

## **MARINE FISHERIES ADVISORY COMMISSION**

**September 24, 2020**

**Held Virtually via Zoom**

### **In attendance:**

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

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

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

*Massachusetts Environmental Police:* Lt. Matt Bass

*Members of the Public:* Barbara Brennessel; Shelley Edmundson; Bill Amaru; Drew Kolek; Russ Cleary; and Phil Coates.

## **INTRODUCTIONS AND ANNOUNCEMENTS**

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

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

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

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

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

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

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

### **CHAIRMAN'S COMMENTS**

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

### **COMMISSIONER'S COMMENTS**

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

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

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

### **DIRECTOR'S COMMENTS**

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

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

Litigation concerning fixed gear fisheries and endangered turtles and whales remained ongoing. Per the order of the US District Court, DMF was in the process of applying to NOAA Fisheries for an Incidental Take Permit to cover the use of vertical buoy lines in

its fixed gear fisheries. The MFAC received a presentation on this subject at their August business meeting.

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

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

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

### **LAW ENFORCEMENT COMMENTS**

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

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

## **ACTION ITEMS**

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

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

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

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

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

## **FUTURE RULE MAKING**

### Turtle Excluder Devices for Blue Crab Traps

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

DMF's protected species biologist, Erin Burke, presented on interactions between diamondback terrapins and blue crab traps in Massachusetts. Erin stated that other states have encountered similar issues with their blue crab trap fisheries. These states have adopted a variety of solutions including: requiring a turtle excluder device on traps;

prohibiting the use of certain baits that may attract turtles; prohibiting traps in certain areas; and requiring traps to be checked once a day.

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

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

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

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

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

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

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

Kalil then questioned the efficacy of a daily trap checking requirement and was interested in the ability of the diamondback terrapin to hold its breath. Erin stated that these turtles can typically only hold their breath for about 20 minutes and concurred that the daily trap checking requirement is unlikely to prevent turtles from drowning in crab traps. This was why DMF was favoring the excluder device or the trap ban.

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

#### Recreational GOM Cod and Haddock Rules

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

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

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

#### Retail Boat Clarification on Histamine Producing Species

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

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

#### Ghost Panel Size for Fish Pots

Jared Silva reminded the MFAC that DMF annually submits compliance plans to the ASMFC. This year, DMF was notified that its black sea bass pot regulations were out of phase with the FMP. Specifically, the plan requires three inches by six inches minimum

ghost panel requirement on all black sea bass pots, whereas DMF requires a ghost panel but does not specify minimum dimensions. Jared indicated that this was likely a historic regulatory deficiency that was just observed now. Accordingly, DMF proposed adopting a minimum ghost panel size of three-inches by six-inches for black sea bass pots. Jared did not anticipate any issues with fishermen given how the gear was typically configured.

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

## **DISCUSSION ITEMS**

### Shellfish Updates

#### *Challenges Related to FDA Compliance*

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

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

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

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

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

Mike P. then followed up about how pollution is calculated from moored boats. Jeff noted the NSSP provides specific criteria on fecal coliform discharge assumptions based on vessel occupancy. Discharge rates are then determined based on the number of vessels in the mooring area while accounting for existing regulations, patrol and enforcement, access to pump-outs, access and mooring area usage. Mike P. asked if FDA considers that all Commonwealth waters are a No Discharge Zone or if they are assuming that vessels are discharging when moored. Jeff stated that FDA is viewing water quality from the standpoint of a potential/direct impact versus an actual impact.

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

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

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

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

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

#### *Comments from Commission Members*

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

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

#### Draft Permit Transfer Policy *Black Sea Bass and Fluke Endorsements for Rod and Reel Fishermen*

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

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

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

#### MFAC Sub-Committees

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

#### *Updates from Commission Members*

Kalil Boghdan thanked DMF for diligence and hard work.

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

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

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

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

#### **PUBLIC COMMENTS**

There were no public comments.

#### **ADJOURNMENT**

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

## **MEETING DOCUMENTS**

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

## **MEETING DOCUMENTS**

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

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

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