

## **MARINE FISHERIES ADVISORY COMMISSION**

**June 18, 2020**

**Held Virtually via Zoom**

### **In attendance:**

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

*Division of Marine Fisheries:* Daniel McKiernan, Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Jared Silva; Nichola Meserve; Story Reed; Julia Kaplan; Ross Kessler; Robert Glenn; Jeff Kennedy; Greg Skomal; and Kathryn Ford

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

*Massachusetts Environmental Police:* Lt. Matt Bass.

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the June 18, 2020 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW AND APPROVAL OF JUNE 18, 2020 BUSINESS MEETING AGENDA**

No changes to the June 18, 2020 MFAC business meeting agenda were proposed.

**Mike Pierdinock made a motion to approve the draft agenda. The motion was seconded by Lou Williams. The motion was approved by unanimous consent.**

## **REVIEW AND APPROVAL OF MAY 21, 2020 DRAFT BUSINESS MEETING MINUTES**

Chairman Kane asked if there were any amendments to the May 21, 2020 MFAC draft business meeting minutes.

Mike P. requested a minor revision to his comment on page 8 regarding landings of HMS managed species to more clearly state that pelagic landings by all sectors were down 60%. Jared Silva added that Captain Kevin Clayton was in attendance at the last meeting but that was not reflected in the draft minutes and the roster would be updated accordingly.

*Due to technical issues, a motion to approve the May 21, 2020 MFAC business meeting minutes was not made. The MFAC will move to adopt the May 21, 2020 business meeting minutes, with the recommended amendments at the August 20, 2020 business meeting.*

## **CHAIRMAN'S COMMENTS**

There were no comments made by the Chairman.

## **COMMISSIONER'S COMMENTS**

Commissioner Ron Amidon's comments focused on ongoing pandemic related efforts. Ron served on the committee to re-open the for-hire industry with Mike Pierdinock and thanked Mike P. for his assistance on the project. The Commissioner also sat in on several meetings regarding the development of DMF's CARES Act relief program's spending plan and the state's Food Supply Task Force. Ron was impressed by DMF's work to roll out spending CARES Act spending plans. Lastly, the event to commemorate the opening of the Deer Island fishing plan was delayed due to the pandemic. DFG and DMF staff were working with MWRA to reschedule an event for the end of July.

Mike P. expressed his disappointment that social distancing guidelines and vessel capacity measures prevented the head boat fleet from reopening during Phase 2 of the reopening plan. The Commissioner was optimistic that restrictions would be further eased on the for-hire fleet during Phase 3. However, Ron also recognized that while this may allow for the head boat fleet to reopen later in the season, they were not provided access to their profitable springtime fisheries.

## **DIRECTOR'S COMMENTS**

Director McKiernan began his comments by noting that President Trump recently issued an Executive Order suspending certain commercial fishing restrictions within the Northeast Canyons and Seamounts National Marine Monument. This action reversed an Obama era Executive Order that intended to phase out lobster and crab trap fisheries within the monument over a seven-year period of time. Dan noted that both Executive Orders were controversial and he expected that environmental interests would proceed with litigation.

The Director then moved on to discuss DMF's efforts to develop a CARES Act relief program spending plan. Dan praised DMF's Statistics Project, specifically Anna Webb and Erich Druskat, for their work in manipulating data and gathering statistics. He noted that developing spending plans highlighted some data collection flaws facing the for-hire and aquaculture industry, which DMF would work to improve moving forward.

Lastly, Dan discussed the state's Food Supply Task Force. Several DMF staff members were serving on this body. Dan noted that the pandemic underscored the importance of secure local food supply chains and there was a growing interest in developing programs to get local caught seafood into the hands of local consumers.

## **LAW ENFORCEMENT COMMENTS**

Lt. Matt Bass handled the comments for MEP. His opening remarks focused on enforcement, noting several recent black sea bass and striped bass violations. He then moved on to discuss some local social distancing issues related to the dockside sale of seafood to consumers under retail boat permits. Lastly, with regards to personnel, MEP had three officers graduating from the police academy on June 19 and two more starting in the academy this summer.

## **DISCUSSION ITEMS**

Emergency Action to Close the Cape Cod Canal to Commercial Striped Bass Fishing  
Director McKiernan stated that he recently filed emergency regulations to close the Cape Cod Canal to commercial striped bass fishing.

Jared Silva reviewed the regulatory language. He stated that the emergency action effectively prohibits any person from retaining any striped bass that do not conform to the recreational fishing slot limit (28" to less than 35") and bag limit (1-fish per angler) while fishing along the Cape Cod Canal. Additionally, it makes it unlawful for any person to possess a commercial sized striped bass (35" or greater) when fishing along the Canal or within 1,000 feet of the Canal, unless that fish was lawfully caught elsewhere and is being actively transported to a seafood dealer for sale. Jared also noted that all fishing (commercial or recreational) from a vessel within the Canal project's boundaries is currently prohibited pursuant to the Army Corps of Engineers (ACOE) navigation regulations.

Dan explained that his decision to take this emergency action was strongly influenced by concerns raised by the ACOE, MEP, and local police departments regarding poaching and public nuisance issues along the Canal that are worsened due to commercial fishing activity. Of note was the March 31 letter from ACOE to DMF. This letter described how commercial fishing activity was driving certain public nuisance behaviors that negatively impacted the ability for ACOE to meet its mission of providing a space for recreation on the property. He noted that extensive rationale was provided in DMF's June 2 memorandum to the MFAC.

Dan recognized that some commission members have expressed their reservations about this emergency action and restricting commercial fishing access. Specifically, some preferred a wait-and-see approach to determine how this year's new commercial and recreational striped bass rules would affect fishing activity along the Canal. While Dan understood these concerns, he felt that it would be difficult to parse how the new striped bass regulations affect fishing behavior along the Canal, particularly given other factors such as the pandemic and local striped bass abundance. Ultimately, he was swayed to take action in 2020 due to the poaching and public nuisance activities documented by MEP, ACOE, and local police departments.

The Director noted that as this was an emergency action it would expire after 90-days. He anticipated favoring making it a permanent closure following this emergency period. To do this, DMF would need to hold a public hearing and the MFAC would need to approve a final recommendation from DMF. Jared Silva stated that a public hearing notice would likely be issued in July, for a public hearing in early August, and then a final recommendation would be provided to the MFAC at their August 20 business meeting. Given current pandemic-related restrictions on gatherings, the public hearing would likely be held virtually.

Mike P. asked if it would be possible to have two meetings on two separate dates to accommodate input from the public. Dan stated that he was unsure how the virtual hearings would work, but the agency would work to encourage public input on the subject.

Mike P. asked for clarification on the exemption for the active transportation of lawfully caught striped bass through and around the Canal. Jared Silva explained that the regulation prohibited the possession of commercial sized striped bass within a 1,000 foot buffer zone along the Canal's shoreline. This was done to allow enforcement along the Canal's banks, access roads and parking areas. However, this restriction would not apply to the active transportation of fish lawfully caught outside the Canal for immediate sale to a primary buyer. This exemption included transiting the Canal waterway by vessel, landing at marinas along the Canal, travelling Canal adjacent roads in vehicles or selling fish to primary buyers at parking lots near the Canal.

Mike P. then mentioned there were several fishermen interested in potential commercial permit refunds. Dan stated DMF would refund any 2020 commercial fishing permit provided the permit holder had not landed any fish to date.

On the subject of striped bass permitting, Chairman Kane asked about the number of commercial striped bass permits issued to non-residents. Dan stated that Story Reed and Mike Armstrong were working on an analysis of striped bass permit trends for the MFAC to consider at a future meeting.

Sooky Sawyer and Mike P. expressed skepticism that DMF's emergency action would eliminate the poaching and public nuisance issues along the Canal. Dan agreed the prohibition would not solve all of the ongoing issues. However, ACOE, MEP, and local police departments indicated that problems were worse around commercial fishing days when fishing activity would spike and this would relieve some of the challenges. Additionally, given the new striped bass regulations governing minimum size, enforcement can be more targeted and effective. For these reasons, he was hopeful that the problems may be curtailed to the point where they are manageable. Lt. Matt Bass agreed with the Director and noted that the feedback his officers have received so far has been overwhelmingly positive.

Mike P. added that given the uncertainty that this prohibition will achieve its goal, some fishermen were concerned that it is effectively the first step towards prohibiting all fishing along the Canal.

McKiernan noted that he spent much of his career working to protect fishing interests. However, the situation at the Canal – driven by commercial fishing activity – had become so untenable that it was preventing the ACOE from meeting their mission in managing the property for recreational purposes. In response, DMF tried to take a surgical approach to curtail this activity. If fishing activity continues to create problems along the Canal, then DMF may have to reconsider this approach. However, the agency had not discussed a blanket prohibition in the area.

Commissioner Amidon stated the ACOE is tasked with managing this property to provide recreational opportunities for a diversity of interests, not just fishing. In recent years, certain fishing activity along the Canal was producing fisheries enforcement and other law enforcement problems. This rule takes a practical approach to minimizing certain problematic behaviors by prohibiting a driving behavior. However, sportsmen must recognize that they are guests on a federal property and that their continued access to the property is contingent on their behavior. He expected managing fishing activity along the Canal would be an iterative process and that DMF would review performance and adjust controls as necessary.

Bill Doyle supported DMF's action. His view was strongly influenced by the reports from ACOE and the Bourne Police regarding the activity along the Canal, particularly the volume of complaints received by the Bourne Police on commercial fishing days in 2019. He noted that the recent activity along the Canal activity demonstrates a certain lack of professionalism among certain commercial striped bass anglers. This allows the fishery to be portrayed negatively and makes it difficult to defend the commercial striped bass fishery from its detractors.

Chairman Kane and Director McKiernan then discussed the ASMFC's striped bass tagging program. The Chairman noted that this program was implemented to prevent poaching and Massachusetts was the only state to adopt a point-of-sale tagging program. Point-of-sale tagging was generally viewed as less effective. Accordingly, the issues along the Canal were getting coastwide attention. Ray felt this minimized Massachusetts influence at the ASMFC as a leader with regards to striped bass conservation and made it more difficult to criticize management efforts in other states.

### Update on Issues Related to COVID-19 and Impacts on the Fishing and Seafood Industries

#### *CARES Act Fisheries Relief in MA*

Director McKiernan provided an overview of CARES Act relief. The federal government provided \$350M in federal relief money to the coastal states for their fishing and seafood industries, which have been negatively impacted by the COVID-19 pandemic. MA was allocated \$28M for impacts to four-sectors: aquaculture, commercial fishing,

for-hire, and seafood processing. DMF was tasked with developing spending plans for this disaster relief aid.

Using past experience with disaster relief programs, DMF assembled an industry-based Advisory Panel to oversee the development of a spending plan. The Advisory Panel met in early June. DMF explained that NOAA Fisheries calculated the state's \$28M allocation based on each of the four sectors economic contributions. DMF then suggested that these calculations serve as the basis for allocating funds to each sector. However, due to the substantial losses accrued in the aquaculture and for-hire industry, DMF would move to double these sector's allocations through re-purposing the monies the state may take for administrative purposes and through slight reductions to the allocations for the seafood processing sector and commercial fishing industry. The Advisory Panel did not object to this approach. The Advisory Panel also supported convening working groups to develop sector-specific spending plans.

These working groups met over the course of the June and began to develop eligibility criteria and spending plans. Information regarding the Working Groups and their decision making may be found on DMF's CARES Act [website](#). Updates were then provided regarding each sector's programs.

Jared Silva, who co-chairs the Commercial Sector Working Group with Melanie Griffin, provided a brief presentation on this group's progress. The Working Group met on June 11 and June 17. At the first meeting, the Working Group reviewed federal guidelines and qualification criteria. They also came to a consensus on a spending approach (e.g., tiering applicants based on revenues) and certain discretionary eligibility criteria (e.g., a minimum \$15,000 ex-vessel revenue qualification threshold for 2017 - 2019). Then at the second meeting, the Working Group reached consensus on a spending plan. This spending plan would create six payment tiers based on best annual ex-vessel revenues from 2017 – 2019. This approach attempted to balance the impacts of overall loss against relative loss. DMF estimated as many as 2,000 commercial fishermen may qualify, and individual payments – while ultimately dependent on the number of applicants - could range from about \$2,000 at the lowest tier to about \$14,000 at the highest tier.

Chairman Kane asked if money would be set aside for an appeal process. Jared explained that payments will not be made until the appeal process is complete. Accordingly, the payment estimates are subject change based on the final number of approved applicants.

Mike P. asked if for-hire operations that land bluefin tuna commercially would be eligible to receive funds from the commercial fishing program. Jared stated that they would be eligible if they met the minimum eligibility criteria.

Dan described the other three sector's programs.

He noted that developing a spending plan for the seafood processing sector was difficult due to a lack of data available to DMF that can characterize the sale of the business. DMF and the Seafood Processing Working Group were leading towards using the number of employees from prior tax returns as a metric to scale payments.

In the aquaculture sector, there was some debate in the working group whether DMF should tie payments more directly to individual losses. While some members of the Aquaculture Working Group supported this approach, DMF did not favor it. DMF felt that this would unduly complicate the program, resulting in a complicated appeals process, which would ultimately delay payments. Accordingly, DMF preferred tiering payments based on recent performance, similar to the commercial sector's spending plan. Staff were refining tiering options to better address some of the concerns raised by the working group.

McKiernan noted there were two issues facing the For-Hire Working Group. First, the Baker Administration decided to front DMF \$400,000 to make immediate payments to the head boat fleet; this fleet was tied up due to Governor's initial emergency public health order and subsequent pandemic related physical distancing guidelines. DMF and the For-Hire Working Group were developing a head boat spending plan that would tier vessels based on activity and vessel capacity. Second, determining activity levels in the for-hire industry was a challenge for DMF because of the lack of a uniform data source. DMF would have to determine effort through a series of differing and incomplete data sets ranging from the very detailed federal VTR program to voluntary DMF surveys issued with permit renewals.

This data gap was something Dan wanted to address moving forward. He felt the for-hire fishery would benefit from a more uniform and synchronized approach to data collection. Mike P. stated that DMF will face resistance from select for-hire operators regarding additional reporting requirements, as these operators are disappointed that the federal government has not used their paper or electronic VTR data for management purposes beyond estimating fishing effort.

Mike P. then asked about the aid application process. Kevin Creighton explained that DMF will be looking to complete the head boat application process by the end of June and get out checks as soon as possible thereafter. As for the other sectors, he anticipated that once NOAA Fisheries approved DMF's spending plans, the agency would initiate a two-week application period, followed by a two-week appeal period, and then the ASMFC would issue payments directly to eligible businesses.

#### *DMF Seafood Marketing Promotion*

Story Reed provided an update on DMF's Seafood Marketing Program. Wendy Mainardi was working on a chef series highlighting local seafood coupled with how-to videos on handling seafood (e.g., scaling, shucking, and filleting). Content from the chef series and how-to videos will be released ahead of the fourth of July. DMF was also working on a larger advertising campaign, and species-specific educational videos.

In regards to retail boat sales, there were meetings among industry, municipalities, and state agencies (e.g., DMF, DPH) on how these activities can be accomplished given physical distancing guidelines and the physical constraints of certain harbors. EEA recently announced a Food Security Infrastructure Grant that may benefit some fishermen. Dan stated that DMF would provide the MFAC with the grant announcement to determine if these funds could be of assistance to fishermen in their networks.

Chairman Kane was sorry to see the State House Fish Day postponed to 2021. For the 2021 event, he was interested in potentially serving black sea bass at this event. Given the lack of a commercial fishery during the spring, Ray suggested the fish could be provided by DMF through those fish harvested during their spring spawning research project.

*Conservation Equivalency Proposal to Extend For-Hire Black Sea Bass Fishery*  
Nichola Meserve reviewed DMF's conservation equivalency (CE) proposal to the ASMFC to extend the for-hire black sea bass fishery into the fall based on lost opportunities this spring.

DMF's first proposal ("Option A") would extend the season closure date from September 9 to November 1. This was based on comparing harvest by day in Wave 3 to harvest by day in Wave 5. Given the for-hire fleet lost 7-days in Wave 3, this analysis shows that DMF could open for an additional 65-days based on Wave 5 data over the past two years. A 65-day season extension would close the fishery in Wave 6, but DMF does not have any Wave 6 data. Recognizing the lack of Wave 6 data and error bars associated with Wave 5 data, DMF instead proposed a 53-day extension through the end of Wave 5.

Given the likelihood that the ASMFC will raise concerns about the high PSE's associated with MA's Wave 5 data, DMF also provided a second proposal ("Option B"). This approach uses Wave 4 data as a proxy for Wave 5 data, as Wave 4 data has lower PSEs. Based on this analysis, DMF could potentially extend the season 13-days through September 21.

The Director will be helping move the proposals forward at the Board level in order to get support for a season extension. Nichola hoped for a quick review and turnaround time to allow the for-hire fleet to begin booking trips for the end of the season. It was notable that MA was the only state to file a CE proposal thus far in response to pandemic related impacts.

Mike P. appreciated DMF's work on this CE proposal and supported Option A over Option B. In the event that both CEs are not approved, Mike P. was curious if any underutilization of the RHL could be carried over to 2021. Nichola stated that this was not possible due to the how the black sea bass fishery is managed at the federal and interstate level. However, if 2020 harvest estimates are well below the 2021 RHL, there may be room for liberalizations. If this occurs, DMF would likely prefer pursuing lengthening the season over increasing the bag limit.



Mike P. asked about the potential to split out the for-hire mode from the recreational black sea bass fishery and manage it separately. Nichola noted that this type of action is allowed under the ASMFC management plan and is something the state could explore. Mike P. felt that it was worthwhile to pursue this, as it may give the for-hire fishery greater flexibility and provide needed relief.

Ray Kane commended Nichola for her work at the joint ASMFC meetings. He and Nichola noted that the MAFMC's allocation amendment may increase the recreational fishery's overall share of the allowable harvest. To this point, Ray added that he would like to see the northeastern states have a vote at the MAMFC given their interest in a variety of MAFMC managed species.

#### *Updates from Commission Members*

Mike P noted the for-hire fleet had a slight uptick in six-pack charter bookings with the opening of hotels. He was also hopeful that the striped bass migration may also encourage additional bookings. However, the 14-day recommended quarantine continues to be a challenge. At select locations, charter captains have been facing situations where patrons who have out-of-state license plates are not being allowed to board the vessel and go fishing.

Lou Williams did not set his gillnets this year. He was also waiting to set his lobster gear until he had a better handle on the price of lobsters and where right whale conservation measures may end up.

Bill Doyle mentioned a slight uptick in the selling of oysters, but it was still only about 12% compared to this time last year. He speculated this was being driven by other states opening up restaurant trade and Massachusetts restaurants allowing outdoor seating.

#### Offshore Wind Energy Development Update

Kathryn Ford provided a presentation to update the MFAC on the Vineyard Wind project. Before she began this presentation, she briefed the MFAC regarding ongoing efforts by the MA Ocean Plan to map recreational fishing activity in state-waters. This mapping initiative will help inform the siting of future energy, minimum, and beach nourishment projects. She was looking to work through the MFAC to review the map and provide guidance.

Chairman Kane moved to assemble a MFAC working group to assist Kathryn in the review of a MA Ocean Plan recreational fisheries mapping layer. Tim Brady and Mike P. volunteered. Ray then stated that either he or Kalil Boghdan would also be involved.

Mike P. thanked Kathryn for involving the MFAC. He noted that with any mapping effort, he is concerned that a snapshot in time to make longstanding decisions regarding ocean usage. He cautioned that fisheries are conducted in a variety of areas over time and this is influenced by migratory patterns, forage availability, climate change, and

other environmental or oceanographic factors. Accordingly, a snapshot may not accurately capture the spatial extent of fishing activity and future access may be limited as a result.

Kathryn then provided an update on Vineyard Wind. The wind project is split into two projects VW-1 and VW-2. VW-1 is the original 100 turbine (800 MW) project that is in advanced stages of permitting. VW-2 - also known as Park City Wind - is in the south side of the lease area. It will be 50-100 turbines and is also a 800 MW project. RI provided VW-1 with federal consistency concurrence on February 28, 2019. MA issued theirs on May 21, 2019.

Compensation funds have been developed for any claims of direct impacts by wind farms on fishing activity. The total compensation will be about \$3.2 million. There are two funds that will offset potential direct, indirect, and cumulative economic impacts to MA fishing businesses. There are also funds available to both MA and RI to facilitate innovation.

Mike P. asked if the mitigation fund included the recreational and for-hire fleets. The Director noted that it was not yet clear. Kathryn expected this would be an issued raised with the mitigation committee. Mike P. pressed DMF to have the recreational and for-hire fleets as they will be impacted by turbine farm siting.

Bill Doyle noted that the for-hire business are a commercial enterprise but are often not considered commercial fishing businesses or legally defined as such. He suggested DMF and the MFAC could work to parse this out in a more clear and consistent manner. Dan stated that a commercial fisherman is defined in regulation for the purposes of fisheries management. This definition is not inclusive of for-hire fishing. Instead, for management purposes, they are considered part of the recreational fishery. This is because their commercial enterprise is selling recreational fishing opportunities to anglers, rather than harvesting and selling fish for seafood markets. However, this becomes complicated when we step back from the fisheries management perspective because they are for-profit businesses and they may be economically impacted by items like wind energy development.

### **COMMISSION MEMBER COMMENTS**

Sooky Sawyer noted these are trying times for the lobster industry. Fishermen are nervous about the pandemic's impact on ex-vessel value and the litigation over right whale conservation. Sooky then discussed bait availability. He noted that fishing had been slow and alleged that a lot of the state's menhaden harvest was being shipped out of state.

During the May MFAC meeting, Sooky asked if it was possible for DMF to amend the actively fished criteria for the transfer of limited entry permits to not include 2020 in the lookback period. Dan stated DMF will provide a waiver for 2020 in response to the

pandemic. He expected DMF would have adopted a formal policy by the August meeting, which he would share with the MFAC. Sooky thanked Dan for the effort.

Tim Brady appreciated the work the DMF staff is doing to get CARES funding out to the industry sectors. He noted that he is debating on cancelling the whole season due to the pandemic.

Chairman Kane thanked members who have been in attendance of the Zoom MFAC meetings. He commended DMF for doing a great job with decisions regarding the distribution of CARES Act funds. He hoped that by the August MFAC meeting a ninth commission member will be appointed.

### **PUBLIC COMMENTS**

There were no public comments.

### **ADJOURNMENT**

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

### **MEETING DOCUMENTS**

- June 18, 2020 MFAC Business Meeting Agenda
- May 21, 2020 MFAC Business Meeting Draft Minutes
- Memo on Closure of Cape Cod Canal to Commercial Striped Bass Fishing
- Meeting Summaries for CARES Act Advisory Panel and Working Groups
- CARES Act Commercial Working Group Presentation
- Conservation Equivalency Proposal to Extend For-Hire Black Sea Bass Season
- Presentation on Vineyard Wind Project Advancement

### **FUTURE MEETINGS**

9AM  
August 20, 2020  
Zoom

9AM  
September 24, 2020  
Location TBD

9AM  
October 29, 2020  
Location TBD

9AM  
November 19, 2020  
Location TBD

9AM  
December 10, 2020  
Location TBD