

**SHELLFISH ADVISORY PANEL**  
**MARCH 2, 2023**  
**Via Zoom**

**In attendance:**

*Shellfish Advisory Panel:* Daniel McKiernan, Chair (DMF); Lisa Rhodes (DEP); Sean Bowen (DAR-Proxy); Jim Peters (Indian Affairs); Mike Moore (DPH); Todd Calaghan (CZM-Proxy); Josh Reitsma, Allen Rencurrel, Dale Leavitt, Renee Gagne, Ron Bergstrom, Steve Kirk, Alex Hay, Bill Doyle; Michael DeVasto; Amy Anne Croteau; and Shannon Emmett representing the House Chair on Environment and Natural Resources  
*Absent:* Jim Abbot; Bob Colby; Mike Trupiano; Rebecca Rausch.

*Department of Fish and Game:* Sefatia Romeo Theken, Deputy Commissioner

*Division of Marine Fisheries:* Bob Glenn, Story Reed, Jeff Kennedy, Chrissy Petitpas, Jared Silva, Julia Kaplan, Melanie Griffin, Matt Camisa, Gabe Lundgren, Ryan Joyce, and Anna Webb

*Department of Public Health:* Eric Hickey

*Members of the Public:* Mark Begley, Danielle Ewart, Michelle Letts, Damon Wei, Chris Miller, Ronnie Parker, Peter Orcutt, Ben Wigren, Tom Siggia, Jordan Halloran, Amanda Cutler, Jack Attridge, Brian Taylor, Donovan McElligatt, Merry Oysters, Don Merry, Mike DiMeo, Ginny, Paul Hogg, Tim Cox, Jon M, Helen Miranda Wilson, Glen Fernandes, Ryan Burch, Tyler Grady, Joseph Pierce, Danny Badger, Craig Keefe, Mark Howards, Tyler Hagenstein, Beth Gibbons, Jake Emerson, Erika Smith, Jeffrey Canha, Chris Avis, Mel Sanderson, Chloe Starr, Heinz Proft, Mashpee DNR

**INTRODUCTIONS AND ANNOUNCEMENTS**

DMF Director Daniel McKiernan chairs the Shellfish Advisory Panel (SAP) and called the meeting to order. He provided a brief history of the SAP and an overview of their mission and purpose. Chairman McKiernan asked attendees to sign into the Zoom chat box so everyone would be aware of who is in attendance. He then reminded everyone of the open meeting law and stated the meeting materials from this meeting will be posted online.

**REVIEW OF MARCH 2, 2023 BUSINESS MEETING AGENDA**

No changes to the agenda were requested.

**REVIEW AND APPROVAL OF MAY 20, 2022 DRAFT BUSINESS MEETING MINUTES**

Chairman McKiernan sought a motion to approve the draft November 15, 2022 business meeting minutes. **Dale Leavitt made a motion to approve the draft meeting minutes. Todd Callaghan seconded the motion.**

Amy Croteau pointed out a typo in the bulk tagging sub-committee meeting date in the draft minutes. Jared Silva stated DMF could amend the minutes to correct this error. There were objections to this amendment. No further amendments were offered.

**Chairman McKiernan requested a motion to approve the amended November 15, 2022 business meeting minutes. Todd Callaghan made a motion to approve the amended meeting minutes. Dale Leavitt seconded the motion. A roll call vote was taken and the motion passed 14-0-2 with Mike DeVasto and Amy Croteau abstaining.**

### **UPDATE ON BULK TAGGING CONSIDERATIONS**

Chairman McKiernan summarized his memorandum to the SAP regarding his decision to not move forward with a pilot program to allow shellfish aquaculturists to bulk tag market bound product. Dan then discussed the rationale behind the decision, which included:

- Shifting enforcement and compliance burden from harvesters to dealer sector, requiring participating dealers to develop Intermediate Processing Plans.
- Complicates maintaining lot integrity at point-of-sale when the dealer is receiving multiple harvester lots in succession.
- Aquaculturists have indicated wrapping pallets and insulated vats are not viable solutions to ensure lot integrity at point-of-sale.
- May be subject to more substantial actions in instances of non-compliance given quantity of shellfish involved (e.g., embargo, criminal penalties, permit sanctions).
- Risk may disincentivize participation by most conscientious dealers impacting shellfish markets and potentially worsening compliance.
- Administrative burden on state management and enforcement agencies.

Dale Leavitt expressed disappointment over DMF's decision and that DMF did not consult the SAP's bulk tagging sub-committee before making this formal decision. Dale then advocated for expand opportunities for harvester bulk tagging.

Mike DeVasto agreed with Dale's assertion that harvester bulk tagging opportunities need to be expanded and felt there was a path forward with standardization. He further argued that tagging individual containers was wasteful, time-consuming, redundant, and likely contributed to non-compliance.

Jared Silva noted DMF's decision focused on adopting a pilot program allowance for all aquaculturists. Jared also agreed with Mike's assertion that there may be a path forward with more standardized practices to ensure shellfish traceability and lot integrity and

DMF was not closing the door on smaller scale pilot programs to investigate best practices that could inform future rule changes.

Alex Hay was also disappointed with DMF's decision. As a seafood dealer, he supported an expanded harvester bulk tagging program and felt the seafood dealer sector could readily adapt to accommodate a bulk tagging model for shellfish aquaculturists. Alex also did not think that discrete enforcement issues involving a select number of entities should influence decisions regarding the broader seafood industry.

Dale Leavitt requested the bulk tagging issue be brought back to the sub-committee. Dan McKiernan did not object to this idea. However, he wanted greater involvement from the seafood dealer sector in the discussion, as this sector privately expressed concerns to DMF about expanding harvester bulk tagging.

Via the chat function, Seth Garfield asked if this decision impacted bulk tagging allowances for grower-dealers. Jared Silva responded that grower-dealers would be allowed to continue to bulk tag their own product. However, all other shellfish aquaculturists would not be able to bulk tag product in 2023.

### **ISSC BIENNIAL MEETING PROPOSALS**

Jeff Kennedy provided the Panel with a presentation regarding Interstate Shellfish Shippers Conference (ISSC) and its upcoming biennial meeting. He first reviewed the history and purpose of the National Shellfish Sanitation Program (NSSP) and the ISSC. He then reviewed the composition of the ISSC and its process.

Jeff discussed various proposals that will be addressed at the upcoming March 2023 ISSC meeting. Some Task Force I (Growing Areas and Patrol) proposals include clarifying NSSP definitions, marine biotoxin controls, assessing wastewater treatment plants, and establishing guidance for shellfish cleansing studies. Eric Hickey from DPH discussed Task Force II (Harvest, Handling, and Distribution) proposals, which include reducing plant inspection frequency, adding shipping Critical Control Point (CPP), pre-chilling vehicles, and proper use of backflow preventers for any equipment/operations requiring a sanitary water source. Eric then discussed Task Force III (Administration) proposals, which include one to limit FDA's use of Guidance Documents to cite program deficiencies in evaluations, and another clarifying/expanding biotoxin management criteria.

Jeff Kennedy welcomed questions or comments. No comments or questions were raised by the SAP.

### **SURF CLAM MANAGEMENT UPDATE**

DMF is concerned about the potential for state regulated commercial fishing activities—particularly surf clam fishing—to be constrained by municipal conservation commissions

("ConComs") under the Wetlands Protection Act. This issue came to the forefront several years ago as the result of Provincetown enforcing local ConCom regulations restricting surf clam fishing off Herring Cove. While commercial fishing interests have avoided fishing in these waters since, Michelle Letts—a surf clam permit holder—recently filed a Notice of Intent ("NOI") with the Provincetown ConCom and the Department of Environmental Protection to fish hydraulic surf clam dredge gear in this area. DMF encouraged the applicant to rescind the NOI filing given concerns about the precedent the issuance of an NOI may set for the fishery state-wide. DMF has been working closely with DEP to determine how to protect legacy commercial fisheries in a manner that allows DEP to continue to address activities that may alter wetlands resource areas.

DMF presented a map of the resource areas regulated, and Dan welcomed Lisa Rhodes from DEP to speak to the subject. Lisa Rhodes indicated DMF and DEP would need to develop a more accurate map depicting wetland resource areas if one is needed. Additionally, DEP was considering ways to potentially reduce the burden of the DEP permitting process to address DMF regulated fishing activities.

Mike DeVasto asked about the case law regarding surf clam fishing in Provincetown. Dan stated that case law stated that Provincetown did not have the authority to ban surf clam fishing, but the town has jurisdiction to permit and condition the use of the certain gear in wetland resource areas under the Wetlands Protection Act.

Dan closed his comments by stating this is a complicated issue that DMF will continue to work on and report back at the next SAP meeting at the end of April.

#### **SUB-COMMITTEE ON MUNICIPAL AQUACULTURE SITE LICENSE TRANSFERS**

Dan McKiernan described the need for a sub-committee on municipal aquaculture license site transfers. Dan provided a brief background regarding his interest in convening this committee. The sub-committee will not weigh in on home rule authorities; however, DMF will compile and the sub-committee will review all municipal regulations governing aquaculture license site permitting and transfer rules and engage with municipal officials and industry members on what may (or may not) be working. The work done by the sub-committee may potentially result in development of best management practices municipalities may consider when adopting or amending municipal rules.

Dan recommended Bill Doyle, Dale Leavitt, Amy Croteau, and Renee Gagne as sub-committee members and welcomed volunteers. Josh Reitsma, Mike DeVasto and Alex Hay volunteered to be on the committee as well.

Ron Bergstrom offered to be on the Panel but recognized there may be redundancy since he and Renee are both from Chatham. Renee deferred to the Chair but recommended Ron Bergstrom. Ron then raised several issues he thought should be considered when the sub-committee meets.

## **OTHER BUSINESS**

### *Panel Member Comments*

Renee Gagne discussed professionalizing the Shellfish Constable training and certification process through the Massachusetts Shellfish Officers Association. The group is looking into creating an educational council to further develop and standardize constable training within Massachusetts. She stated this process has begun but will take time to complete. Renee will brief the SAP as on the project's progress.

Sean Bowen brought up concern over hatchery seed supply reliability as discussed at the Massachusetts Aquaculture Association meeting. Seed supply is at the foundation of the aquaculture industry, so he wanted to initiate panel discussion on how to respond and possible solutions.

Alex Hay expressed concern over hatchery resources. Dan McKiernan asked if funding could fix some of the issues. Alex stated that money could definitely help relieve some of the strain on resources and maybe support research to overcome some of the hatchery issues.

Steve Kirk stated he is interested in this issue as well as it is a critical issue that effects industry at large. Steve Kirk asked if this was the right forum to discuss DMF staffing and resource needs.

Dale Leavitt stated while there are some commonalities, there are usually individual problems at each hatchery and they differ across hatcheries. Chrissy stated harmful algal blooms (HABs) may have a role in the stalled or failed production experienced by hatcheries and seed mortality observed on grower sites. Chrissy then described ways DMF can help including funding through the Environmental Economic Innovation grant. Chrissy stated DMF is also re-assessing policies and consulting with the Regional Shellfish Seed Biosecurity Program to allow the importation of seed and larvae from hatcheries further south than historical authorized.

Bill Doyle stated it goes beyond the hatchery issue. Hatcheries have struggled to get the seed out to growers, but even when hatcheries can provide seed there are occasions when it all of a sudden stops growing. Bill stated he lost 22.5% of seed held in his upweller, and the issue has been occurring since about 2020.

Josh Reitsma stated there is research being conducted into why the seed is failing.

Amy Croteau described a request to DPH and DMF to issue a variance to the Town of Barnstable to allow harvesters to transport their product from the landing at Blish Point to a nearby piece of town property referred to as the "grassy knoll" for sale to primary buyers. She described public safety concerns related to dealer trucks having to pick up product at the highly congested landing site and stated town officials can adequately oversee transactions at the grassy knoll.

Dan asked Jared to describe the regulatory process. Jared stated that should a DMF regulation change be warranted then it would require approximately six-to-eight months. Dan then asked Jared if DMF could provide more instant relief to Barnstable. Jared stated DMF could consider other mechanisms, but deferred the question to DPH, as this is a joint management issue.

Michael Moore stated DPH regulations currently restrict this activity and DPH was not in a position to amend its regulatory code to address this narrow issue. However, they may be allowed to issue a regulatory interpretation that would accommodate Barnstable.

Amy Croteau and Mike DeVasto questioned why DPH could not issue a variance, as it had provided a similar variance to Wellfleet several year ago. Michael Moore indicated DPH's legal opinion on the subject had evolved and determined it was not appropriate to use the variance in such instances.

Michael Moore asked Amy Croteau if this issue was flagged in writing by FDA; Amy stated it was raised verbally but it did not appear in FDA's evaluation.

Bill Doyle asked if it was possible for the different agencies to get together and devise a plan so this would be resolved for Barnstable by the summer. Dan stated that DMF will work with DPH to hopefully get this resolved for this year.

#### *Public Comments*

Helen Miranda Wilson wanted to see DPH give Barnstable a variance for this year. She agreed with Mike DeVasto's comments regarding expanding allowances to bulk tag. Helen expressed concern over interactions between hydraulic dredge gear and eelgrass. Helen asked if the SAP's sub-committee meetings are open to the public. Jared Silva stated this was at the discretion of the Chair and no determination had been made for the aquaculture license site transfer sub-committee. Helen then asked to be placed on the SAP sub-committee on aquaculture license site transfers, should DMF accommodate public involvement.

Jeffrey Canha asked that the bulk tagging sub-committee keep in mind the bulk tagging of product for offsite culling and moving seed between SGAs. Chrissy clarified that the bulk tagging considered in this meeting was referring specifically to market bound product and that bulk tagging allowances for offsite culling, overwintering and moving seed are not impacted by this bulk tagging assessment. Jeffery suggested a bulk-tagging limit so it is more manageable by the seller and buyer. He then discussed issues he had with the federal Army Corps of Engineers aquaculture permitting processes; he was told delays in permitting were due to an influx of offshore wind permitting applications. Dan stated he will look into the issues and get back to him. Chrissy stated that DMF will not hold up propagation permits if growers submit to DMF proof of permit application submission to federal agency.

Tyler Hagenstein and Jon M advocated for the state to take action to support the Town of Barnstable's efforts to address landing site congestion and allow for product to be sold at a secondary site.

Donovan McElligatt stated he would like to see the SAP dedicate more time to discussing wild shellfisheries and shellfish species other than oysters. He noted the Vineyard had one of the most successful bay scallop seasons this year.

Mark Begley thanked Dan for working with Amy Croteau regarding the landing site issue at Barnstable Harbor.

### **ADJOURN**

Chairman McKiernan requested a motion to adjourn the March SAP meeting. **Ron Bergstrom made a motion to adjourn the March SAP meeting. The motion was seconded by Renee Gagnee. The motion was approved by unanimous consent.**

## **MEETING DOCUMENTS**

- March 2, 2023 SAP Business Meeting Agenda
- November 15, 2022 SAP Draft Business Meeting Minutes
- DMF Decision on Bulk Tagging Pilot Program Memo
- Bulk Tagging Decision Rationale Slide
- 2023 ISSC Biennial Meeting Presentation
- WPA Map
- Aquaculture Transfer Sub-Committee Slide
- Next Meeting and Deliverables
- 2022 MA Oyster Risk Assessment
- 2022 MA Hard Clam Risk Assessment
- Aquaculture Transfer Sub-Committee Presentation

## **UPCOMING MEETINGS**

April 27<sup>th</sup>  
SMAST East  
836 S Rodney French Blvd, New Bedford, MA 02744  
4-7PM