3) Regulated Fishery Permit Endorsement Requirement. It shall be unlawful for any fisherman or vessel to take, land, or possess Atlantic menhaden in excess of 6,000 pounds per trip or per 24-hour day, whichever duration is longer, without a regulated commercial fishery permit endorsement for Atlantic menhaden issued by the Director, in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* **and managed pursuant to 322 CMR 7.06: *Limited Entry Permits*.**

(4) Commercial Fishing Limits.

(a) **Quota Managed Fishery.**

1. Regulated Fishery Trip Limits. Commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3), and 7.01(4)(a): *Regulated Fishery Permit Endorsement*, shall adhere to the following trip limits:

a. Until the Director declares that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 125,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer; and

b. Once the Director has declared that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 25,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer.

2. Open Access Fishery Trip Limits. Commercial fishermen who have not been issued a regulated Atlantic menhaden fishery permit in accordance with 322 CMR 6.43(3) and 7.01(4)(a): *Regulated Fishery Permit Endorsement* may possess and land up to 6,000 pounds of Atlantic menhaden per trip or 24-hour day, whichever duration is longer.

3. **Quota Closure.** Except as provided at 322 CMR 6.43(4)(b) and (c), it shall be unlawful to catch and retain or land Atlantic menhaden once the Director has declared that 100% of the quota has been harvested. The quota closure will be enacted and announced in accordance with the procedure set forth at 322 CMR 6.41(2)(c).

~~(a) **Regulated Fishery Trip Limits.** Commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3), and 7.01(4)(a): *Regulated Fishery Permit Endorsement*, shall abide by the following trip limits:~~

- ~~1. Until the Director declares that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 125,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer; and~~
- ~~2. Once the Director has declared that 85% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 25,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer; and~~
- ~~3. Once the Director has declared that 95% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 6,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer.~~

~~(b) **Open Access Fishery Trip Limits.** Commercial fishermen who have not been issued a regulated Atlantic menhaden fishery permit in accordance with 322 CMR 6.43(3) and 7.01(4)(a): *Regulated Fishery Permit Endorsement* may possess and land up to 6,000 pounds of Atlantic menhaden per trip or 24-hour day, whichever duration is longer.~~

~~(c) **Closure.** It shall be unlawful to catch and retain or land Atlantic menhaden once the Director has declared that 100% of the quota has been harvested, except as provided at 322 CMR 6.43(4)(d).~~

~~(b) (d) **Bycatch Tolerance Incidental Catch and Small-scale Fishery.** When the Quota Managed Fishery is closed, commercial quota has been harvested and the commercial fishery is closed, commercial fishermen may possess and land up to 1,000 6,000 pounds of Atlantic menhaden bycatch per trip or per 24-hour day, whichever is longer. The weight of the Atlantic menhaden bycatch shall not exceed 5% of the weight of the entire catch being landed. Exception:~~ There shall be no such allowance allowable bycatch tolerance for vessels using purse gear measuring 150 fathoms length and eight fathoms depth or greater.

(c) **Episodic Event Set Aside Fishery.** When the Quota Managed Fishery is closed, and if Massachusetts is approved by the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program provided for in the Interstate Fishery Management Plan, commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3), and 7.01(4)(a): *Regulated Fishery Permit Endorsement*, may possess and land up to 120,000 pounds of Atlantic menhaden per trip or calendar day, whichever duration is longer. Vessels participating in the Episodic Event Set Aside Fishery must harvest only from waters under the jurisdiction of the Commonwealth and land in Massachusetts ports. Daily catch reporting is required in accordance with 322 CMR 6.43(5).

Once Massachusetts is approved by the Atlantic States Marine Fisheries Commission to participate in the Episodic Events Set Aside Program, the Director shall notify commercial fishermen and dealers via the Division's e-mail list serve, posting notice on the agency's website, and filing a legal notice with the Massachusetts Register. Once the Atlantic States Marine Fisheries Commissioner determines that the Episodic Event Set Aside is exhausted, the closure of the Episodic Event Set Aside Fishery will be enacted and announced in accordance with the process set forth at 322 CMR 6.41(2)(c).

(5) **Daily Catch Reporting.** All regulated Atlantic menhaden fishery permit endorsement holders must obtain a bait dealers permit, as defined at 322 CMR 7.01(3)(g): *Bait Dealer*, and report to the Division of Marine Fisheries their directed commercial Atlantic menhaden landings in the Commonwealth on a daily basis on forms provided by the Director.

7.01: Form, Use and Contents of Permits

(4) Special Permits. The following special permits may be issued by the Director for the following activities:

(a) Regulated Fishery Permit Endorsement. In accordance with M.G.L. c. 130 §§ 2 and 80, regulated fishery permit endorsements may be added to commercial fisherman permits, issued pursuant to 322 CMR 7.01(2), to authorize the named individual or commercial fishing vessel to harvest, possess or land fish or shellfish, or use certain fishing gear in a fishery regulated pursuant to M.G.L. c. 130 § 17A.

2. Limited Entry Regulated Fishery Permit Endorsements. Commercial fisherman permits, issued in accordance with 322 CMR 7.01(2), may be endorsed with the following regulated fishery permit endorsements. Pursuant to the authority at M.G.L. c. 130, §2, the following regulated fishery permit endorsements are limited entry and may only be renewed and transferred subject to the provisions set forth at 322 CMR 7.06. These regulated fishery permit endorsements are required for the following:

h. Menhaden. For a named individual **and vessel and/or vessel** to commercially fish for menhaden within the waters under the jurisdiction of the Commonwealth, or to harvest, possess or land ~~any~~ menhaden for commercial purposes in the Commonwealth. ~~„A menhaden regulated fishery permit endorsement is not required to commercially fish for menhaden in the Commonwealth, provided no more than in excess of 6,000 pounds of menhaden are possessed at any one time or landed within a per calendar day or fishing trip or 24-hour period, whichever period duration is longer.~~

7.06: Limited Entry Permits

(1) Definitions.

Menhaden Regulated Fishery Permit Endorsement means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a) and 322 CMR 7.06, that authorize a named individual to commercially fish for menhaden in accordance with the regulations set forth at 322 CMR 6.43.

(5) Owner-operator Requirements. All Fish Pot Regulated Fishery Permit Endorsements **and Menhaden Regulated Fishery Permit Endorsements** are issued to a named individual who shall be the owner operator of that commercial fishing business. This requirement may be waived by means of a letter of authorization from the Director for:

- (a) immediate family;
- (b) active military duty; or
- (c) for up to two years for good cause, including death or disability to the permit holder, subject to annual renewal. In all instances, the performance criteria at 322 CMR 7.06(4)(a)2. shall be met prior to the request for a letter of authorization.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

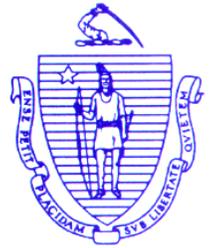
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Deputy Commissioner

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Final Recommendation on 2020 Commercial Black Sea Bass Management**

This memo includes a final recommendation to increase the black sea bass trip limits during the directed summertime fishery; to increase the annual weir set-aside; and to adjust the commercial trawl fishery incidental catch limits. To provide context to these decisions, I have also included a review the public hearing proposal; a summary of public comment; discussion regarding my decision making; and final strikethrough regulations.

Final Recommendation

I am making the following recommendations regarding the management of the commercial black sea bass fishery beginning in 2020:

1. Increase the weir set-aside from 15,000 pounds to 24,000 pounds.
2. Increase the directed fishery trip limits for potters from 300 pounds to 400 pounds and maintain the existing Sunday/Tuesday/Thursday open fishing day schedule.
3. Increase the directed fishery trip limit for anglers from 150 pounds to 200 pounds and maintain the existing Sunday/Tuesday/, Thursday open fishing day schedule.
4. Increase the trawl bycatch limits during the springtime (April 23 – June 9) small mesh trawl squid fishery from 50 pounds to 100 pounds and maintain the existing 50,000 pound seasonal landings cap.
5. Decrease the summertime large mesh trawl bycatch allowance of black sea bass from 150 pounds to 100 pounds but allow vessels to retain and land black sea bass during open summer flounder fishing days within the directed summer flounder season (i.e., Sundays – Thursdays beginning on June 10) rather than only on open black sea bass fishing days during the directed black sea bass fishery (i.e., Sunday/Tuesday/Thursday beginning on July 8)

These revisions are intended to utilize a substantial 59% increase to the commercial quota while maintaining or increasing value to vessels, reduce regulatory discarding of legal sized fish in squid and summer flounder trawl fisheries, and continue our ongoing management objective of minimizing commercial fishing mortality on spawning fish during late May and June.

Difference from Public Hearing Proposal

This final recommendation is consistent with the proposal brought to public hearing. Background on the public hearing proposal is described in my December 13 memo to the MFAC, "[Proposed Adjustments to the Commercial Black Sea Bass Limits.](#)"

Public Comment

The [public hearing notice](#) was issued of February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for

March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation.

DMF received a diversity of public comment on the state's commercial black sea bass proposals at public hearing and in written public comment. The public comments on each proposal are summarized in the bullets below:

Weir Fishery Set-Aside. Comments received generally either supported this action or did not object to it. There was one written comment in opposition to increasing the weir fishery set-aside as part of a general objection to increasing any limits for 2020.

Directed Fishery Trip Limits and Open Days. Comment on this proposal was diverse. Hook and line fishermen generally supported the trip limit increases and maintaining the existing three-day per week open fishing day schedule. Some pot fishermen, especially those who also pot for whelks and lobsters, preferred having fewer open fishing days per week and higher daily limits, as it would allow them to fish more efficiently. This approach was also supported by one of the more active seafood dealers citing concern about the market's ability to move larger quantities of fish on a weekly basis. Another contingent of comments favored maintaining the status quo limits and making in-season adjustments during the late-summer or early-fall if it was projected that quota would go unharvested.

Trawl Fishery Bycatch Limits. The proposal to adjust the trawler bycatch limits was largely supported among those members of the fleet who commented.

Other Measures. There was also comment in support of starting the directed commercial fishing season earlier in the summer instead of - or in addition to - increasing the directed fishery trip limits. Additional comment supported a new "bycatch allowance" of 100 pounds of black sea bass during the spring scup and fluke rod-and-reel fisheries.

Discussion

The coastwide commercial black sea bass quota is increasing by 59% from 2019 to 2020. Accordingly, Massachusetts commercial black sea bass quota is increasing from 457,600 pounds to 725,400 pounds. As stated in the December 13 memo, if catch rates in 2020 are similar to 2019, it is unlikely that the state's commercial black sea bass fishery will harvest its available commercial quota before the fish begin to migrate out of our water in the fall. Accordingly, there is room to liberalize our existing commercial fishing limits to encourage the utilization of this quota.

Weir Fishery Set-Aside. The commercial weir fishery occurs during the springtime when the fish move into our nearshore waters and concludes in June when the fish move offshore and weirs are dismantled. Activity and landings fluctuate annually in response to the availability of fish in the near shore waters where the weirs operate. In recent years, DMF has allocated the weir fishery a set-aside of 15,000 pounds annually. As there are only a few weir operators, and the weir fishery occurs prior to the start of the directed fishery, landings from this fishery are easy to monitor and the set-aside is enforceable. Any of the set-aside that is not taken by the weirs is automatically rolled over to the directed fishery quota. While the weir fishery has not reached the 15,000 pound set-aside, if conditions are right and effort is high, the potential exists for this to occur. Accordingly, I recommend increasing the weir set-aside to 24,000 pounds, commensurate with the quota increase. Keep in mind that if the set-aside is not taken by weir operators it is automatically available to the directed fishery.

Directed Fishery Trip Limits and Open Days. With regards to the directed pot and hook and line fishery, harvester data shows that in 2018 most potters and anglers successfully landed their daily trip limits (Figures 1 and 2). Based on these statistics, it is likely these fishermen can land more black sea bass on a daily basis. This determination was also supported by testimony from fishermen at the December ad hoc industry meetings and in public comment.

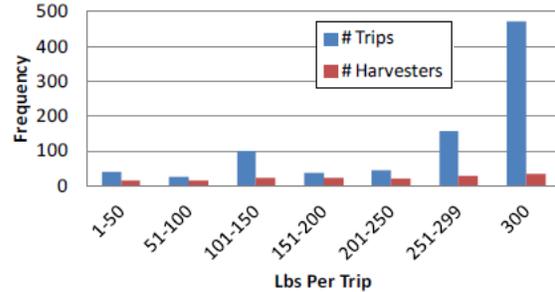
I recommend increasing the directed fishery trip limits by about 30% for both active gear types. If this increases daily landings from their 2019 average of about 21,000 pounds to about 27,000 pounds in 2020, then the quota could be harvested in about 8–9 weeks (assuming the same three-day-per-week schedule). Extrapolating this out, with a current opening start date of Thursday, July 9, we can anticipate a closure in early September. This is a comparable season length to what has occurred in recent years.

During the ad hoc meeting and in public comment, there was some concern expressed regarding the market’s ability to take on additional supply. This concern is likely elevated at present due to the potential loss of demand related to the ongoing coronavirus public health situation. I recognize these concerns and have been working with the seafood industry to enhance marketing strategies to increase seafood demand locally. This situation remains incredibly dynamic and it is difficult to project market conditions this summer. If markets remain soft, ex-vessel value may constrain effort and overall landings. However, if markets rebound, higher trip limits may provide fishermen with the opportunity to land additional fish and generate needed revenues.

There was some support for decreasing the number of open commercial fishing days to two days per week while increasing daily trip limits proportionally to maintain the same potential weekly landings currently allowed under three open fishing days. This was primarily supported by a segment of pot fishermen who also fish seasonally for lobsters and whelks. Reducing the number of days per week allows them to fish more efficiently. However, this alternative was rebutted by other potters and anglers who were concerned about the impact losing a fishing day (e.g., weather, mechanical problems) under a two-day-per-week schedule would have on their potential income and profitability. I tend to agree with these concerns and favor maintaining three open fishing days per week.

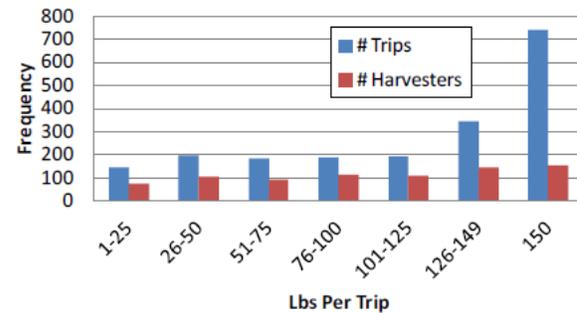
Trawl Fishery Bycatch Limits. The springtime small mesh trawl fishery for squid and the summertime large mesh mixed trawl fishery that occur south and west of Cape Cod have an incidental catch of black sea bass. These trawl fisheries are usually responsible for less than 5% of the state’s black sea bass landings on an annual basis. This is because catch is constrained by spatial closures and gear restrictions. With or without the adoption of my recommendation, I expect the trawl fishery’s contributions to the overall annual landings to remain low.

Fig. 1 – 2018 Trips and Harvesters by Pounds per Trip for Commercial Potters



SOURCE: MA Trip-Level Reports and federal Vessel Trip Reports, 12/2/19.

Fig. 2 – 2018 Trips and Harvesters by Pounds per Trip for Commercial Anglers



SOURCE: MA Trip-Level Reports and federal Vessel Trip Reports, 12/2/19.

During the springtime squid fishery (April 23–June 9), current rules allow trawlers to land up to 50 pounds of black sea bass per trip with total seasonal landings capped at 50,000 pounds. Since this limit was established in 2018, we have not approached the 50,000 pound cap. However, the hearing proposal considered raising this limit to 100 pounds, which is consistent with the maximum small mesh bycatch limit allowed under the ASMFC’s Black Sea Bass FMP. This proposal was moved forward based on a preliminary analysis of observer data that suggested there are some squid trips where black sea bass bycatch exceeds 50 pounds of legal sized fish. Accordingly, with the substantial increase in the quota, I was interested in further reducing the potential regulatory discarding of any legal sized fish (without causing a directed fishery). This proposal was generally supported by the trawl fleet and strong objections were not raised by other stakeholders.

For the summer flounder trawl fishery, fishermen are currently allowed to retain and land up to 150 pounds of black sea bass on open black sea bass days (Sundays, Tuesdays, and Thursdays) during the directed summertime black sea bass season (beginning July 8). These existing rules should be changed for two reasons. First, the summer flounder fishery opens a month prior (on June 10) and has five open fishing days per week (Sundays – Thursdays); the trawl fleet should be able to retain and land a bycatch allowance of black sea bass when fishing for summer flounder and not be constrained by the directed black sea bass fishery schedule. This will prevent the regulatory discarding of otherwise saleable fish. Second, given the minimum mesh size requirements (6.5”) and other gear restrictions (e.g., rock hoppers) black sea bass are not targeted or commonly caught in the summer flounder trawl fishery and it is reasonable to right-size the trawl trip limit to better reflect what may be taken as bycatch. For these reasons, I recommend amending the rules to allow trawlers to retain and land up to 100 pounds of black sea bass on open summer flounder fishing days throughout summertime summer flounder season. This is consistent with the public hearing proposal for which there were limited objections.

Other Measures. While not proposed, there was some comment in favor of starting the season earlier (e.g., May or June) to provide fishermen with additional access to the quota. My rationale against making such a proposal is described in detail in my December 13 and has not been swayed by the public comment. Similarly, I also do not agree with those comments in favor of allowing commercial anglers a 100-pound black sea bass “bycatch allowance” during the spring scup and fluke fisheries. Given the availability of black sea bass during the spring, this requested allowance is essentially a guise to allow directed rod and reel fishing. Accordingly, it is rife with the same concerns described for starting the directed season earlier. Moreover, the justification for allowing trawlers to retain a bycatch of black sea bass during the squid and summer flounder trawl fisheries is driven by the lethality of the gear type. Accordingly, it is sensible to reduce regulatory discarding and allow our small number of trawlers to retain saleable black sea bass that would otherwise likely be thrown back dead. I do not have similar concerns about the discarding of dead black sea bass caught by rod and reel in the scup and summer flounder hook and line fisheries. Hook and line gear is less lethal than trawl gear and the fish are being reeled up from shallow waters where barotrauma is less common. Keeping fishing mortality low during the peak spawning period is still a priority for DMF.

Final Strikethrough Regulatory Language

6.28: Black Sea Bass Fishery Management

(1) Definitions.

Black Sea Bass means that species of fish known as *Centropristis striata*.

Black Sea Bass Pot means any pot or trap that has six sides and at least two unobstructed escape vents or openings in the parlor section that are at least 2½ inches diameter, two inches square or 1_ inches by 5¾ inches, and is set on the bottom of the ocean and designed to capture black sea bass.

Black Sea Bass Pot Regulated Fishery Endorsement means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80, and 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* and 7.06: *Transfer of Limited Entry Permits*, that authorize a named individual to use black sea bass pots for the taking of black sea bass for commercial purposes.

Black Sea Bass Regulated Fishery Endorsement means those limited entry regulated fishery permit endorsements, issued and managed pursuant to M.G.L. c. 130, §§ 2 and 80 and 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* and 7.06: *Transfer of Limited Entry Permits*, that authorize a named individual to harvest, possess and land black sea bass for commercial purposes.

Commercial Fishermen means any person fishing under the authority of a permit issued in accordance 322 CMR 7.01(2) *Commercial Fisherman Permits* for the purposes of sale, barter, or exchange, or to keep for personal use or family use any fish or shellfish caught under the authority of the commercial fisherman permit.

Commercial Black Sea Bass Quota means the allowable annual Massachusetts commercial harvest of black sea bass pursuant to the ASMFC Interstate Scup, Black Sea Bass and Summer Flounder Management Plan.

Dealer means any wholesale or retail seafood dealer permitted by the Director pursuant to M.G.L. c. 130, § 80 and 322 CMR 7.01(3): *Dealer Permits*.

Director means the Director of the Division of Marine Fisheries.

For-hire Vessel means any vessel that holds a for-hire permit, issued in accordance with M.G.L. c. 130, § 17C and 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, that is carrying paying customers for the purpose of recreational fishing.

Mobile gear means any moveable or encircling fishing gear or nets which are towed, hauled, or dragged through the water for the harvest of fish including, but not limited to, pair trawls, otter trawls, beam trawls, mid-water trawls, Scottish seines, Danish seines, pair seines, purse seines or shellfish dredges.

Recreational Fishermen means any person who harvesters or attempts to harvest fish for personal or family use, sport or pleasure, and which are not sold, bartered or exchanged.

Total Length means the greatest straight line length, in inches, measured on a fish with its mouth closed from the anterior most tip of the jaw or snout to the farthest extremity of the tail. For fish with a forked tail, the upper and lower fork may be squeezed together to measure the tail extremity.

Trawl means any mobile fishing gear or nets which are towed, hauled, or dragged through the water for the harvest of fish including, but not limited to, otter trawls, beam trawls, and pair trawls.

(2) Commercial Fishery Management.

(a) Permit Requirements. A regulated fishery black sea bass permit endorsement or black sea bass pot permit endorsement, issued by the Director pursuant to 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, is required to sell black sea bass or to fish for, retain, possess or land black sea bass in accordance with the black sea bass commercial fishery regulations at 322 CMR 6.28(2).

(b) Minimum Size. It is unlawful for any commercial fisherman or dealer to possess black sea bass less than 12 inches in total length, not including the tail tendril.

(c) Possession and Landing Limits. **It shall be unlawful for any commercial fisherman to retain, possess, land or sell black sea bass, except as authorized at 322 CMR 6.28(3)(c)(1)-(5):**

1. Winter Catch Allowance. From January 1st through March 31st, it shall be unlawful for a commercial fisherman to possess or land more than 100 pounds of black sea bass.

~~2. **Closed Season.** Except as provided at 322 CMR 6.28(2)(c)3. and 4., it shall be unlawful for any commercial fisherman to possess or land black sea bass from April 1st until the summertime commercial fishery opens in accordance with 322 CMR 6.28(2)(c)5.~~

2. ~~3.~~ **Weirs.** From April 1st through December 31st, commercial fisherman permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* to operate a fish weir, shall not be subject to daily possession limits or closed commercial fishing days for black sea bass caught in fish weirs. The weir fishery shall close when all permitted weir fishermen have combined to land ~~24,000~~ **15,000** pounds of black sea bass or the commercial black sea bass quota is taken and the fishery is closed in accordance with 322 CMR 6.28(2)(c)6.

3. Black Sea Bass Bycatch Allowance for Trawlers.

a. **Small Mesh Trawl Squid Fishery.** During the small mesh trawl squid fishery, as established at 322 CMR 4.06(5)(a), commercial fishermen permitted in accordance with 322 CMR 7.01(4)(a) to fish with small mesh trawls for squid and retain black sea bass may retain, possess and land up to 100 pounds of black sea bass per calendar day or trip, whichever period is longer. When the small mesh trawl fishery for squid closes or once aggregate landings by trawlers have combined to land 50,000 pounds of black sea bass, whichever occurs first, it shall be unlawful for trawl fishermen to possess black sea bass until the directed Period II trawl fishery for summer flounder, managed in accordance with 322 CMR 6.22(2)(d)(2), opens on June 10.

b. **Summertime Summer Flounder Trawl Fishery.** Beginning on June 10, commercial fishermen permitted in accordance with 322 CMR 7.01(4)(a) to fish with trawls and retain black sea bass may retain, possess, and land up to 100 pounds of black sea bass on Sundays, Mondays, Tuesdays, Wednesdays, and Thursdays during the Period II summer flounder fishery, as set forth at 322 CMR 6.22(2)(d)(2).

4. **Summertime Black Sea Bass Pot Fishery.** During the period beginning on July 8, commercial fishermen permitted to fish black sea bass pots may retain, possess and land up to 400 pounds of black sea bass on Sundays, Tuesdays, and Thursdays.

5. **Other Gear Types.** During the period beginning on July 8, commercial fishermen using all other authorized gear types, including but not limited to hook and line, may retain, possess, and land up to 200 pounds of black sea bass on Sundays, Tuesdays, and Thursdays.

~~4. **Black Sea Bass Allowance in the Small Mesh Trawl for Squid.** During the small mesh trawl fishery for squid, as established at 322 CMR 4.06(4), commercial fisherman permitted in accordance with 322 CMR 7.01(4)(a) to fish with small mesh trawls for squid may possess and land up to 50 pounds of black sea bass per day. When the small mesh trawl fishery for squid closes or once aggregate landings by trawlers have combined to land 50,000 pounds of black sea bass, whichever occurs first, it shall be unlawful for trawl fishermen to possess black sea bass until the summertime commercial fishery opens in accordance with 322 CMR 6.28(2)(c)5.~~

~~5. **Summertime Black Sea Bass Fishery.** The summertime black sea bass fishery shall begin on the first open fishing day following July 8th until the annual quota is reached and the commercial fishery is closed in accordance with 322 CMR 6.28(2)(c)6.~~

~~a. **Open Fishing Days.** During the summertime black sea bass fishery, commercial fishermen with a black sea bass pot fishery regulated fishery endorsement or black sea bass regulated fishery endorsement may fish for, possess or land black sea bass on Sundays, Tuesdays and Thursdays.~~

~~b. **Closed Fishing Days.** It shall be unlawful to possess black sea bass on Mondays, Wednesdays, Fridays and Saturdays, except when in compliance with the recreational black sea bass regulations set forth at 322 CMR 6.28(3).~~

~~c. **Black Sea Bass Pots.** It shall be unlawful for any commercial fishermen with a black sea bass pot regulated fishery permit endorsement to possess or land more than 300 pounds of black sea bass on any open fishing day.~~

~~d. Other Gear Types. It shall be unlawful for any commercial fishermen with a black sea bass regulated fishery permit endorsement to possess or land more than 150 pounds of black sea bass on any open fishing day.~~

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

(3) Recreational Fishery Regulations.

(a) Minimum Size. It shall be unlawful for any recreational fisherman to possess black sea bass less than 15 inches in total length not including the tail tendril.

(b) Seasonal Possession Restrictions.

1. Closed Season. From September 13th through May 18th, it shall be unlawful for a recreational fisherman to possess or land any quantity of black sea bass.

2. Open Fishing Season. From May 19th through September 12th, it shall be unlawful for a recreational fisherman to possess or land more than five black sea bass per calendar day.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

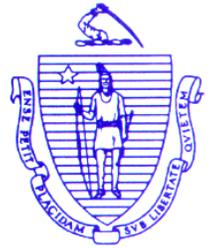
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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Recommendation on Period II Commercial Summer Flounder Limits**

This memo includes a final recommendation to increase the trip limits for the during June 10 – October 31 directed inshore commercial summer flounder fishery and liberalize the fishing limits for the November 1 – December 31 offshore commercial summer flounder fishery. It also includes a determination to renew the Period II summer flounder pilot program allowing trawlers to possess and land two consecutive day’s daily limits effective June 10, 2020. To provide context to these decisions, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I make the following recommendations regarding the management of the Period II (June 10 – December 31) commercial summer flounder fishery:

1. For the inshore June 10 – October 31 season, increase the daily trip limits for trawlers from 300 pounds to 400 pounds and for hook and line fishermen from 200 pounds to 250 pounds;
2. For the offshore November 1 – December 31 season, eliminate closed fishing days (Fridays and Saturdays) and allow the possession and landing of up to 1,000 pounds of summer flounder per trip if greater than 5% of the annual quota remains available or 500 pounds of summer flounder per trip if 5% or less of the annual quota remains available.

This action is intended to allow for the utilization of the available commercial quota. It may also enhance profitability and improve fishery performance, however, it is impossible to forecast given the depressed demand for seafood products and the inability to anticipate this summer’s market conditions.

No changes were proposed to amend the rules affecting the April 23 – June 9 season within Period II. This is effectively the small mesh squid trawl season and a 100 pound bycatch of summer flounder is allowed consistent with the ASMFC’s Summer Flounder FMP.

Final Determination on Renewing Period II Pilot Program

I intend to renew the Period II summer flounder pilot program for 2020. This pilot program was initiated in late-August 2019 and allowed commercial trawlers to possess and land two daily limits of summer flounder caught and retained over consecutive open commercial fishing days. The feedback we received last fall was extremely positive among the participants. For 2020, this program will begin at the June 10 start of the inshore directed summer flounder fishery. This pilot program is intended to improve summer flounder quota utilization and fishing performance, and at this time, similar accommodations will not be made for other species that may be targeted by trawlers or incidentally caught in trawl gear (e.g., whelks, horseshoe

crabs, scup, black sea bass). As this is a pilot program, this action does not require a motion or vote by the MFAC. However, I encourage Commission members provide me with feedback on this decision.

Difference from Public Hearing Proposal

This final regulatory recommendation and final determination on the pilot program is consistent with the proposal brought to public hearing. Background on the public hearing proposal is described in my December 13 memo to the MFAC, "[Proposed Adjustments to Period II Summer Flounder Trawl Fishery.](#)"

Public Comment

The [public hearing notice](#) was issued of February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation.

DMF received some public comment on the state's commercial summer flounder proposals at public hearing and in written public comment. The public comments on each proposal are summarized in the bullets below:

June 10 – October 31 Trip Limit Increases. Among some trawl fishery participants there was a preference that status quo trip limits be maintained for 2020. Status quo was largely supported to maintain stable market conditions and avoid potential market gluts. There were concerns that higher limits may result in early season quota closures due both to increased daily landings and the activation of latent effort in response to higher limits. However, support for status quo limits was not universal among the trawl fishermen who commented. A number of fishermen supported increasing the trawler trip limits, particularly if DMF could manage the quota in a manner that it would not produce an early season closure (e.g., built in trip limit reductions in response to quota utilization). Those in favor of increasing the limits cited the potential for fishermen to increase their revenue and the summertime supply of fresh local seafood. Among those who both supported and opposed the trip limit increase, there was general support for DMF using its authority to make in-season adjustments in the late summer and early fall to enhance access to available quota. Potential in-season adjustments may include increasing trip limits and eliminating closed fishing days.

Maintaining the status quo limits was also supported by those commercial anglers who commented. This was preferred for two specific - and related - reasons. First, they argued that rod and reel fishing for summer flounder was depressed in Nantucket and Vineyard Sounds and commercial anglers were not frequently taking their existing 200 pound limit. Accordingly, increasing trip limits would principally benefit the trawl fleet. Second, they argued that additional benefits to the trawl fleet would likely come at the expense of commercial anglers because depressed local fishing conditions are further diminished once trawlers work a shoal. Therefore, they argued that increasing trawler trip limits could further degrade hook and line fishing. This latter argument was also made by those recreational anglers who favored maintaining the status quo summer flounder trip limits for trawlers.

Renewing the Period II Pilot Program. Comment regarding the renewal of the pilot program was similarly split. Those in favor of the program argued it lowered overhead costs making the fleet more profitable and efficient while not affecting market conditions. Some of those in favor also supported expanding the pilot program to include other species that may be caught in this mixed trawl fishery (e.g., whelks, horseshoe crabs, black sea bass). Opposition to the program concentrated on the potential for it to attract new effort

and impact market conditions and quota utilization. Additionally, there were concerns that the program could undermine compliance with daily limits.

November 1 – December 31 Limit Adjustments. There were no objections to the proposal to increase the summer flounder trip limits and eliminate closed fishing days in the final two months of the year if a quantity of the annual quota remains available.

Other Measures. Comment on issues not proposed included (but was not limited to): establishing weekly landing limits for trawlers; allowing hook and line fishermen a bycatch of black sea bass; expanding the pilot program to include other species beyond summer flounder.

Discussion

June 10 – October 31 Trip Limits. My recommendation is to increase the trip limits for the June 10 – October 31 inshore directed summer flounder fishery by about 30% for each gear type. This will increase trawler limits from 300 to 400 pounds and commercial angler limits from 200 to 250 pounds. The open commercial fishing days will remain Sundays – Thursdays. This decision is influenced by my interest in fully utilizing the quota allocated to the state and supplying fresh local caught seafood to consumer markets. This action is supported by public comment and consistent with the extensive rationale set forth in the December 13 memorandum.

To better understand how I reached this decision some background on summer flounder quota management and fishery performance is necessary. The annual summer flounder quota is divided among two seasonal periods. The Period I (January 1 – April 22) fishery is allocated 30% of the annual quota and the Period II (April 23 – December 31) fishery is allocated the remaining 70%. The Period II directed inshore fishery occurs from June 10 – October 31; a 100 pound bycatch allowance is authorized during the small mesh squid fishery (April 22 – June 9) and whatever quota remains after October 31 is allocated to the offshore fishery.

Last year (2019), the Period I fishery only landed 3% of the annual quota. This was due to a large quota increase, conservative catch limits, and enforcement issues pertaining to Carlos Rafael's vessels that resulted in them not fishing. In response, DMF took three actions in 2020 to improve the use of the Period I quota allocation. This included rescinding the January closure; increasing the trip limits from 500 pounds to 1,000 pounds (by regulation) and then 2,000 pounds (by in-season adjustment); and administering a multi-state cooperative pilot program (with RI, CT, NY) to allow vessels to possess trip limits from more than one state while offloading a state-specific limit in each state. This improved the current performance of this fishery (in 2020). As of March 25, 16.5% of the annual quota has been taken by the Period I fishery. However, catch rates have stalled in recent weeks due to the loss of demand from the ongoing coronavirus situation and it is likely that this will remain the case throughout the remainder of Period I (April 22).

Accordingly, we can assume that about 650,000 pounds of the state's 786,399 pound quota will be available to the Period II fishery. Last year, 461,197 pounds of summer flounder was landed between June 10 and October 31. If the fishery performs similarly this year, then we can anticipate that less than 600,000 pounds of the 2020 quota (~75%) will be landed by the end of October. If the November 1 – December 31 fishery performs similarly to 2019, we can expect another 60,000 pounds may be landed during this period. Accordingly, under status quo limits, it is likely that the 2020 fishery will run a quota underage of about 100,000 to 150,000 pounds. That is a substantial amount of revenue and fish supply to the state's seafood industry left on the table. However, I'd project that if the trip limits were modified as proposed, Massachusetts would take the quota available to by the end of the year.

I am aware of the concerns raised by certain commercial trawler owners who preferred the status quo limits. However, I do not think this slight increase in the trip limit is going to flood the markets and cause

the fishery to become less profitable for the fishermen. This position is supported by input from seafood dealers who, at our December meeting, argued that the low price per pound in 2019 was driven principally by the small size grade of fish being harvested in Massachusetts and not by market supply. In fact, they have argued an even higher trip limit for trawlers (500 pounds) could be accommodated because the market could absorb more product. I prefer to work towards full use of the quota for the benefit of the entire seafood industry and consumers.

Renewing the Period II Pilot Program. Last August, DMF – with input from the MFAC and members of the inshore trawl fleet – developed a novel pilot program. This pilot program allowed commercial trawlers to possess and land two daily limits of lawfully caught summer flounder retained over two consecutive open commercial fishing days. The purpose of this program was to make the fishery more efficient and profitable by reducing overhead, steaming time, and fuel consumption. To ensure compliance with daily trip limits, DMF required that the first day’s catch of summer flounder be locked in a container and tagged with a sequentially numbered truck seal issued by DMF. Fishermen were also required to log daily catch and truck seal numbers into DMF issued log sheets to enhance enforceability.

After the end of the season, DMF had informal discussion with some members of the fleet and there was consensus that the program was a success. Accordingly, DMF was interested in renewing this program for 2020. This was discussed at the informal industry meeting in December 2019 and DMF solicited public comment on it this winter. Based on the feedback received, I am taking action to renew this program for 2020. Last year this program started in late August to address emerging issues. For 2020, I will start this program at the beginning of the directed fishing season (June 10) to afford trawlers the benefits of the program throughout the summertime fishery.

One issue that has come up in relation to this pilot program is whether DMF would expand allowances to similarly possess consecutive daily limits of other species caught in this mixed trawl fishery (e.g., whelks, horseshoe crabs, black sea bass). Based on informal discussions with industry members and the Massachusetts Environmental Police, I do not support such an expansion of the program. To be enforceable, the first day’s catch of each species would need to be segregated and stored and that may create unforeseen complexities if additional species are included. Because this program is regulated with permit conditions, these changes could be considered in-season and need not be made at this time.

November 1 – December 31 Limits. As the regulations are currently written, the November 1 – December 31 season is managed by the same limits as the June 10 – October 31 season. This is because the quota has historically been taken by the late summer or early fall and the fishery is closed before any offshore fishing can be conducted in the late fall. However, with the expectation that the quotas will remain at current levels throughout at least 2021, it is likely that quota may be available into the late fall and early winter. Accordingly, it is not appropriate to manage the offshore trip fishery with limits designed to meet the need of the inshore day boat fishery.

To provide any early winter offshore fishery greater flexibility to target summer flounder and land them in Massachusetts, it is necessary to manage the November 1 – December 31 fishery separately from the June 10 – October 31 fishery. Accordingly, I am pursuing my recommendation to eliminate closed fishing days and increase trip limits for this November 1 – December 31 period. This will provide the offshore fleet with additional access to whatever quota may remain available. This recommendation is consistent with the public hearing proposal and there was no substantive objection to the public hearing proposal. Additionally, this recommendation is similar to the in-season adjustment made in 2019 with the approval of the MFAC.

Final Proposed Regulatory Language

322 CMR 6.22 Summer Flounder (Fluke) Restrictions

(2) Commercial Fishery.

- (a) Minimum Size. It shall be unlawful for commercial fishermen to land or possess summer flounder less than 14 inches in total length.
- (b) Seasonal Quota Allocations. The annual quota shall be split with a target allocation of 30% to the Period I fishery that occurs from January 1st through April 22nd, and 70% allocated to the Period II fishery that occurs from April 23rd through December 31st. Any unused portion of the quota from Period I may be re-allocated to Period II. Overharvest of either period allocation may be deducted from the corresponding period in the following year.
- (c) Period I (January 1st through April 22nd).
1. From January 1st through April 22nd, or until 25% of the annual quota has been reached, it shall be unlawful for any commercial fisherman to retain, possess or land any summer flounder using any gear other than nets. During this period fishermen using nets may retain, possess or land up to 1,000 pounds of summer flounder during any calendar day or trip, whichever period is longer.
 3. Once 25% of the annual quota has been reached, it shall be unlawful for any commercial fisherman using nets to retain, possess or land more than 100 pounds of summer flounder during any calendar day or trip, whichever period is longer.
- (d) Period II (April 23rd through December 31st).
1. April 23rd through June 9th. During this period, it shall be unlawful for any commercial fisherman to retain, possess or land:
 - a. more than 100 pounds of summer flounder caught with nets or longlines during a 24-hour day.
 - b. any summer flounder caught with handlines or rod-and-reel.
 2. June 10th through October 31st ~~December 31st~~. During this period, it shall be unlawful for any commercial fisherman to retain, possess or land:
 - a. any summer flounder on Fridays or Saturdays;
 - b. more than **400 pounds** ~~300 lbs.~~ of summer flounder when fishing with nets;
 - c. more than **250 pounds** ~~200 lbs~~ of summer flounder when fishing with hook and line gear.
 3. November 1st through December 31st. During this period, it shall be unlawful for any commercial fisherman to retain, possess or land:
 - a. more than 1,000 pounds of summer flounder during any calendar day or trip, whichever period of time is longer, provided at least 5% of the annual quota remains available to harvest on November 1.
 - b. more than 500 pounds of summer flounder during any calendar day or trip, whichever period of time is longer, if 5% or less of the annual quota remains available to harvest on November 1.
- (e) Quota Closure. It shall be unlawful for any commercial fisherman to retain, possess or land summer flounder once the Director has determined that 100% of the annual commercial summer flounder quota has been reached. The quota closure will be enacted and announced in accordance with the procedure set forth at 322 CMR 6.41(2)(c).
- (f) Vessel Limits. The landing/possession limits described in 322 CMR 6.22(2) shall apply to any vessel involved in the commercial summer flounder fishery, regardless of the number of commercial fishermen with summer flounder special permits on board said vessel.
- (g) Landing Prohibition. It is unlawful for commercial fishermen to land or possess summer flounder from 8:00 P.M. through 6:00 A.M.
- (h) Inspection. Commercial fishermen shall keep all summer flounder separate from the rest of the vessel's catch and readily available for immediate inspection by the Division of Environmental Law Enforcement.
- (i) Requirements for Dealers. All dealers authorized as primary buyers permitted in accordance with G.L. c. 130 and 322 CMR 7.01(3) and 7.07 shall obtain a federal dealer permit from the National Marine Fisheries Service to purchase fluke directly from commercial fishermen during the Period I commercial fluke fishery.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

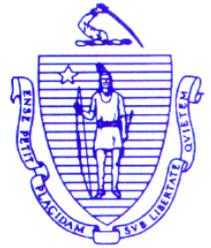
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Deputy Commissioner

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Acting Director

DATE: March 27, 2020

SUBJECT: **Final Recommendation on Open Access Horseshoe Crab Limits for Trawlers**

This memo includes a final recommendation to establish an open access horseshoe crab limit for trawlers fishing for summer flounder. To provide context to this decision, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I recommend the adoption of an open access horseshoe crab limit of 75 crabs for those trawlers who do not hold a limited entry horseshoe crab endorsement.

If approved, this open access limit will replace the annual Letter of Authorization (LOA). Historically, the LOAs allowed trawlers with a fluke endorsement, but without a limited entry horseshoe crab endorsement, to retain up to 300 crabs per day. This LOA limit matched the regulatory limit established for the limited entry fishery. The LOA was designed to reduce regulatory discarding in this mixed trawl fishery and to ensure crabs were available for bait and biomedical purposes.

Difference from Public Hearing Proposal

This final regulatory recommendation is consistent with the public hearing proposal. Background on the public hearing proposal is described in my December 13 memo to the MFAC, "[Proposed Adjustments to Period II Summer Flounder Trawl Fishery.](#)"

Public Comment

The [public hearing notice](#) was issued of February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation.

DMF received a limited amount of public comment regarding this proposal. The public comment that was received was split among those in favor of it and those opposed to it. Support came exclusively from those trawl fishermen who hold a limited entry horseshoe crab permit endorsement. They felt the proposal adequately allowed for the retention of an incidental catch of horseshoe crab by non-permit holders, while allowing directed fishing to only occur under a limited entry endorsement. Those individuals who opposed the proposal were exclusively trawl fishermen who do not hold a limited entry horseshoe crab permit and

have been receiving the LOA on an annual basis. While these fishermen recognized why the open access limit was being proposed, they argued that it should be set at a higher level (e.g., 100 or 200 crabs).

Discussion

While the rationale for this recommendation is laid out in detail in the December 13 memorandum, I am providing a brief summary. The summertime large mesh trawl fishery for summer flounder conducted south of Cape Cod is a mixed-species trawl fishery. Horseshoe crabs are commonly taken both as a directed catch and an incidental catch. DMF implemented horseshoe crab spawning closures in 2010 and this action effectively constrained hand harvesters who targeted crabs on spawning beaches. As a result, the trawl fishery became an increasingly important source of bait crabs, which are also made (temporarily) available to the biomedical industry. The biomedical industry extracts horseshoe crab blood to produce limulus amebocyte lysate, which is used to detect and quantify bacterial endotoxins.

As permits are transferred and new fishermen enter into the summer flounder trawl fishery, not all hold a limited access horseshoe crab permit endorsement. Beginning in 2012, DMF began issuing LOAs allowing trawlers who do not hold a limited entry horseshoe crab endorsement to retain and land horseshoe crabs when fishing for summer flounder. This LOA recognized that horseshoe crabs are a common incidental catch, and it is appropriate to reduce the regulatory discarding of this species given the market demands and biomedical industry needs. Historically, DMF issued about 10 of these LOAs annually. This means that about 1/3 of active summer flounder trawlers receive an LOA.

In 2019, the annual commercial horseshoe crab quota (165,000 crabs) was fully harvested for the first time ever. As a result, the commercial horseshoe crab bait fishery closed on September 1. The impacts of this quota closure were two-fold. First, the trawl fishery for summer flounder continued through October and all participants were forced to discard any horseshoe crabs caught in September and October. Second, bait markets did not have fresh crabs available for the biomedical industry to borrow and bleed. As a result, DMF worked to accommodate some experimental biomedical trawl fisheries for horseshoe crabs.

With the expectation that fluke quotas are going to remain elevated for the next few years, there was interest in keeping the horseshoe crab quota open later into the year. At the informal industry meeting in December 2019, it was requested that DMF limit the LOA allowance to a true incidental catch limit. DMF reviewed this request and determined that rather than continue the LOA program it was more sensible to establish a separate catch limit for trawlers that do not have a limited entry commercial horseshoe crab endorsement.

Keeping in mind that endorsement holders and LOA holders have been fishing under a 300 crab limit for the better part of the decade, sufficient data does not exist to tease out an appropriate incidental catch limit. Instead, DMF informally queried trawl fishermen. Based on their comments, DMF proposed a 75-crab limit, which was thought to be appropriate to accommodate this “bycatch.”

Public comment indicates that those individuals who do not have horseshoe crab endorsement favor a higher incidental limit of either 100 or 200 crabs. However, it is difficult to discern if this higher limit is necessary to accommodate incidental catch or desirable to enhance profitability. Accordingly, I prefer taking the more conservative approach and moving forward with the 75-crab limit, as proposed at public hearing. This more conservative approach will better constrain harvest and draw out the period when the quota is available. Avoiding an early quota closure should reduce regulatory discards and ensure crabs are available to the bio-medical industry in the fall.

Final Proposed Regulatory Language

6.34: Horseshoe Crab Management

(1) Purpose. The purpose of 322 CMR 6.34 is to comply with the Interstate Management Plan for horseshoe crabs to manage horseshoe crab populations for continued use by current and future generations of the fishing and non-fishing public including the biomedical industry, scientific and educational research; migratory shorebirds; and, other dependent fish and wildlife. The plan requires the Commonwealth to monitor and control harvest levels by all sectors and conserve crabs through a commercial quota for crabs harvested as bait.

(2) Definitions.

Asian Horseshoe Crab means those species of horseshoe crab identified as *Carcinoscorpius rotundicauda*, *Tachypleus gigas* and *Trachypleus tridentatus*.

Commercial fisherman means any person fishing under the authority of a permit issued in accordance with G.L. c. 130 s. 80 and 322 CMR 7.01(2) for the purpose of sale, barter or exchange, or to keep for personal use any fish caught under the authority of a commercial fisherman permit.

Horseshoe Crab means that species known as *Limulus polyphemus*.

Mobile Gear means any moveable gear or encircling fishing gear or nets, which are towed, hauled or dragged through the water for the harvest of fish. This includes, but is not limited to, pair trawls, otter trawls, beam trawls, mid-water trawls, Scottish seines, pair seines, purse seines or shellfish dredges.

Trip means that period of time that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp or port to carry out commercial fishing operations and that terminates with a return to a dock, berth seawall, ramp or port.

(3) Permit. Except as authorized at 322 CMR 6.34(5)(a), (b), and (c) it shall be unlawful for any person to harvest any horseshoe crabs without one of the following permits.

(a) ~~Horseshoe Crab Harvest~~ Regulated Fishery Horseshoe Crab Harvest Permit Endorsement. A regulated fishery horseshoe crab harvest permit endorsement, issued by the Director pursuant to the authority at 322 CMR 7.01(4)(a), is needed to retain, possess, land or sell horseshoe crabs in accordance with the limits set forth at 322 CMR 6.34(5)(c) and (d). The holder of regulated fishery horseshoe crab harvest permit endorsement shall not also hold a special biomedical horseshoe crab harvest permit, unless so authorized by the Director in writing to facilitate the harvest of horseshoe crabs for bio-medical purposes.

~~It shall be unlawful for any person to take, land or possess more than six horseshoe crabs (*Limulus polyphemus*) per day for any purpose without a regulated fishery permit for horseshoe crabs issued by the Director pursuant to 322 CMR 7.01(4)(a): Regulated Fishery Permit Endorsement. Licensed pot fishermen using horseshoe crabs as bait may possess more than six horseshoe crabs without a regulated permit, provided their documented source is a wholesale or bait dealer.~~

(b) Special Biomedical Horseshoe Crab Harvest Permit. Harvesters collecting horseshoe crabs exclusively for use by the biomedical industry for the manufacture of *limulus lysate* or sale to a permitted scientific institution for research purposes must obtain a special permit issued in accordance with 322 CMR 7.01(4)(c). ~~(f): Special Biomedical Horseshoe Crab Harvest Permit limited to that purpose.~~ The holder of the species biomedical horseshoe crab harvest permit shall not also hold a regulated fishery horseshoe crab harvest permit endorsement, unless so authorized by the Director in writing to facilitate the harvest of horseshoe crabs for bio-medical purposes. ~~The holder of the biomedical special permit shall not be allowed to obtain a Horseshoe Crab Permit.~~

(4) Bait Harvest Quota. The annual quota for horseshoe crabs harvested for bait purposes shall be 165,000 crabs. Horseshoe crabs harvested solely for biomedical or research purposes by harvesters licensed under 322 CMR 6.34(3)(a) which are bled and released alive in the area of capture or used for display or research shall not be counted against the annual quota established by the Atlantic States Marine Fisheries Commission. When 100% of the annual quota is reached, the Division shall file a notice of the horseshoe crab bait fishery closure with the *Massachusetts Register*, email a notice *via* the Marine Fisheries Listserv and post a notice on the Division's website.

(5) Possession Limits. Possession limits shall be vessel limits and shall apply regardless of the number of persons or permit holders aboard a vessel or working in conjunction with a vessel. It shall be unlawful for any person to harvest more than the possession limit in a day regardless of the number of permits held.

(a) Non-Commercial Limit. Except as authorized by 322 CMR 6.34(5)(b)-(f), it shall be unlawful for any person to retain, possess or land more than six horseshoe crabs per day. Any crabs retained pursuant to this limit shall not be sold, bartered, exchanged or offered for sale.

~~(a) Bait Crab Harvesters Using Mobile Gear. It shall be unlawful for any commercial fisherman using mobile gear, as defined at 322 CMR 4.06(1): *Definitions*, permitted to harvest horseshoe crabs for bait purposes, in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, to take, possess or land more than 300 horseshoe crabs during any fishing trip or calendar day, whichever is longer.~~

(b) Open Access Mobile Gear Incidental Horseshoe Crab Limit. Commercial fishermen who hold a Coastal Access Permit for the use of mobile gear, issued in accordance with 322 CMR 7.01(4)(a), who do not also hold a limited entry regulated fishery permit endorsement for horseshoe crabs, issued in accordance with 322 CMR 6.34(3)(a) and 7.01(4)(a), may retain, possess, land and sell up to 75 horseshoe crabs taken by mobile gear for bait purposes when participating in the Period II summer flounder fishery, regulated at 322 CMR 6.22(2)(d). This limit shall apply per calendar day or trip, whichever period is longer. Under this allowance, fishermen are prohibited from fishing for, retaining, possessing and landing horseshoe crabs on days and during seasons when the Period II summer fishery is closed to the retention, possession and landing of summer flounder.

(c) Regulated Bait Crab Harvest Using Mobile Gear. It shall be unlawful for commercial fishermen using mobile gear and permitted to harvest horseshoe crabs for bait purposes in accordance with 322 CMR 6.34(3)(a) and 7.01(4)(a), to retain, possess or land more than 300 horseshoe crabs per calendar day or trip, whichever period is longer.

(d) ~~(b)~~ Bait Crab Harvesters Using Gears Other than Mobile Gear. It shall be unlawful for any commercial fisherman using gears other than mobile gear and ~~, as defined in 322 CMR 4.06(1): *Definitions*~~, permitted to harvest horseshoe crabs for bait purposes, in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, to take, possess or land more than 400 horseshoe crabs during any 24-hour period beginning at 12:00 P.M.

(e) ~~(e)~~ Biomedical Crab Harvester. It shall be unlawful for any fishermen permitted to harvest horseshoe crabs for biomedical purposes, in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement*, to take, possess or land more than 1,000 horseshoe crabs during any 24-hour period beginning at 12:00 P.M.

(f) ~~(d)~~ Exemption. ~~Possession limits shall not apply to lawfully harvested horseshoe crabs held in storage by licensed conch pot or eel pot fishermen permitted in accordance with 322 CMR 7.01(4)(a): *Regulated Fishery Permit Endorsement* or bait dealers permitted in accordance with 322 CMR 7.01(3): *Dealer Permits*.~~ The possession limits set forth at 322 CMR 6.34(5)(b)-(e) shall not apply to:

1. Pot fishermen, permitted in accordance with 322 CMR 6.12(2) and 322 CMR 7.01(4)(a), who are using horseshoe crabs as bait, provided their documented source of bait is a permitted wholesale dealer or authorized dealer or they are held in storage by the fisherman.
2. Wholesale dealers and bait dealers permitted in accordance with 322 CMR 7.01(3).

(6) Biomedical/Research Harvest.

(a) Authorization. Biomedical harvest permit holders must sell horseshoe crabs only to a dealer authorized by the Director to receive crabs harvested exclusively for biomedical purposes.

(b) Live Release.

1. Biomedical Permit Holders shall return all horseshoe crabs not used for display or research, other than bleeding, alive to the area of capture.
2. Dealers authorized by the Director to receive crabs harvested exclusively for biomedical purposes shall:
 - a. keep horseshoe crabs supplied by biomedical permit holders separate from horseshoe crabs supplied by bait permit holders; and
 - b. ensure horseshoe crabs supplied by biomedical permit holders are returned for live-release back into the same area of capture.

- (c) Temporary Use of Horseshoe Crabs Harvested for Bait Purposes. If a biomedical company or permitted scientific institution chooses to purchase horseshoe crabs from bait dealers:
 - 1. the company or institution shall keep records sufficient to show the number and source(s) of said horseshoe crabs;
 - 2. horseshoe crabs purchased by a biomedical company from bait dealers may be returned to bait dealers to be sold as bait.
 - (d) Horseshoe Crabs Imported from Other States for Biomedical Purposes shall be counted against the quota of the producing state or returned to the producing state for release, according to established rules and regulations of the state of origin.
- (7) Closed Days.
- (a) Lunar Closures. It shall be unlawful to harvest horseshoe crabs within a series of five day periods coinciding with each new and full moon during the period of April 16th through June 30th, as published by the US Naval Observatory and adjusted for Eastern Daylight Savings Time. Lunar closures shall commence at 12:00 A.M. two days prior to, and end at 11:59 P.M. two days after the date of the full or new moon.
 - (b) Mobile Gear No-fishing Days. In addition to closures described in 322 CMR 6.34(7)(a), Permit Holders using mobile gear shall be prohibited from fishing for horseshoe crabs on Fridays and Saturdays during the summer flounder summer season beginning on June 10th and ending when the summer-time summer flounder quota is reached.
- (8) Closed Areas.
- a. Pleasant Bay Complex. All waters within Pleasant Bay, as defined at 322 CMR 4.02(2)(c)(9) are closed to the harvest of horseshoe crabs, except as authorized at 322 CMR 6.34(6) for biomedical harvest and research.
 - b. Declaration of Temporary Horseshoe Crab Harvest Closures. The Director may temporarily close any area to the taking of horseshoe crabs subject to the procedure below:
 - 1. It has been approved by a majority of the members of the Marine Fisheries Advisory Commission;
 - 2. A Declaration of Closure has been filed with the Massachusetts Secretary of State for publication in the *Massachusetts Register*;
 - 3. A Declaration of Closure has been published in a local newspaper of record and posted on the Division of Marine Fisheries' Legal Notice website; and
 - 4. A Declaration of Closure has been distributed via the Division's e-mail list serve and sent directly to affected permit holders.
- (9) Minimum Size. It is unlawful to possess a horseshoe crab for commercial purposes with a prosomal width of less than seven inches.
- (10) Asian Horseshoe Crab Prohibition. It shall be unlawful to import, transport, purchase, possess, offer for sale or release into state waters Asian horseshoe crab species.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

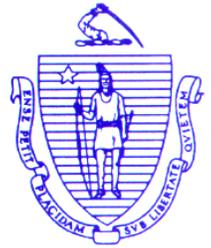
Division of Marine Fisheries

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Deputy Commissioner

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Final Recommendation to Adopt a Sand Lance Harvest Limit**

This memo includes a final recommendation to adopt a sand lance possession limit. To provide context to this decision, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making and final strikethrough regulations.

Final Recommendation

I recommend the adoption of a 200 pound sand lance possession and landing limit.

Difference from Public Hearing Proposal

This final regulatory recommendation is consistent with the public hearing proposal. Background on the public hearing proposal is described in my December 13 memo to the MFAC, "[Sand Lance Trip Limit Proposal](#)."

Public Comment

The [public hearing notice](#) was issued on February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation. DMF received no public comment in opposition to this proposal. The public comment received supported the recommendation.

Discussion

This action is designed to prevent the further development of a fishery for sand lance for either bait or reduction purposes and provide protection to this important local forage species. However, limit will continue to accommodate historic small scale fisheries which have occurred in Massachusetts. In a review of SAFIS data, the commercial harvest of sand lance is typically limited to about 100 pounds. Given that the benefits of preventing the proliferation of a new industrial fishery and the support for and lack of objection to the proposal in public comment, I am moving this recommendation forward.

Final Proposed Regulatory Language

6.42: Other Minimum Sizes and Possession Limits

(1) Definitions.

Sand lance means those species of fish known as American sand lance (*Ammodytes americanus*) and Northern sand lance (*Ammodytes dubius*).

Weakfish means that species of fish known as *Cynoscion regalis*.

White Perch means that species of fish known as *Morone americana*.

(2) **Sand Lance.** It shall be unlawful for any person to retain, possess or land more than 200 pounds of sand lance per calendar day or trip, whichever period of time is longer.

(3) ~~(2)~~ **Weakfish.** It shall be unlawful for:

(a) ~~It is unlawful for~~ any person to possess weakfish less than 16 inches in total length.

(b) ~~It is unlawful for~~ recreational fishermen to possess more than one weakfish per calendar day.

(c) ~~It is unlawful for~~ commercial fishermen to ~~possess onboard or land~~ retain, possess or land more than 100 pounds of weakfish per ~~24-hour day~~ calendar day or trip, whichever period is longer.

(4) ~~(3)~~ **White Perch.**

(a) It ~~is shall be~~ unlawful for ~~any person~~ ~~recreational fishermen~~ to possess white perch less than eight inches in total length.

(b) It ~~is shall be~~ unlawful for ~~recreational fishermen~~ ~~any person~~ to possess more than 25 white perch at any time.

(c) These limits apply only to white perch harvested in coastal waters as defined by M.G.L. c. 130, § 1.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

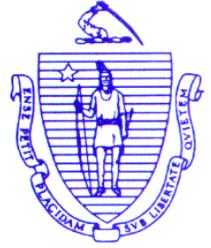
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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Acting Director 
DATE: March 27, 2020
SUBJECT: **Final Recommendation on Sea Herring Regulations**

This memo includes a final recommendation to adopt revised regulations pertaining to the management of sea herring in the inshore Gulf of Maine. To provide context to this decision, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough language.

Final Recommendation

I recommend the following changes to the state’s regulations affecting the commercial harvest of sea herring taken from Management Area 1A (Inshore Gulf of Maine):

1. Establish a 2,000-pound incidental catch and small-scale fishery limit, which will apply to state-only permit holders and federal category permit holders during closed periods; and
2. Update language and terminology regarding the MA/NH Spawning Area Closure to better align to the ASMFC’s Atlantic Sea Herring FMP.

Difference from Public Hearing Proposal

This final regulatory recommendation is consistent with the public hearing proposal. Background on the public hearing proposal is described in my December 13 memo to the MFAC, “[Management of Sea Herring in Area 1A.](#)”

Public Comment

The [public hearing notice](#) was issued of February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation.

DMF received no public comment regarding this proposal.

Discussion

Incidental Catch and Small-Scale Fishery Limit

Atlantic sea herring is managed at the federal, interstate, and state level. The NEFMC sets annual catch limits for the herring stock that are divided up into sub-ACLs for each individual geographic management area (Figure 1). The ASMFC then manages the state component of the fishery through its Sea Herring

Board. Delegates from the states of Maine, New Hampshire, and Massachusetts are responsible for the management of the commercial fishery within Area 1A. Of specific interest is their management of the quota through landing limits and no landing days. These controls are adjusted frequently throughout the summer and early fall months to make sure bait is available to the lobster fishery. The controls are to be implemented by the individual state agencies.

Due to the frequency of in-season changes to landing limits and landing days, DMF uses its authority to condition permits to implement these controls. This has become an administratively burdensome task. To streamline some of this management process, I am recommending a 2,000-pound incidental catch and small-scale fishery limit to apply to all state-only permitted vessels and federal category permit holders during closed periods. If this is adopted, then DMF will only have to issue permit conditions to federal category permit holders, which will significantly reduce staff time spent on program administration.

MA/NH Spawning Area Closure Updates

DMF's MA/NH spawning area closure regulations have fallen out of phase with the ASMFC's FMP. To ensure our regulations conform to the FMP, several updates are needed. This includes refining the definition for the gonadal somatic index, expanding the closure duration from four to six weeks, eliminating the 5-day advance notification requirement for the closure, and reducing the threshold for spawn herring in sample catch to extend the closure from 25% to 20%.

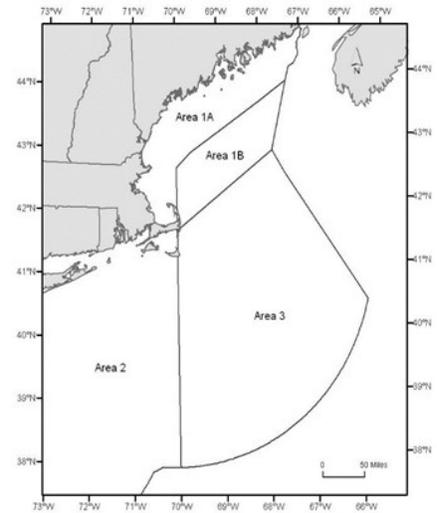


Figure 1. Atlantic herring management areas

Final Proposed Regulatory Language

322 CMR 9.00 Management of Atlantic Sea Herring

9.01: Definitions

For purposes of 322 CMR 9.00 only, the following words shall have the following meanings:

Commercial fisherman means any person who may catch, possess and land Atlantic sea herring for the purpose of sale barter or exchange or keeps for personal use any Atlantic sea herring taken under the authority of a commercial fishing permit and regulated fishery permit endorsement for sea herring issued by the Director under the authority at 322 CMR 7.01.

Division means the Division of Marine Fisheries.

Fish for means to harvest, catch or take, or attempt to harvest, catch or take any sea herring by any method or means.

Gonadal somatic index or GSI means the calculation of female herring gonad mass as a proportion of total body mass used to measure maturity, ~~for female herring the percentage~~ obtained by the formula: $[\text{Gonad weight}/(\text{total body weight} - \text{gonad weight})] \times 100$.

Land means to transfer the catch of any sea herring from any vessel onto any land or dock, pier, wharf, or other artificial structure.

Management Area means one of the four ~~three~~ Management Areas – 1A, 1B, 2 and 3 - as specified in the Atlantic States Marine Fisheries Commission Atlantic Herring Fishery Management Plan (FMP) and NOAA Fisheries federal fishery management plan.

Management Area Quotas means that portion of the quota that is allocated to a Management Area as specified by the Atlantic States Marine Fisheries Commission under the authority of the interstate and federal management plans.

Massachusetts/New Hampshire Spawning Area means all waters north of Cape Cod bounded by the Massachusetts, New Hampshire and Maine coasts and 43°30' north latitude and 70°00' west longitude.

Primary Buyer means any dealer authorized by the Director, pursuant to M.G.L. c. 130 § 80 and 322 CMR 7.07, to purchase Atlantic sea herring directly from commercial fishermen.

Quota means the allowable annual commercial harvest of Atlantic sea herring as specified by the Atlantic States Marine Fisheries Commission under the authority of the interstate and federal management plans.

Sample means a batch of ~~100~~ 80 or more adult herring taken randomly from commercial catch or fish surveys.

Sea Herring means that species of Atlantic sea herring known as *Clupea harengus*.

~~Southern Gulf of Maine means that portion of Management Area 1A south of 43° 32' N parallel of latitude.~~

Spawn Herring means mature sea herring in ICNAF gonadal stages V and VI.

Trip means the period of time that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp or port to carry out commercial fishing operations and that terminates with the return to a dock, berth, seawall, ramp or port.

Vessel means any waterborn craft registered under the laws of the state as that term is defined in M.G.L. c. 130, § 1.

~~Vessel Fishing for Mackerel means any vessel whose catch on board at any given time is at least 75% mackerel (*Scomber scombrus*) by weight.~~

9.02: Management Area Boundaries

(1) **Management Area 1:** All U.S. waters of the Gulf of Maine (GOM) north of a line extending from the eastern shore of Monomoy Island at 41° 35' N latitude, 70° 00' W longitude, thence northeasterly to a point along the Hague Line at 42° 53' 14" N latitude, 67° 44' 35" W longitude, thence northerly along the Hague Line to the U.S. Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

N Latitude	W Longitude
41° 58'	70° 00' at Cape Cod shoreline
42° 38'	70° 00'
42° 53'	69° 40'
43° 12'	69° 00'
43° 40'	68° 00'

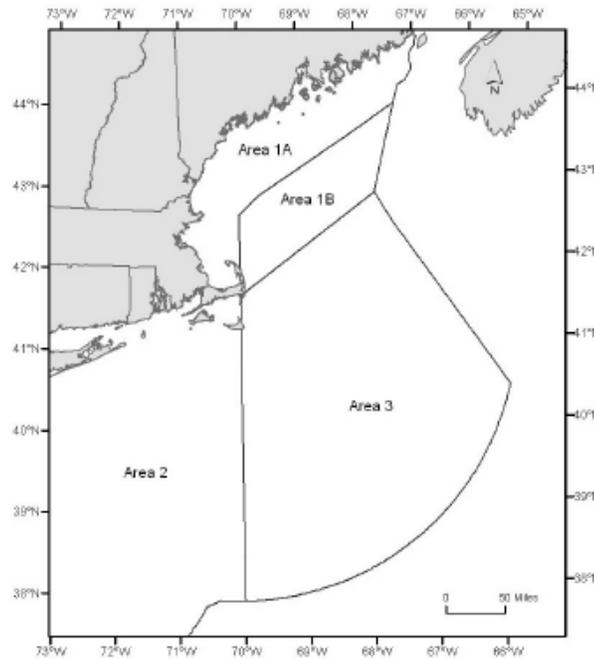
43° 58'

67° 22' (the U.S.-Canada
Maritime Boundary)

(2) Management Area 2: All waters west and south of the Cape Cod shoreline at 70° 00' W longitude, to include state and Federal waters adjacent to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina.

(3) Management Area 3: All U.S. waters east of 70° 00' W longitude and southeast of the line that runs from a point at 70° 00' W longitude and 41° 35' N latitude, northeasterly to the Hague Line at 67° 44' 35" W longitude and 42° 53' 14" N latitude.

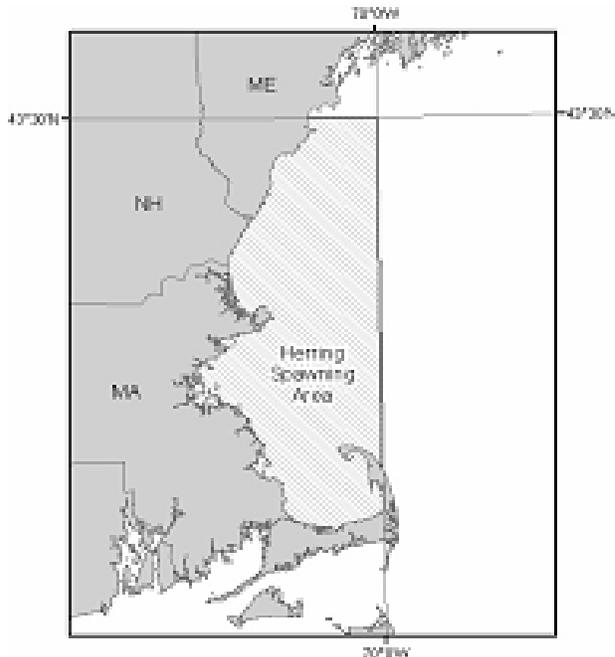
(4) Management Area Map:



9.03: Spawning Herring Protection

(1) Massachusetts/New Hampshire Spawning Area.

a. Massachusetts/New Hampshire Spawning Area Map.



- b. Massachusetts/New Hampshire Spawning Area Closure. To protect spawning sea herring, the Director shall close the Massachusetts/New Hampshire Spawning Area to sea herring fishing, as provided in 322 CMR 9.03(1)(f), when it is determined that sea herring are in **spawning condition later stages of maturity just prior to spawning**. The closure date will be projected in accordance with the formula and process set forth in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Sea Herring.
- c. Closure Duration. Once the closure is enacted, it shall remain in effect for **six weeks 28 days**, unless extended pursuant to 322 CMR 9.03(1)(d).
- d. Closure Procedure. The closure date shall be announced **5 days** prior to the closure being enacted by:
 - i. Filing a Notification of Closure with the Secretary of State;
 - ii. Publishing the Notification of Closure through the Division's electronic listserv and on the Division's website; and
 - iii. Providing a Notification of Closure directly to all primary buyers by e-mail or facsimile.
- e. Closure Extension. Sampling of sea herring taken from the Massachusetts/New Hampshire Closure Area shall begin during the last week of the initial closure period or at the end of the initial closure period. If one sample taken from the Massachusetts/New Hampshire Spawning Area is comprised of **25% 20%** or more spawn herring then the closure shall be extended for an additional 14-days. Any closure extension shall be announced in accordance with 322 CMR 9.03(d)(i-iii).
- f. Limits on Sea Herring During the Closure. During the Massachusetts/New Hampshire Spawning Area Closure, or an extension thereof, it shall be unlawful for any vessel to possess or land more than 2,000 pounds of sea herring caught within the Massachusetts/New Hampshire Spawning Area.

9.04: Vessel Size Limit

It shall be unlawful for any vessel greater than 165 feet in overall length and 3,000 horsepower to land sea herring in the Commonwealth.

9.05 Fishing Limits for Management Area 1A

- (1) **January 1 – May 31**. During this period the commercial fishery for Atlantic sea herring in Management Area 1A is closed and it shall be unlawful for any commercial fisherman to retain, possess or land any Atlantic sea herring taken from Management Area 1A, except as authorized at 322 CMR 9.05(4).

- (2) **June 1 – December 31.** During this period it shall be unlawful for any commercial fisherman to retain, possess or land any Atlantic sea herring taken from Management Area 1A, except if the commercial fisherman holds a federal category Atlantic sea herring permit and has been issued a Statement of Permit Conditions by the Director, in accordance with 322 CMR 7.01(7), to implement those landing limits approved by the Atlantic States Marine Fishery Commission’s Sea Herring Section.
- (3) **Quota Closure.**
 - a. **Management Area 1A Fishery.** Once 92% of any seasonal quota allocation for Management Area 1A, established by the ASMFC Atlantic Sea Herring Board, is projected to be landed, the Division shall close the Atlantic sea herring fishery in Management Area 1A in accordance with 322 CMR 6.41(2).
 - b. **Coastwide Atlantic Sea Herring Fishery.** Once 95% of the annual Atlantic sea herring quota, as established by NOAA Fisheries, is projected to be landed, the Division shall close the Atlantic sea herring fishery in Management Area 1A in accordance with 322 CMR 6.41(2).
- (4) **Incidental Catch and Small-Scale Fishery Allowance During Closed Periods.** During any closed period established at 322 CMR 9.05 commercial fishermen may land up to 2,000 pounds of Atlantic sea herring during any trip or calendar day, whichever period of time is longer.

9.05: Fishing Restrictions & Annual Specifications

(1) Annual Specifications

- a. ~~Declaration of Limits. For Management Areas 1A, 1B, 2 and 3, as defined at 322 CMR 9.02, the Director may declare and adjust Atlantic sea herring commercial possession and landing limits, seasons, and no fishing days to correspond to the limits established by the Atlantic States Marine Fisheries Commission, in accordance with 322 CMR 9.05(1)(b).~~
- b. ~~Declaration Process. The Director shall make such declarations and adjustments described at 322 CMR 9.05(1)(a), as follows:~~
 - i. ~~obtain written approval by a majority of the members of the Massachusetts Marine Fisheries Advisory Commission;~~
 - ii. ~~file a Notice of Declaration with the Secretary of State;~~
 - iii. ~~publish a Notice of Declaration through the Division’s electronic listserv and on the Division’s website; and~~
 - iv. ~~provide a Notice of Declaration directly to all primary buyers by e-mail or facsimile.~~

(2) Commercial Fishery Limits.

- a. ~~General Provisions. It is unlawful for a vessel to possess or land Atlantic sea herring taken from Management Areas 1A, 1B, 2, or 3, as defined at 322 CMR 9.02, once the Director has closed the commercial Atlantic sea herring fishery in Massachusetts, in accordance with quota closure procedure 322 CMR 6.42. The Director will close the fishery in response to a written determination by the Atlantic States Marine Fisheries Commission, after its review of Atlantic sea herring landings, that the Atlantic sea herring quota has been landed by the commercial fishery.~~
- b. ~~Rules Specific to Management Areas. It shall be unlawful for any vessel to possess or land Atlantic sea herring taken from Management Area 1A, 1B, 2, or 3, as defined at 322 CMR 9.02, under the following circumstances:~~
 - i. ~~Contrary to Management Area specific limits established by the Atlantic States Marine Fisheries Advisory Commission and implemented by the Director through a Declaration in accordance with 322 CMR 9.05(1); or~~
 - ii. ~~Once the Director has closed the commercial Atlantic sea herring fishery in Massachusetts for that specific management area, in accordance with quota closure procedure 322 CMR 6.42. The Director will close the fishery in response to a written determination by the Atlantic States Marine Fisheries Commission, after its review of Atlantic sea herring landings, that the Atlantic sea herring management area quota for Management Areas 1A, 1B, 2 or 3 has been landed by the commercial fishery.~~

(3) Exceptions.

- (a) ~~Any vessel may land or possess up to 2,000 lbs. of sea herring during prohibited times established by 322 CMR 9.05.~~



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

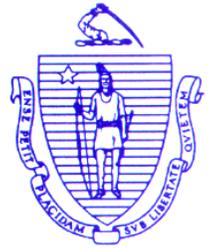
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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Acting Director

DATE: March 27, 2020

SUBJECT: **Final Recommendation on Edible Crab Regulations**

This memo includes final recommendations to adopt revised regulations pertaining to edible crabs. To provide context to these decisions, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I recommend the following changes to the state’s regulations pertaining to edible crabs:

1. Consolidate existing cancer crab and blue crab regulations in a single regulatory section under the header of Management of Edible Crabs;
2. Define the term “edible crab” to exclude invasive species (e.g., green crabs).
3. Clarify that a non-commercial lobster and edible crab permit is needed only to take lobsters and edible crabs by five or six sided traps and is not needed to harvest edible crabs by other means (e.g., dip net).

Difference from Public Hearing Proposal

This final regulatory recommendation is consistent with the public hearing proposal. Background on the public hearing proposal is described in my December 19 memo to the MFAC, “[Regulatory Housekeeping Proposal](#).”

Public Comment

The [public hearing notice](#) was issued of February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation. DMF received no public comment in opposition to this proposal and that comment received supported the recommendation.

Discussion

This is principally a housekeeping measure to consolidate and clarify existing regulations. However, by virtue of defining edible crabs to not include invasive species, DMF will be able to clarify that under state law a commercial lobster permit is not needed to harvest and sell invasive crab species to consumer markets. This may help accommodate the eradication of these species, particularly if they become marketable.

Final Proposed Regulatory Language

6.19: ~~Blue Crab Restrictions~~

~~(1) Definition.~~

~~Blue Crab means that species of crustacean known as *Callinectes sapidus*.~~

~~(2) Minimum Size. No person shall take, offer for sale, or possess at any time any blue crab measuring less than five inches across the shell from tip to tip of the posterior-most, longest spines along the lateral margins of the carapace.~~

~~(3) Possession Limits. It shall be unlawful for any recreational fisherman or commercial fisherman to take or possess:~~

~~(a) more than 25 blue crabs per 24-hour day; or~~

~~(b) any egg-bearing blue crab or female crabs with the egg mass (sponge), egg pouch or bunion removed at any time.~~

6.19: Edible Crab Management

(1) Definitions. For the purpose of 322 CMR 6.19, the following words shall have the following meaning:

Asian Shore Crab means that species of crustacean known as *Hemigrapsus sanguineus*.

Blue Crab means that species of crustacean known as *Callinectes sapidus*.

Cancer Crab means that genus of crustacean that includes Jonah crab (*Cancer borealis*) and rock crab (*Cancer irroratus*).

Commercial Fisherman means any person who holds a commercial coastal or offshore lobster permit, issued by the Director in accordance with M.G.L. c. 130, §§ 37, 38 and 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits*, 7.03: *Coastal Lobster Permit and Trap Allocation Transfer Programs*, and 7.08: *Offshore Lobster Fishery Control Date and Moratorium*, to take, possess and land lobsters and edible crabs in the Commonwealth of Massachusetts for the purpose of sale, barter, or exchange or keep for personal or family use any edible crabs, including Cancer crabs, taken under the authority of the commercial coastal or offshore lobster permit.

Dealer means wholesale or retail seafood dealer permitted by the Director pursuant to M.G.L. c. 130, § 80, and 322 CMR 7.01(3): *Dealer Permits*.

Director means the Director of the Division of Marine Fisheries or their designee.

Edible Crab means blue crabs, Cancer crabs, and other native species of crabs that are suitable for human consumption. This shall not include species of non-native crabs, including but not limited to the European green crab or the Asian shore crab.

Gillnet means any anchored vertical wall of webbing that is buoyed at the top and weighted at the bottom and is designed to capture fish by entanglement, gilling or wedging.

Green crab means that species of crustacean known as *Carcinus maenas*.

Incidental Catch means fish, shellfish or other marine species, taken by a gear that is not the primary species targeted by that gear.

Jonah Crab means the species of crustacean known as *Cancer borealis*.

Mobile Gear means any moveable or encircling fishing gear or nets which are towed, hauled or dragged through the water for the harvest of fish including, but not limited to, pair trawls, otter trawls, beam trawls, midwater trawls, Scottish seines, Danish seines, pair seines, purse seines or shellfish dredges.

Open or Collapsible Trap means any collapsible device constructed of wire or other material that is fished in an open configuration until retrieved.

Recreational Fisherman means any person who takes, possesses or lands edible crabs in the Commonwealth for personal or family use, sport or pleasure, which are not to be sold, traded or bartered.

Rock Crab means that species of crab known as *Cancer irroratus*.

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

(2) Permit Requirements.

(a) **Commercial.** A commercial coastal lobster permit, issued by the Director in accordance with G.L. c. 130 §§ 2, 37, 38, and 80 and 322 CMR 7.01(2) and 7.03, is required to retain, possess, or land edible crabs by any method or gear in the Commonwealth of Massachusetts for the purpose of sale, barter, or exchange.

(2) **Non-Commercial.** A non-commercial lobster and edible crab permit, issued by the Director in accordance with G.L. c. 130 §38 and 322 CMR 7.01(4)(b)(2), is required to fish for edible crabs with trap gear or retain, possess, or land edible crabs taken by trap gear in the waters under the jurisdiction of the Commonwealth of Massachusetts for personal or familial use and which are not to be sold, traded, or bartered. No permit is required to fish for, retain, or land edible crabs taken by hand, handline, dip net, or open and collapsible trap.

(3) Size Limits.

(a) **Blue Crabs.** No person shall take, offer for sale, or possess at any time any blue crab measuring less than five inches across the shell from tip to tip of the posterior-most, longest spines along the lateral margins of the carapace.

(b) **Jonah Crabs.** Commercial fishermen and dealers shall not take, possess, or land Jonah crabs that have a carapace width less than 4 3/4" inch.

(c) **Mutilation.** The mutilation of any edible crab regulated by a size limit which affects its measurement shall be prima facie evidence that the edible crab was or is less than the required length.

(d) **Disposition.** Commercial and recreational fishermen shall not land any parts of a Cancer crab other than a whole Cancer crab.

(4) **Egg Bearing Crabs.** It shall be unlawful for any person to take, possess, or land any Cancer crab or blue crab that is egg bearing, from which eggs have been removed, or has come in contact with any substance capable of removing eggs.

(5) Cancer Crab Rules for Commercial Fishermen Using Lobster Trap Gear.

(a) Commercial fisherman are prohibited from setting any lobster trap gear to take or attempt to take Cancer crabs, unless the lobster trap gear complies with the applicable:

1. trap gear marking regulations at 322 CMR 4.13: *Trap Gear Marking and Maximum Trawl Length*;
2. lobster gear restrictions at 322 CMR 6.02(1);
3. lobster trap limits or allocations at 322 CMR 6.13;
4. lobster trap tag requirements at 322 CMR 6.31(a); and
5. protected species regulations at 322 CMR 12.00: *Protected Species*.

(b) **Catch Limits.** For commercial fishermen fishing exclusively with lobster trap gear in accordance with 322 CMR 6.44(4), there shall be no catch, possession or landing limit for Cancer crabs.

(6) Cancer Crab Rules for Commercial Fishermen Using Gillnets or Mobile Gear.

(a) **Incidental Catch Limit.** Commercial fishermen fishing with gillnets or mobile gear may possess and land an incidental catch of up to 1,000 Cancer crabs per calendar day or per trip, whichever duration is longer. It is unlawful at any time for the incidental catch of Cancer crabs to exceed 50% the catch in weight of other species onboard.

(b) **Catch Limit Exemption.** The incidental catch limit at 322 CMR 6.44(5)(a) shall not apply to any commercial fisherman who has obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.

(7) Cancer Crab Possession Limits for Recreational Fishermen. It shall be unlawful for a recreational fisherman to take, possess or land more than 50 Cancer crabs per calendar day or possess more than 50 Cancer crabs while fishing. This limit shall not apply to any fisherman how has obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.

(8) Blue Crab Possession Limits. It shall be unlawful for any recreational fisherman or commercial fisherman to take, possess, or land more than 25 blue crabs within a 24-hour period.

(9) Night Closure. It shall be unlawful for any person to tend, lift, raise, or draw any trap or to take edible crabs from a trap from one-half hour after sunset to one-half hour before sunrise. This shall not apply to the taking of edible crabs by hand, handline, dip net, or open and collapsible trap.

6.44: ~~Cancer Crab Management~~

~~(1) Definitions:~~

~~Cancer Crab means that genus of crab, that includes Jonah crab (*Cancer borealis*) and rock crab (*Cancer irroratus*).~~

~~Commercial Fisherman means any person who holds a commercial coastal or offshore lobster permit, issued by the Director in accordance with M.G.L. c. 130, §§ 37, 38 and 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits, 7.03: Coastal Lobster Permit and Trap Allocation Transfer Programs, and 7.08: Offshore Lobster Fishery Control Date and Moratorium*, to take, possess and land lobsters and edible crabs in the Commonwealth of Massachusetts for the purpose of sale, barter, or exchange or keep for personal or family use any edible crabs, including cancer crabs, taken under the authority of the commercial coastal or offshore lobster permit.~~

~~Dealer means wholesale or retail seafood dealer permitted by the Director pursuant to M.G.L. c. 130, § 80, and 322 CMR 7.01(3): *Dealer Permits*.~~

~~Gillnet means any anchored vertical wall of webbing that is buoyed at the top and weighted at the bottom and is designed to capture fish by entanglement, gilling or wedging.~~

~~Incidental Catch means fish, shellfish or other marine species, taken by a gear that is not the primary species targeted by that gear.~~

~~Jonah Crab means the species of crab known as *Cancer borealis*.~~

~~Mobile Gear means any moveable or encircling fishing gear or nets which are towed, hauled or dragged through the water for the harvest of fish including, but not limited to, pair trawls, otter trawls, beam trawls, midwater trawls, Scottish seines, Danish seines, pair seines, purse seines or shellfish dredges.~~

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

~~Recreational Fisherman means any person who takes, possesses or lands edible crabs, including cancer crabs, in the Commonwealth for personal or family use, sport or pleasure, which are not to be sold, traded or bartered.~~

~~Rock Crab means that species of crab known as *Cancer irroratus*.~~

~~(2) Permit Requirements. A commercial coastal or offshore lobster permit, issued by the Director in accordance with M.G.L. c. 130, §§ 37, 38 and 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits, 7.03: Coastal Lobster Permit and Trap Allocation Transfer Programs, and 7.08: Offshore Lobster Permit Control Date, Moratorium, and Transfers* is required to take, possess or land cancer crabs by any method or gear in the Commonwealth of Massachusetts for the purpose of sale, barter or exchange.~~

~~(3) General Requirements:~~

~~(a) Size Limit. Commercial fishermen and dealers are prohibited from taking, possessing or landing jonah crabs that have a carapace width less than 4 $\frac{3}{4}$ inch. The mutilation of any Jonah~~

~~crab which affects its measurement shall be prima facie evidence that the Jonah crab was or is less than the required length.~~

~~(b) Disposition. Commercial and recreational fishermen are prohibited from landing any parts of cancer crabs other than whole cancer crab.~~

~~(c) Egg Bearing Females. Commercial and recreational fishermen and dealers are prohibited from taking, possessing or landing female cancer crabs:~~

- ~~1. that are egg bearing;~~
- ~~2. from which eggs have been removed; or~~
- ~~3. that have come in contact with any substance capable of removing eggs.~~

~~(4) Commercial Fishermen Using Lobster Trap Gear.~~

~~(a) Commercial fisherman are prohibited from setting any lobster trap gear to take or attempt to take cancer crabs, unless the lobster trap gear complies with the applicable:~~

- ~~1. trap gear marking regulations at 322 CMR 4.13: Trap Gear Marking and Maximum Trawl Length;~~
- ~~2. lobster gear restrictions at 322 CMR 6.02(1);~~
- ~~3. lobster trap limits or allocations at 322 CMR 6.13;~~
- ~~4. lobster trap tag requirements at 322 CMR 6.31(a); and~~
- ~~5. protected species regulations at 322 CMR 12.00: Protected Species.~~

~~(b) Catch Limits. For commercial fishermen fishing exclusively with lobster trap gear in accordance with 322 CMR 6.44(4), there shall be no catch, possession or landing limit for cancer crabs.~~

~~(5) Commercial Fishermen Using Gillnets or Mobile Gear.~~

~~(a) Incidental Catch Limit. Commercial fishermen fishing with gillnets or mobile gear may possess and land an incidental catch of up to 1,000 cancer crabs per calendar day or per trip, whichever duration is longer. It is unlawful at any time for the incidental catch of cancer crabs to exceed 50% the catch in weight of other species onboard.~~

~~(c) Catch Limit Exemption. The incidental catch limit at 322 CMR 6.44(5)(a) shall not apply to any commercial fisherman who has obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.~~

~~(6) Recreational Fishing Limits: Catch Limits. It shall be unlawful for a recreational fisherman to take, possess or land more than 50 cancer crabs per calendar day or possess more than 50 cancer crabs while fishing. This limit shall not apply to any fishermen who have obtained rock crabs from lawfully permitted dealers for the purpose of use as bait.~~

6.44 Reserved for Future Regulation

7.01: Form, Use and Contents of Permits

(4) Special Permits. The following special permits may be issued by the Director for the following activities:

(b) Non-commercial Fishing Permits.

1. Recreational Saltwater Fishing Permits. Pursuant to M.G.L. c. 130, § 17C and 322 CMR 7.10, the Director may issue a recreational saltwater fishing permit to authorize:

- a. recreational saltwater fishing; and
- b. for-hire vessels.

2. Non-commercial Lobster and Edible Crab. Pursuant to M.G.L. c. 130, § 38, the Director may issue a non-commercial lobster **and edible crab** permit to authorize:

a. Pot-Trap Fishing. Issued to a named individual authorizing the harvest, possession and landing of lobsters **and edible crabs** by means of **traps pots** for non-commercial purposes by that individual or by members of that individual's immediate family residing in the same household.

b. Diver Fishing. Issued to a named individual authorizing the harvest, possession and landing of lobsters by diving for non-commercial purposes by that individual only. A

noncommercial lobster permit may not be carried on board any vessel fishing under authority of an offshore lobster permit.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

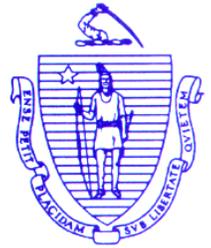
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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Acting Director

DATE: March 27, 2020

SUBJECT: **Final Actions on Permitting Housekeeping Regulations**

This memo includes several final actions that I intend to take to clarify existing permitting regulations. As this affects permitting and will not be filed pursuant to G.L. c. 130 s. 17A, it does not require the approval of the MFAC. However, I'd appreciate the perspective of Commission members before I take action to finalize this rule. To provide context to these decisions, I have also included a review of the public hearing proposal, a summary of public comment, some discussion about my decision making, and final strikethrough regulations.

Final Recommendation

I recommend the following changes to the state's permitting regulations:

1. For lobster fisheries with effort control plans, allow a minimum trap allocation transfer of 10 traps, rather than the current 50 trap rule and eliminate the language that requires coastal lobster permits be retired once trap allocations are reduced to less than 50 traps;
2. Clarify that for DMF to waive the coastal lobster permit transfer performance criteria in certain circumstances (i.e., death, disability, military duty) the permit must have been "actively fished" prior to the qualifying circumstance;
3. Make explicit that the initial sale of fish from any commercial fisherman must be to a primary buyer; and
4. Codify that the for-hire permit covers the recreational fishing activity of paying customers on a for-hire trip and the private recreational fishing activity of the named individual.

Difference from Public Hearing Proposal

This final regulatory recommendation is consistent with the public hearing proposal. Background on the public hearing proposal is described in my December 13 memo to the MFAC, "[Regulatory Housekeeping Proposals.](#)"

Public Comment

The [public hearing notice](#) was issued of February 7, with all written comments due by March 16. Hearings in Reading and Vineyard Haven, on March 10 and 12, occurred as scheduled. The hearing scheduled for March 12 in Buzzards Bay was cancelled due to the developing coronavirus situation. In response, the written comment period was extended two-days until March 18, which was as long as possible while still leaving time for final recommendations to be developed for the then-scheduled March 25 MFAC business meeting. The business meeting was later postponed until April 1 to account for the disruption to normal operating procedures caused by the developing coronavirus situation. DMF received no public comment regarding these proposals.

Discussion

Trap Allocation Transfer Rules

DMF permitting regulations currently require coastal lobster permits subject to effort control plans (e.g., LMA 2) to be retired when trap allocations fall below 50 traps and prevent the transfer of trap allocations when fewer than 50 traps are being sold. The state rules pre-date the federal rules but the federal rules are more liberal by allowing trap allocations to fall below 50 traps and trap allocation transfers to occur with as few as 10 traps. As many LMA2 permits include dual state-federal trap allocations, DMF has been waiving its regulatory requirements by policy to facilitate that consolidation of trap allocations. This action would codify this policy.

Actively Fished Criteria

To constrain the activation of latent effort, DMF regulations require Coastal Lobster permits for LMA1 to be actively fished for four out of the five years prior to transfer. For this fishery, actively fished means either more than 1,000 pounds of lobster sold or 20 sales of lobster in a calendar year. DMF may waive this criteria in the case of death, disability or military service. The purpose of this is to move the clock back to that time immediately before a certain circumstance occurred to determine if the permit was eligible. For instance, if a permit holder became disabled, felt they could recover and fish again, but were ultimately unable to do so then they would not lose their ability to transfer their permit. Instead, DMF would look back to before the disability occurred to see if the permit was fished rather than the period when they were attempting to recover. The action will clarify that when such a look back occurs, the “actively fished” criteria would apply.

Primary Buyer

DMF has longstanding rules that require primary buyers buy commercial catch only from permitted commercial fishermen. However, a corollary rule was never adopted to require commercial fishermen only sell their catch to a primary buyer. This was cited as a regulatory deficiency at a recent Law Enforcement Sub-Committee rule. This action seeks to remedy this deficiency and adopt the corollary rule. This will not prevent fishermen from selling their catch under the authority of a retail boat permit (or a bait permit), as they would be both the commercial fisherman and primary buyer. This does not alter existing restrictions on the direct sale of shellfish to the public by harvesters; shellfish are a high hazard food product, and the sale of shellfish to consumers is strictly regulated by the Department of Public Health’s Food Code.

For-Hire Permit Clarification

Since DMF established the recreational fishing permit in 2011, the agency has allowed the “for-hire” permit to serve as the individual private recreational fishing permit for the named individual. This was done to accommodate for-hire operators by not requiring they purchase a private recreational permit in addition to their for-hire permit. Accordingly, their for-hire permit would cover recreational fishing activity by paying patrons on their for-hire vessel and their own private recreational fishing activity. This interpretation has been published in our sportfish guide and in our annual letter to for-hire permit holders. The action is to also codify it in regulation. Codifying this rule may improve outreach and education, as we continue to field questions about how the for-hire permit applies.

Final Proposed Regulatory Language

7.03: Coastal Lobster Permit and Trap Allocation Transfer Programs

(1) Purpose and Scope. The purpose of 322 CMR 7.03 is to regulate the number of lobster traps on a regional and individual basis to prevent over-fishing within each Lobster Conservation Management Area (LCMA) managed by the Commonwealth through the ASMFC, and to establish a process to enable the transfer of existing commercial lobster permits and traps pursuant to M.G.L. c. 130, § 38B, and St. 1992, c. 369.

The American lobster fishery is the state's most economically important fishery conducted within the territorial waters. To meet conservation goals of the interstate plan specific to the nearshore waters around eastern Cape Cod and Southern New England, the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA) and Lobster Conservation Management Area 2 (LCMA 2) were developed, respectively. 322 CMR 7.03 details the effort control plans for the OCCLCMA and LCMA 2 comprised of trap limit programs and transfer programs as well as transfer regulations for the remainder of the coastal lobster fishery conducted in LCMA 1.

The transfer program for the coastal lobster fishery conducted in ~~Area~~ LCMA 1 allows permit holders to transfer their permits along with lobster related business assets under the historical transfer criteria developed for the coastal lobster fishery. Beginning in 2004; the only permit transfers allowed between LCMAs are those involving the transfer of a permit to an LCMA under management of an effort control plan. This will enable commercial fishermen to retain the maximum flexibility in the conduct of their businesses while ensuring conservation goals of any area-specific effort control plans are not comprised by increases in traps fished.

(2) Definitions. For the purposes of 322 CMR 7.03 the following words shall have the following meanings:

Actively Fished means landing and selling at least 1,000 lbs. of lobster or landing and selling lobster on at least 20 occasions, in a single year.

Allocation Transferee means the holder of a commercial lobster permit to whom a transfer of trap allocation is made.

Permit Holder means a holder of a coastal commercial lobster permit endorsed for either LCMAs 1, 2 or OCC.

Permit Transferee means the person to whom a commercial lobster permit is transferred who must document that he/she has at least one year of full-time or equivalent part-time experience in the commercial lobster trap fishery or two years of full-time or equivalent part-time experience in other commercial fisheries, according to criteria developed by the Division.

Transfer Trap Debit means the area-specific percentage of each allocation transfer transaction retained by the Division for conservation purposes as defined by the Division and subject to criteria developed by the Division, and not restricted by the Director under his authority to condition permits.

(3) Renewals.

(a) The Director shall renew all existing Coastal Commercial Lobster Permits in accordance with M.G.L. c.130, § 38B, and 322 CMR 7.01(2)(a) and (5)(f), provided that catch reports and renewal applications are received by February 28th and the renewal process, including late renewals approved for sufficient cause, is completed prior to December 31st of any year.

(b) Coastal Lobster Permit holders are prohibited from multiple LCMA endorsements, except those commercial lobster permits held by persons with valid federal authorization for LCMA 3 who may additionally receive authorization for either LCMA 1, 2 or Outer Cape Cod or those commercial lobster permit holders not fishing with trap gear who may additionally receive authorization for LCMA 1, 2, or Outer Cape Cod.

(c) Those authorized for more than one LCMA as designated on their permits shall observe the most restrictive of different regulations for the areas declared as established by 322 CMR and the ASMFC Lobster Management Plan.

(d) Coastal Lobster Permit holders are prohibited from making changes in area designations during the annual renewal period except to drop a LCMA or to add a LCMA under management of

an approved effort control plan for which the permit holder has received a LCMA-specific trap allocation.

(4) Forfeiture. All Coastal Lobster Permits which are not renewed in accordance with 322 CMR 7.03 shall be forfeited to the Division. The Director may transfer, in order, no more than 50% of the forfeited permits to waiting list applicants.

(5) Transfer Programs.

(a) OCC Transfer Program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the allocation or permit transferee, and must be notarized prior to submission to the Division. No applications may be accepted after November 30th for the following fishing year. Commercial lobster permit holders endorsed for Outer Cape Cod may:

1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
2. transfer all of their trap allocation to an allocation transferee; or
3. in compliance with 322 CMR 7.03(9)(d), transfer part of their transferable allocation in multiples of 50 traps to an allocation transferee.

(b) LCMA 2 Transfer Program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the allocation or permit transferee, and must be notarized prior to submission to the Division. No trap allocation transfer applications may be accepted after November 30th for the following fishing year. Commercial lobster permit holders endorsed for LCMA 2 may:

1. transfer their commercial lobster permit involving the sale or transfer their entire trap allocation;
2. transfer all of their trap allocation to an allocation transferee; or
3. transfer part of their transferable allocation in multiples of ~~50~~ 10 traps to an allocation transferee.

(c) LCMA 1 Transfer Program enables commercial lobster permit holders endorsed for LCMA 1 to transfer their permits to a permit transferee, provided the permit has been actively fished for four of the last five years, as evidenced by valid catch reports filed with the Division, subject to criteria developed by the Division, and is not restricted by the Director under his authority to prohibit transfers. The transfer program is administered by the Division. Applications for transfers shall be provided by the Division, must be signed by the permit holder and the transferee, and must be notarized prior to submission to the Division. Commercial lobster permit holders endorsed for LCMA 1 may transfer their commercial lobster permit involving the sale or transfer of lobster related business assets to a permit transferee.

(6) Restrictions.

(a) Transfers shall involve the sale or transfer of lobster related business assets.

(b) Permit and allocation transfers may be denied if any evidence of fraud is found, or the Director determines that the transfer is not in the best interests of the Commonwealth.

(c) All lobster businesses fishing under the authority of a coastal lobster permit as defined in 322 CMR 7.01(2)(a) shall be owner-operated.

(d) Trap Allocation transfers may be subject to a transfer trap debit of 10% of the total amount of traps transferred through the trap transfer process.

~~(e) Any permit holder authorized to fish traps in OCCLMA or LCMA 2 who transfers a portion of their Trap Allocation resulting in the Allocation totaling less than 50 traps shall have their permit retired immediately.~~

(e) ~~(f)~~ Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13: *Lobster Trap Limit in the Coastal Waters of the Commonwealth* shall be prohibited from transferring any part of their trap allocation except when transferring their commercial lobster permit.

(f) ~~(g)~~ Any permit holder issued a trap allocation based in part or whole upon SCUBA history as determined in 322 CMR 6.13: *Lobster Trap Limit in the Coastal Waters of the Commonwealth* shall be prohibited from transferring their trap allocation along with their commercial lobster permit until the permit has been actively fished for four of the last five years as evidenced by valid

catch reports filed with the Division, subject to criteria developed by the Division, and not restricted by the Director under his authority to prohibit transfers. Catch history prior to the issuance of a trap allocation shall not apply towards fulfilling meeting actively fished requirements.

(7) Exceptions.

~~(a) Performance criteria for permit holders as established by 322 CMR 7.03(2) may be waived for the following reasons:~~

~~1. documented disability of the permit holder, provided that the permit holder fished during at least four of the five years immediately preceding the disability as evidenced by catch reports, and provided further that a signed statement by a physician verifies the disability precludes the permit holder from fishing,~~

~~2. for the purposes of transferring a permit to an immediate family member, including transfers involving the death of the permit holder. Immediate family member shall mean the legal father, mother, wife, husband, sister, brother, son, daughter, or grandchild of the permit holder in the direct line.~~

(a) The permit holder's actively fished performance criteria for the Coastal Lobster Transfer programs, established at 322 CMR 7.03(5), may be waived by the Director in instances of posthumous transfer; a recent disability to the Coastal Lobster Permit holder; or for persons on active military duty, provided the permit holder actively fished their permit for four out of the past five years prior to death, disability, or military duty. In the case of disability, there must be a signed statement from a physician that verifies the disability prevented the permit holder from fishing.

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

~~(b)~~ (c) Performance criteria established by 322 CMR 7.03(5) shall be waived for forfeited permits issued to waiting list applicants.

~~(c)~~ (d) The requirement that permit holders be owner/operators may be waived through a letter of authorization issued by the Director that is subject to annual renewal. Letters of authorization may be issued **granted** for use of the permit and associated fishing operation that includes the gear and vessel owned by the permit holder that was actively fished prior to the request. Authorizations may be issued for permit holders on active military service or for immediate family members. For the recipient of a posthumous transfer, or disabled permit holder, authorizations may be issued for up to two years, provided the disability prevents the permit holder from fishing their permit as evidenced by a signed statement from a physician.

~~(d) The requirement that allocation transfers involve multiples of 50 traps may be waived for permit holders who transfer all of their transferable allocation.~~

(8) Waiting List. Persons on the established waiting list for Coastal Commercial Lobster Permits must reapply to hold their relative positions on the list prior to August 1, 1993, after which the list will be closed. Persons who can document, to the satisfaction of the Director, that, due to unforeseen circumstances, they were unable to reapply before the list closure date may be reinstated to the bottom of the waiting list.

(9) Prohibitions. It shall be unlawful:

(a) To loan, lease, or sell a Coastal Commercial Lobster Permit except under the provisions of 322 CMR 7.03.

(b) To submit false or incomplete forms or applications according to the provisions of M.G.L. c. 130, § 38B.

(c) For the holder of a Coastal Commercial Lobster Permit to acquire an additional permit(s) through a transfer pursuant to 322 CMR 7.03 or from the established waiting list unless specifically authorized by the Director as a means to mitigate trap allocation cuts required by the interstate management plan.

(d) for a Permit Holder to retain a trap allocation equal to less than **50 10** traps after they have transferred part of their trap allocation to another permit holder;

- (e) for a permit holder to retain a trap allocation greater than 800 traps after they receive a trap allocation from another permit holder unless specifically authorized by the Director as a means to mitigate trap allocation cuts required by the interstate management plan;
- (f) for allocation transfers to involve the transfer of traps outside of the specific LCMA for which the trap allocation is designated;
- (g) to transfer a commercial lobster permit from one LCMA to another LCMA unless the permit is transferred to an LCMA under management of an approved effort control plan for which the permit holder has received an LCMA-specific trap allocation.

7.07: Dealers Acting as Primary Buyers

(1) Purpose. The purpose of 322 CMR 7.07 is to establish consistent standards for dealers to purchase certain species from commercial fishermen managed by DMF, including those under commercial quotas pursuant to interstate and federal management plans. To provide a mechanism to collect and verify landings of all species landed and sold in Massachusetts, dealers are required to maintain and report on records concerning sale of fish within Massachusetts. In addition, dealers are required to provide access to said records to law enforcement officials at a permanent place of business within the Commonwealth.

(2) Definitions.

Dealer means any whole sale or retail seafood dealer permitted by the Director pursuant to G.L. c. 130 s. 80 and 322 CMR 7.01(3).

Primary Purchase means first commercial transaction by sale, barter or exchange of any fish or shellfish after its harvest.

Quota Managed Species means those species managed by DMF with annual commercial quotas pursuant to interstate and/or federal management plans. Quota managed species include striped bass, summer flounder, scup, black sea bass, spiny dogfish, squid, bluefish, horseshoe crabs and tautog.

(3) Authorization. ~~Dealers~~ **No persons shall ~~not~~ make a primary purchase of any species without being properly permitted by DMF as a dealer and authorized as a primary buyer.** In addition, dealers buying quota managed species must have written authorization from the Director.

(4) Dealer Requirements.

(a) Dealers must have a permanent place of business in Massachusetts. Dealers shall maintain a written record, at their Massachusetts place of business, of all primary purchases of any species from commercial fishermen in Massachusetts.

(b) Dealers accepting any species from fishermen shall record all purchases at the time of landing with number of containers per species, date, time, fishermen's name and DMF ~~iii~~ **commercial fisherman permit identification** number for reporting purposes and inspection by law enforcement officials. Each container shall be labeled with vessel name and fishermen's DMF ~~iii~~ **commercial fisherman permit identification** number to identify who the product was purchased from.

(c) Dealers shall report all purchases of all species either electronically or by phone or in writing based on schedules established and on forms provided by the Division.

(5) Prohibitions. It is unlawful for dealers:

(a) to purchase any species in excess of any species-specific possession limits established by 322 CMR from a single commercial fisherman regardless of the number of commercial fisherman permits in possession.

(b) to purchase any species when the commercial fishery for that species is closed.

(c) to accept or purchase any species from commercial fishermen during any species-specific no-fishing days established by any section of 322 CMR or during those species-specific hours of the day when landing is prohibited established by any section of 322 CMR.

(d) to accept any species of fish from persons not commercially permitted by DMF.

- (6) Exceptions. Prohibitions in 322 CMR 7.07(5)(a) through (c) shall not apply to the purchase of aquaculture-reared product.

7.10: Recreational Saltwater Fishing Permits

(1) Authority and Purpose.

(a) The Director is authorized, pursuant to St. 2009, c. 161, § 8, to establish the Commonwealth's recreational saltwater fishing permit program in compliance with the state exemption requirements of section 401(g)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1881 (the "Federal Act"). The Director, pursuant to his authority under the Federal Act, and M.G.L. c. 130, §§ 17 and 17A, has promulgated 322 CMR 7.10 for the purposes of implementing the state recreational saltwater fishing permit program in regulation.

(b) 322 CMR 7.10 identifies the persons who must apply for or are exempt from a recreational saltwater fishing permit, sets forth the application and permit requirements applicable to individual and for-hire permits, and gives notice of the penalties that may be assessed against persons who violate M.G.L. c. 130, § 17C, or 322 CMR 7.10.

- (2) Definitions. As used in 322 CMR 7.10, the definitions have the following meaning, unless the context otherwise requires. Other words used in 322 CMR 7.10 have the meaning set forth in 322 CMR 7.01(1).

For-Hire means that activity permitted in accordance with G.L. c. 130 s. 17C and 322 CMR 7.10(5), whereby the vessel named on the for-hire permit is carrying paying customers for the purpose of recreational fishing.

Recreational Fishing means the non-commercial taking or attempted taking of finfish for personal or family use, sport, or pleasure, and which are not sold, traded or bartered.

Trip means the period of time that begins when the fishing vessel departs from the dock, berth, mooring, beach, seawall, ramp, or port to carry out recreational fishing and terminates with a return to a dock, berth, mooring, beach, seawall, ramp, or port.

- (3) Persons Required to Obtain a Permit. Unless exempted pursuant to 322 CMR 7.10(4), all persons engaged in the recreational fishing, or who take or land finfish for recreational purposes in or from the coastal waters of the Commonwealth, shall obtain a recreational saltwater fishing permit from the Director in accordance with 322 CMR 7.10.

- (4) Persons Exempt from Obtaining a Permit. A recreational saltwater fishing permit is not required in the following circumstances:

(a) persons younger than 16 years old;

(b) persons who, regardless of their age, otherwise meet the definition of a disabled person in M.G.L. c. 19C;

(c) persons fishing **during a for-hire trip conducted under the authority of a for-hire permit issued in accordance with G.L. c. 130 s. 17C and 322 CMR 7.10(5). ~~as a passenger from a for-hire vessel; provided that the owner of the vessel has obtained a for-hire permit from the Director in accordance with 322 CMR 7.10;~~**

(d) persons who hold a commercial fishing permit from the Director and keep for personal use any fish taken under the authority of that permit **in accordance with the applicable commercial fishing regulations set forth at 322 CMR 6.00 or 9.00;** or

(e) non-resident persons holding a valid recreational saltwater fishing permit of any coastal state, provided however, that the Director has determined in writing that the requirements of such other state permit is substantially the same as the permit issued by the Director pursuant to 322 CMR 7.10 and that the other state provides similar privileges granted under its law to residents as permitted by the Director.

- (5) For-Hire Permit Requirements ~~Applicable to For-hire Vessels~~. The Director may issue a recreational for-hire permit to a named individual for use onboard the vessel identified on the permit application. This permit shall cover all recreational fishing by recreational anglers onboard the for-hire vessel during a for-hire trip, as well as any private recreational fishing

conducted by the individual person named on the for-hire permit. ~~As provided in 322 CMR 7.10(4)(c), persons who engage in recreational fishing as a passenger from a for-hire vessel are exempt from the requirement to obtain an individual recreational saltwater permit, ; provided that the owner of the for-hire vessel has obtained a permit from the Director. The owner of the for-hire vessel shall obtain the applicable recreational saltwater fishing permit in accordance with permit categories for the following for-hire permit categories:~~

- (a) Permit Categories. The following for-hire permit categories are available based on vessel capacity:
 - 1. Charter Boat. The for-hire vessel has a capacity to carry up to six persons fishing as passengers from the for-hire vessel.
 - 2. Head Boat. The for-hire vessel has a capacity to carry seven or more persons fishing as passengers from the for-hire vessel.
 - (b) Requirement to Post and Give Notice of Rules. The owner or operator, if different from the owner, of a for-hire vessel shall:
 - 1. Charter Boats: give verbal notice to all persons fishing as passengers from the vessel about their compliance with the catch sizes and possession limits.
 - 2. Head Boats:
 - a. post written rules on the minimum catch sizes and possession limits applicable to the target fish species in a conspicuous and accessible location on the vessel; and
 - b. give verbal notice to all persons fishing as passengers from the vessel about their compliance with the catch sizes and possession limits, and direct their attention to the posted rules.
 - (c) Requirement to Carry Measuring Devices. For the purposes of ensuring compliance with the minimum catch size rules:
 - 1. all charter boats shall be equipped with at least one ruler or other appropriate measuring device that is visible and accessible to the passengers; and
 - 2. all head boats shall be equipped with at least five rulers or other appropriate measuring devices that is visible and accessible to the passengers.
- (6) Application for a Permit. All applicants for a recreational saltwater fishing permit shall comply with the following requirements:
- (a) Application Forms. Application for a recreational saltwater fishing permit shall be made by completing the applicable application form provided by the Director, and by paying the application fee, if applicable, established in 801 CMR 4.00: *Rates*.
 - (b) Information Required to Be Provided by the Applicant. In order for an application for a recreational saltwater fishing permit to be considered complete, the applicant shall provide the following information to the Director:
 - 1. An applicant seeking an individual permit shall provide their full name, address, date of birth, and telephone number;
 - 2. An applicant seeking a for-hire vessel permit shall provide the following information about the vessel and the owner, and if applicable, the operator:
 - a. the name of the vessel, the vessel's registration or documentation number and the vessel's home port;
 - b. the full name, address, date of birth and telephone number of the owner of the vessel; if there is more than one owner, this identification information shall be provided by each person holding an ownership interest in the vessel;
 - c. the full name, address and telephone number of the operator; if the operator is different from the vessel owner;
 - d. if the owner or operator of the vessel is a corporation or other legal entity, the name, address and any other identification information specified in the application form; and
 - e. any other information deemed necessary or appropriate by the Director to complete the Division's review and action on the application.
 - (c) Completeness of the Application. The Director shall not issue a recreational saltwater fishing permit before receiving a complete application and payment of the application fee, if applicable, as required under 322 CMR 7.10(6).

(7) Permit Conditions. The Director may include general or special conditions in recreational saltwater fishing permits to provide for and ensure compliance with the requirements of M.G.L. c. 130, § 17C, or 322 CMR 7.10.

(8) Penalties for Violations of M.G.L. c. 130, § 17C, or 322 CMR 7.10. Any person who violates M.G.L. c. 130, § 17C, or 322 CMR 7.10 may be subject to one or more of the following penalties:

- (a) the suspension or revocation of the recreational saltwater fishing permit, or the suspension or revocation of a non-resident's authorization to engage in recreational fishing in the coastal waters of the Commonwealth;
- (b) the confiscation of all finfish caught, possessed or sold in violation of M.G.L. c. 130, § 17C, or 322 CMR 7.10;
- (c) a non-criminal fine in the amount of \$50, as provided under M.G.L. c. 21A, §§ 10G and 10H;
- (d) when the violator has failed to obtain an individual permit, a criminal fine of not less \$50 nor more than \$250;
- (e) when the violator has failed to obtain an individual permit and has two or more such offenses in violation of M.G.L. c. 130, § 17C, or 322 CMR 7.10, a criminal fine of not less \$100 nor more than \$500;
- (f) when the violator has failed to obtain, or is the holder of, a for-hire permit and the offense is a violation of 322 CMR 7.10, a criminal fine of not less \$250 nor more than \$1000;
- (g) when the violator has failed to obtain, or is the holder of, a for-hire permit and has two or more offenses in violation of 322 CMR 7.10, a criminal fine of not less \$500 nor more than \$1000;
- (h) when the violator has failed to obtain, or is the holder of, a for-hire permit and the offense is a violation of M.G.L. c. 130, § 17C, a criminal fine of not less \$500 nor more than \$5000;
- (i) when the violator has failed to obtain, or is the holder of, a for-hire permit and has two or more offenses in violation of M.G.L. c. 130, § 17C, a criminal fine of not less \$1000 nor more than \$5000; and
- (j) any other sanction or penalty authorized under M.G.L. c. 130.

(9) Permit Fees.

- (a) The Director may charge a separate annual fee for each category of permits established by the Director pursuant to 322 CMR 7.10, provided that the amount of such permit fees shall be established by the Secretary of Administration and Finance pursuant to M.G.L. c. 7, § 3B.
- (b) The Director or agents authorized by the Director to sell permits may not charge a permit fee to those persons applying for an individual recreational saltwater fishing permit who at the time of the permit application are 60 years of age or older.



Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

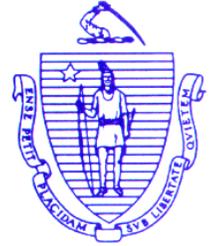
Division of Marine Fisheries

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Secretary

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Commissioner

Mary-Lee King

Deputy Commissioner

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
THRU: Daniel J. McKiernan, Acting Director 
FROM: Jared Silva, Policy Analyst
DATE: March 5, 2020
SUBJECT: Summary of Interagency Meeting Regarding Fishing Related Issues on the Cape Cod Canal

On February 27, 2020, DMF and DFG staff met with members of the MFAC, the MA Environmental Police (MEP), Army Corps of Engineers (ACOE) and the Bourne Police Department. The purpose of the meeting was to discuss issues related to fishing along the Cape Cod Canal (“Canal”). In attendance were: DFG Commissioner Ron Amidon; DMF Acting Director Dan McKiernan, DMF Assistant Director Mike Armstrong, and DMF policy analysts Jared Silva and Nichola Meserve; MFAC members Mike Pierdinock, Bill Doyle, and Kalil Boghdan; MEP Major Pat Moran, Captain Kevin Clayton, Lt. Matt Bass, Lt. Pat Grady, and Ofc. Michael Cole; ACOE representatives Joe Mazzola, John MacPherson and Michele Breen, and Bourne Police Sgt John Stowe.

ACOE opened the meeting by discussing their regulatory authority. Park regulations are located at 36 CFR and rangers are allowed to enforce these park rules. However, they do not have the powers of arrest and detention; if an incident escalates they must involve law enforcement. Rangers are also not allowed to patrol after midnight for self-defense and safety purposes (they do not carry weapons). Rangers also do not have the authority to inspect for or enforce state and local laws or regulations, including fishing rules. Lastly, ACOE legal counsel indicated that the project’s prohibition on unpermitted commercial activity does not extend to commercial fishing because there is no on-site commerce occurring.

ACOE went on to discuss their mission at the Canal. The Canal is primarily a shipping and transit corridor. However, the adjacent property is to be used to provide the public with access to a diversity of recreational opportunities. While fishing has always been a popular activity at the Canal, effort has increased in recent years. This was thought to be driven by social media, an abundance of large fish in the area, and the commercial value of striped bass. ACOE expressed strong concern regarding how fishing activity on commercial days and illegal commercial fishing activity on closed commercial fishing days was becoming incompatible with other recreational activities. Of particular concern, were user group conflicts, threats of violence, noise complaints, littering, public defecation, trespassing, parking shortages, and other nuisance activities. The

problems have become so acute that the ACOE has hired police details (Bourne Police Department and MEP) to patrol the area during times of peak activity.

DMF reviewed the management of striped bass in Massachusetts and the status of the resource. Mike Armstrong stated that striped bass tend to set up in certain areas within state waters in response to forage and water temperature. In recent years, striped bass did not aggregate in many of the usual areas, except for the Canal. This likely intensified fishing effort in the area. Dan McKiernan explained that the current ex-vessel value for striped bass is about \$5 per pound, making a commercial-sized fish worth about \$100. This has created a profit motive that may encourage some illegal fishing activity for striped bass. Dan then explained that DMF may manage the times, manner, and places where fishing may occur pursuant to the authority at G.L. c. 130 s. 17A. This authority is not limited to managing for conservation, but may also be used to manage user group conflicts. In fact, there was precedent for creating recreational only zones (e.g., Harwich reef) and managing the commercial striped bass fishery to minimize conflicts with other recreational activities (e.g., July 3rd and 4th closures).

The MEP then provided some insight into the various illegal fishing activities that they have encountered along the Canal. This includes the possession of undersized fish, possession of fish in excess of recreational and commercial limits, high-grading, sale of fish to entities that are not primary buyers, front loading before commercial days. MEP opined that the harvest of fish intended for sale was driving most of this illegal fishing activity. It was noted that the proposed recreational slot limit (28" to less than 35") provided a unique opportunity to address commercial fishing on the Canal. If this slot limit is adopted, and DMF increases the commercial minimum size to 35", then the recreational and commercial fisheries become segregated based on size. This will allow MEP to better differentiate between commercial and recreational fishing activity.

Given this, there was also support among attendees to consider making the Canal a "recreational only fishing area". If the Canal were to become such an area, then any angler retaining striped bass that measure 35" or larger or more than the one fish recreational bag limit would be in violation of the recreational only rule. This should improve enforcement and compliance and help validate enforcement tips from other anglers. Additionally, such an area would be compatible with the ACOE's mission at the Canal and would likely help to reduce some of the ongoing user group and public nuisance issues. Representatives from DMF, DFG, and the MFAC stated that strong documentation of these issues would be needed to justify any additional regulation.

ACOE indicated that they would internally discuss providing DMF and DFG with a letter providing incident documentation and the challenges fishing intensified. Both Bourne PD and MEP also stated they would review their records from prior years regarding Canal incidents and determine if there were trends that pointed to elevated activity on commercial fishing days. DMF asked that this documentation be provided to the agency by mid-March. This would allow for DMF to discuss this with the MFAC at their March meeting and weigh the appropriateness of taking any emergency action (if warranted) to address this issue in 2020.

Attachments

Meeting attendance roster

Meeting agenda

Meeting Agenda

Location: USACE Cape Cod Canal Project Office. 40 Academy Drive Buzzards Bay, MA 02532

Date: Thursday, February 27, 2020

Time: 10:30 am

Issues related to fishing at the Canal Project

- Overcrowding on the rip rap and on the service roads
- Littering and degradation of natural resources
- Noise complaints
- Parking congestion at access points and local roads

Fisheries Management Issues

- State recreation fishing and commercial fishing regulations
- Commercial fishing from shore
- Illegal fishing activity particularly on commercial days
- Challenge of enforcing state regulations

Jurisdiction and Authority

- USACE – Title 36 CFR
- MEP
- BPD
- DMF

Potential Solutions

Measuring Success

NAME / ORGANIZATION / Contact info

1 JOE MARZOLA / USACE / 978-318-8545
2 John MacPherson USACE 978-318-8176
3 John Stowe BOURNE PD 508-759-4420 X203
4 Mike Arns from MA DMF 978-888-6525
5 Daniel McKiernan MA DMF 617 413-2374
6 Jared Silva MA DMF ~~508~~ 617-626-1534
7 Nichola Meserve MA DMF 617-626-1531
8 MICHAEL PIERDINOLE MASS MFAC 617 291 8914
9 KALIL BOGH-DAN MASS-DMF-MFAC 978-407-7901
10 Matt Bass MEP 774-836-8081
11 Patrick Grady MEP 774 487-0086
12 Michael Cole MEP 617-416-9522
13 CAPT. KEVIN CLAYTON OELE 617-626-1665 RADIO Room
14 Bill Doyle MFAC 508 244 7441
15 Patrick Moran MEP 857-202-8391
16 Ronald Amidon OF&G 857-286-5379
17 Michele Breen USACE 978-318-8636

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Daniel J. McKiernan
Acting Director

Commonwealth of Massachusetts

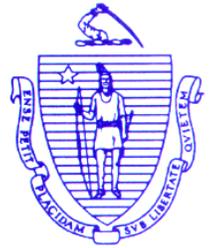
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MEMORANDUM

TO: Ronald Amidon, Commissioner
FROM: Daniel J. McKiernan, Acting Director *Daniel J. McKiernan*
DATE: March 20, 2020
SUBJECT: Summary of COVID-19 Emergency Impacts on Seafood Dealers and Seafood Supply

Massachusetts is home to some of the most prominent seafood firms in the country. DMF convened a conference call that included some of the largest seafood processing and distribution companies. The purpose of the call was to have each of the participants describe the impacts that the pandemic is having on the seafood markets, supply, and demand. This memo described the situation and includes some recommendations.

Attendees: Laura Ramsden (Foley Fish), Dave Coombs (Steve Connolly Seafood), Joe Furtado (Eastern Fisheries), Scott Hutchins (Raw Seafoods), Jason Hutchins (Raw Seafoods), Logan Clark (Lobster Trap), Nick Novello (Whole Foods Market), John Whiteside, Jared Auerbach (Red's Best), Tory Bramante (Atlantic Coast Seafood), Ray Kane (Cape Cod Commercial Fishermen's Association, Chairman MA Marine Fisheries Advisory Commission), Amanda Cousart (Cape Cod Commercial Fishermen's Association),

DMF Staff: Dan McKiernan, Story Reed, Wendy Mainardi, Melanie Griffin, Nichola Meserve

Key Outcomes:

- A detailed description of the seafood industry's losses. Descriptions of seafood industry's unprecedented impacts caused by reduced demand.
- If any "shelter in place" order is issued, the seafood industry must be exempted. This needs to be a clear directive from government that the exemption includes the entire seafood production industry from harvesters to retailers and include cold storage and transporters.
- Request from industry for state officials to lobby for insurance companies to allow this pandemic to be considered a cause for payouts to those businesses that have "business interruption" insurance.
- State and federal financial assistance is critical.

I opened the call by describing what actions DMF has taken this week:

- DMF approved re-submergence of oysters held by some dealers back to oyster farmers due to a loss of market.
- DMF is using its social media platforms to remind consumers that fresh seafood is available and is publishing a list of all active and participating retailers for consumers.

- DMF is accommodating fishermen unable to sell fish, lobsters and crabs to dealers by issuing “Retail Boat permits” and we have waived the \$65 fee.
- Coordinated this summarized conference call to learn about the impacts of reduced demand and other consequences of the pandemic.

Call Summary

It was stated that about **70% of all seafood is consumed in restaurants** so the complete shutdown of the restaurant, hotel, and convention industries has been devastating. The closure of these businesses is global so no alternative outlets can be found. Dealers had purchased seafood and were holding products for imminent shipping to hotels and restaurants but the abrupt closure meant the product had to be given away, destroyed, or frozen if possible.

The impact is seen to be especially severe for those seafood products that are kept alive such as oysters and lobsters. Overseas demand has dried up and even shipments overseas and to Canada have ceased. Lobster demand and prices have reached unprecedented lows. Lobster supply is usually low at this time of year and prices are consequently high in the \$7-10 per pound range. However, with the loss of demand, most dealers are refusing to buy lobster and those who are, are paying only around \$2.50 per pound at most. There has been discussion in Canada and Maine about closing the fishery, but it appears the market will dictate the outcome and most harvesters will simply not fish because there are no buyers willing to purchase. These live perishable products must be moved and because they could not be sold, one participant reported they simply gave the employees bags of shellfish to take home, at a total loss to the wholesaler.

Finfish demand is at an all-time low and dealers are advising most fishermen not to leave port because the fish cannot be sold. Prices being paid to fishermen for most fresh fish is below the usual costs to operate their businesses. Fishermen cannot anticipate the short term or long-term prognosis to make business decisions about when to resume fishing. There is a sense of bewilderment among fishermen who don't know what circumstances they will face even one week out or longer. The potential for increased demand remains uncertain as the spring and summer fisheries scale up. Without the re-opening of restaurants, it is unlikely the demand and ex-vessel prices can be restored.

Seafood dealers usually advise the vessels what species to catch and in what quantity depending on current and anticipated demand but even this is completely unknown. In the case of groundfish (cod, haddock, flounders) many vessels have purchased or leased federal quota expecting to fish in March and April, two of the peak demand months. Inability to use this quota means fishermen are losing money even without fishing. It remains to be seen if federal regulators will allow uncaught quota to be rolled over (in sufficient quantities) to the next fishing year that begins May 1.

The demand for fresh fish products is especially diminished but there has been some uptick in frozen portions and “tray packs” – fish that is sold in portions for supermarkets and other food service providers. All call participants agreed that the modest uptick in these products' demand cannot make up for the huge loss of restaurant demand. However, there is increased demand for frozen portions and in retail settings. This should be promoted, but it is clear that the loss of restaurant trade prevents the demand (and ex-vessel prices) from approaching normal levels.

While some retailers and restaurants have responded by converting to take-out and drive-through models, it has not mitigated the overwhelming loss of business. Members on the call were especially hurt by the last-minute announcement of restaurant ban. Dealers have inventory of fish and shellfish and are unable to sell it to anyone. One participant suggested the government could pay for some of these products placed into frozen storage and these products could be given to

front-line recipients such as nursing homes, hospitals, and food banks. Layoffs have begun and will continue at these businesses. State and federal unemployment is critically needed.

Much concern was aired about a possible “Shelter in Place” order. If it occurs, members of the call want state government leaders to declare that food production and distribution will be exempt. This would include all parts of the seafood production and distribution chain: harvesters, dealers, processors, distributors, cold storage, and retailers should be exempt. Moreover, they hoped the governor would state on the record that workers on all these levels are integral to the supply of food.

Call participants feared losing employees to illness spreads among their ranks. If that occurs there will be a labor shortage.

Finally, there was some discussion about “Business Interruption Insurance.” One participant reported the state of Pennsylvania was lobbying the insurance industry to allow this pandemic to count as a triggering factor allowing payouts for those with business interruption insurance. If successful, this action would be a substantial benefit for some companies.

Shellfish Aquaculture Regulation in Massachusetts – opportunity and challenge

Background:

“Managed cultivation of shellfish and crustaceans in Massachusetts originated with the native Americans and was adopted by the early settlers on Cape Cod. It was not until the 1970's and 1980's, however, that efficient and viable hatchery and grow-out techniques were proven effective on a larger, commercial scale.”¹ However, as a “Commonwealth” Massachusetts has historically seen a great deal of regulatory oversight and authority delegated by state agencies or the legislature to municipal governments. In fact Massachusetts General Laws (MGL) Chapter 130 section 52 provides broad authority to municipal authorities to “control, regulate or prohibit the taking of eels and any or all kinds of shellfish and sea worms...” and further stipulates that municipalities may “make any regulations not contrary to law in regard to said fisheries as they deem expedient, including the times, places, methods, purposes, uses, sizes, quantities and any other particulars of such taking, and may grant permits, and establish the fees therefor, subject to any such regulation, then or thereafter in force.” MGL 130 Section 98 also states “each city and town bordering on coastal waters the mayor or the selectmen, as the case may be, shall appoint a person or persons, qualified by training and experience in the field of shellfishery management, as shellfish constables or deputy shellfish constables.” This same section of law further states that “They shall enforce all statutes, ordinances, by-laws, rules and regulations relative to shellfish in such city or town.” And relative to shellfish aquaculture, MGL Chapter 130 through section 57 grants municipal authorities the option to issue shellfish aquaculture licenses stating that “The city council or mayor of any city, or the selectmen of any town, may upon written application, accompanied by plans sufficient to show the intended project and project area to be licensed, and after public notice and hearing pursuant to section sixty, grant to any person a shellfish aquaculture license.”

In short, the broad regulatory authorities delegated to municipalities allow extensive local regulatory oversight for shellfish and shellfish aquaculture but importantly does not provide specific standards or parameters within which the regulations may be constructed. As a result, regulations, permits and licensing terms vary widely; from out-right prohibition of shellfish aquaculture, through regulations that constrain business development to a limited pro-active few that have supported shellfish aquaculture development.

Impact of Current Shellfish Aquaculture Regulatory Structure in Massachusetts:

Despite significant economic growth of shellfish aquaculture in Massachusetts, the foot-print of shellfish farms has comparatively grown little over the past 25 years. As evidence to the constraining impact that the current regulatory structure has on shellfish aquaculture, although thanks to individual grower ingenuity and increasing consumer demand production value has seen a 600% increase from approximately \$4 million farm gate value in 1992 to over \$28 million in 2018², however the footprint of shellfish farms in Massachusetts has increased by just over 100%, from 645 acres in 1994 to now around 1,300 acres³. Importantly, the current acreage under cultivation represents less than .09% of the current 1.5 million acres of coastal resource areas that are classified as “open” or “conditionally approved” for shellfish harvesting.

¹ Massachusetts Aquaculture White Paper and Strategic Plan, September 1995, MACZM

² Massachusetts Aquaculture White Paper and Strategic Plan, September 1995, MACZM and MDMF 2017 annual landing data

³ Ibid.

Furthermore, the value of farmed shellfish (oysters) harvested per acre for the for the towns that do allow shellfish aquaculture provides some indication of impact of aquaculture “friendly” regulatory conditions. (Figure 1.)

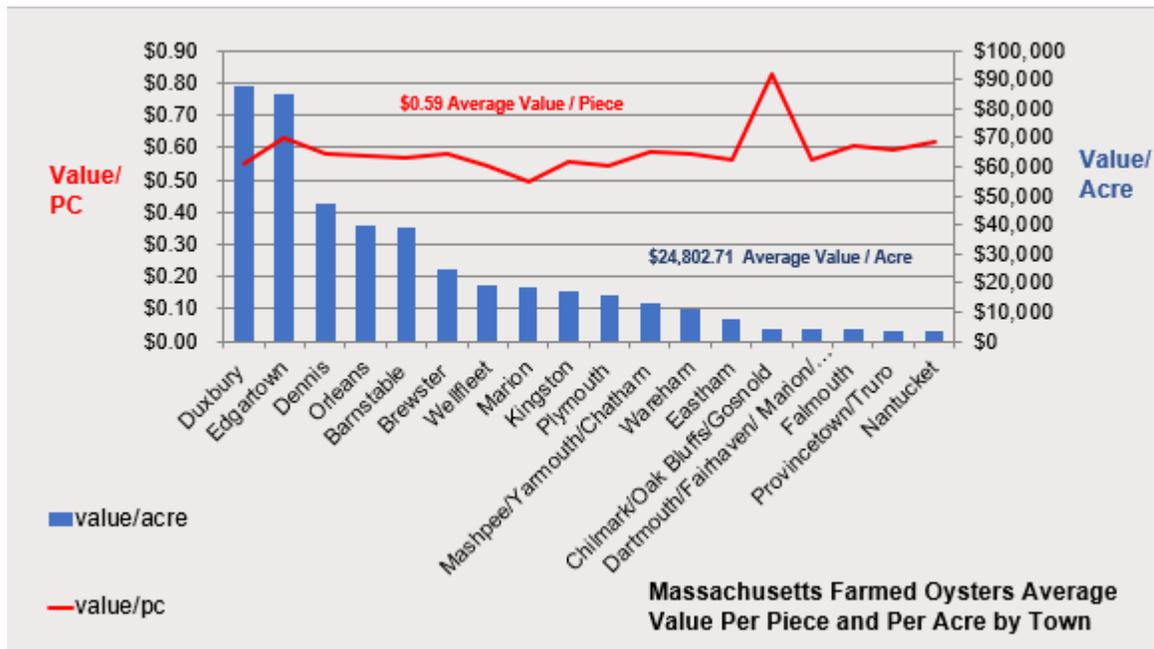


Figure 1 Massachusetts Reported Value per Acre Farmed Oysters 2017

Although certainly seasonal, hydrographic and environmental characteristics also factor into the value per acre results, clearly the value of oysters harvested per acre is higher, significantly in some cases, for towns known to have been more favorable of shellfish aquaculture development.

The wide variation in landed value per town is also a reflection of the willingness of growers to invest in their farms which in several ways is an investment in the local community as well as the shellfish resources themselves. Such investments not only improve the economic opportunities associated with local business development but also contribute to shellfish resources broadly by way of improved water quality and contributions to “wild” shellfish populations through mass spawning events that result from high shellfish densities like those present on shellfish farms.

Following the above reasoning, regulations that vary from town to town as a result of the broad authority granted to municipalities certainly influence the existence, success or failure of shellfish farms. Variation in municipal regulations with respect to whether or not a town allows shellfish aquaculture, the maximum acreage that a license holder may have, variable “productivity” requirements that dictate how much a farmer must invest annually in their farm, transferability and license tenure terms are among the conditions that not only limit the investment that could be made in shellfish farms but also the beneficial impact that such farms could have on the environment, shellfish resources as well as state and local economies. Indeed, and certainly a result of limited resources at the municipal level, there are few opportunities or requirements to measure the success of municipal shellfish programs, including the varying local regulations that govern shellfish aquaculture development.

Getting to Consistency and Predictability as part of the solution:

As evidenced by the growth of shellfish aquaculture in Massachusetts, some towns have done well by aquaculture not only developing local opportunities but also allowing opportunities that have clearly benefitted the Commonwealth at large. Unfortunately, however, there is inconsistency across coastal communities in Massachusetts that in some cases have limited or completely eliminated the opportunity for shellfish aquaculture development.

There is currently no common or standardized approach for shellfish aquaculture development or management in Massachusetts. Much can be gleaned and gained by documenting what is being done by towns that is or isn't working to not only support shellfish aquaculture development but to maximize the economic and environmental benefits of shellfish aquaculture for the Commonwealth. – Documentation and analysis of municipal shellfish aquaculture regulations will allow a blending 'best practices' to establish 'A model ordinance' for shellfish aquaculture in Massachusetts. Such an ordinance would serve as a valuable tool for municipalities that may be limited in their ability to craft shellfish aquaculture programs.

Currently, State agencies have limited knowledge about the success, failure or general impact of shellfish aquaculture programs that are administered by municipalities. There is a clear benefit to the broader Commonwealth that results from successful shellfish aquaculture programs. These benefits range from the economic to the environmental and have become evident where shellfish aquaculture programs have thrived.

Absent any measurement or accountability for practices engaged by municipalities, the Commonwealth and the DMF have no ability to determine positive or negative impacts on shellfish populations. The ability to assess the impact of local shellfish management programs and plans would be enhanced by periodic population assessment work and/or collection of recreational landing data that in some communities where thousands of recreational permits are sold annually can be significant. A thorough analysis of current municipal shellfish aquaculture and shellfish propagation activities and a requirement for assessments of municipal practices relative to impact on shellfish populations would provide an opportunity for the Commonwealth to identify and promote practices that work to maximize the benefits of municipal shellfish aquaculture and propagation activities.

Shellfish aquaculture businesses have grown, have provided valuable employment and economic opportunities to coastal communities and have matured in the Commonwealth of Massachusetts. As these businesses have matured so too have the business owners. Like all businesses, there eventually comes a time where the business must be transferred or, in a worst-case scenario, close. Unfortunately, the transferability of shellfish aquaculture businesses remains uncertain due to rules and conditions that are in some cases arbitrary and not reflective of the realities associated with today's shellfish aquaculture businesses. Such subjective and arbitrary conditions limit the investment and benefit that could be realized through shellfish aquaculture and limit the broader benefit that could otherwise be realized by the Commonwealth.

Certainty and consistency from town to town through clear, consistent and objective regulatory terms and conditions that support transferability promotes a 'leveling of the playing field' where predictability will also encourage greater levels of investment that will result in beneficial economic and environmental impact to local communities and the Commonwealth at large.

In consideration of the recent and current impacts and benefits of shellfish aquaculture in Massachusetts,

a recognition through proactive response by the State that shellfish aquaculture plays an important role and is an increasingly valuable contributor to the Commonwealth's economy and food system is needed. Such a proactive response should include seeking and identifying favorable locations for aquaculture development rather than locations suitable for aquaculture being defined as locations where no other coastal resource use or activity wants to be.

There is a great opportunity and growing need to support and promote our domestic food production capacity. Shellfish aquaculture has clearly demonstrated opportunities to enhance economic opportunities, support and retain invaluable coastal employment opportunities and infrastructure, provide unique environmental benefits as the only form of agriculture that extracts excess nutrients and carbon from our environment, establish a cadre of water-quality supporters by virtue of their businesses relying on high water quality all while at the same time serving as an increasingly important protein source for our growing population.

It is also clear that changes in policy will be needed to maximize the benefits that could be realized by coastal communities and states like Massachusetts that have the unique opportunity to promote and expand wise beneficial use of our coastal resources. Perhaps this was best framed by a recent study by the Coastal Enterprises Inc.

“Future Growth and Development is Heavily Contingent upon Removal of Cultural and Policy-driven Barriers

Barriers facing aquaculture expansion are significant but not unsurmountable. The foremost hurdle is the combination of “Not in My Back Yard” viewpoints coupled with conflicts over existing uses, predominately recreational, for priorities of the waterways. Municipal control of the aquaculture leasing process heavily favors competing town interests and biases and can stifle the opportunities for expanded growth or new entry. The requirement that a grower seeking a grant site must be a town resident further presents a barrier to outside interests investing in the sector.”⁴

⁴ Opportunities for Aquaculture on the Massachusetts South Coast: A Sector Analysis Report, April 1, 2018, Coastal Enterprises Inc.

**NEFMC Activities between March and April MFC Meetings
(March 25th – April 16th)**

April 14-15 NEFMC meeting by webinar:

The New England Fishery Management Council meets in mid-April. The revised agenda has been whittled down and will include Council discussion on recommendations for emergency action by NOAA in response to COVID-19 impacts. MSA Section 305(c) authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies.

Below are additional agenda items likely to be of more interest to MFC members.

Groundfish

- Catch Share Program Review – final report

Scallops

- Approve range of alternatives for Amendment 21
- Turtle BiOp briefing

Small Mesh (Whiting)

- Update on southern red hake rebuilding action

Herring

- GB spawning protection (FW7)
- 2021-2023 specs (FW8)

Further details and registration at <https://www.nefmc.org/calendar/april-2020-council-meeting>

March/April Lead-up Work to April Council Meeting:

Preceding the April NEFMC meeting, various fishery management plans will have held meetings of its Plan Development Teams (PDT), Advisory Panels (AP), and Committees (CTE). See below for a list of meeting dates and topics. The April 2nd and 3rd groundfish-related meetings were cancelled to allow for extended time to complete the Catch Share Program Review document.

Date	Fishery Management Plan Meeting	
March 26 th	Skate AP/CTE <ul style="list-style-type: none">• Limited Access (Am5)	Scallop AP
March 27 th	Scallop CTE	
March 31 st	SSC <ul style="list-style-type: none">• Ecosystems Status Report• NEFMC Research Priorities	Ecosystem Joint CTE/PDT <ul style="list-style-type: none">• Public outreach materials• Ecosystem Status Report

NEFMC Related Developments of Note to Date:

- Recreational Groundfish recommendations for FY2020 submitted to GARFO (2/4)
 - Last year GARFO published PR in May and FR in July
- CLF Petition for Rulemaking on Atlantic Cod (2/13)
 - Argue Secretarial action is warranted due to chronic overfished status and inadequate rebuilding progress.
 - Underscores need for robust at-sea monitoring to achieve successfully management objectives

- NOAA denied similar petition by Center for Biological Diversity in 2015
- Scallop Fishery hit incidental take trigger for turtles (2/20)
 - Reinitiates formal consultation under ESA
 - Council to now consider projected dredge hours during annual specification process
- Groundfish Amendment 23 DEIS submitted to GARFO (3/4)
 - Public hearing by webinar on April 15th (4-6pm)
<https://register.gotowebinar.com/register/8766043774885604099>
Call in information: +1 (213) 929-4232 Access Code: 771-577-358
Remaining hearings to be announced in separate notice
 - Final action slated for June Council meeting
- GARFO notified NEFMC of 2019 Stock Status (3/05)
 - White hake now overfished, triggers rebuilding plan timeline
 - Plaice rebuilt
 - SNE/MA YT no longer subject to overfishing but still overfished; 2029
 - CC/GOM YT no longer overfished or subject to overfishing; not rebuilt; 2023
 - GB winter flounder now overfished but not subject to overfishing; 2029