

SHELLFISH ADVISORY PANEL

March 1, 2022

Held Virtually via Zoom

In attendance:

Shellfish Advisory Panel: Bill Doyle; Mike Devasto; Michael Moore; Todd Callaghan; John Lebeaux; Dan McKiernan; Amy Croteau; Josh Reitsma; Seth Garfield; Jim Peters; Lisa Rhodes; Mindy Domb; Andrea Bolduc; Shannon Emmett; Sean Bowen; Allen Rencurrel; Mike Trupiano; Ron Bergstrom; Steve Kirk, and Dale Leavitt

Division of Marine Fisheries: Jared Silva; Kevin Creighton; Jeff Kennedy; Kevin Creighton; Thomas Shields; Chrissy Petitpas; Story Reed; Kelly Whitmore; Gabe Lundgren; Scott Schaffer; Matt Camisa; Greg Bettencourt; Ryan Joyce; Diane Regan; Melanie Griffin; and Julia Kaplan

Massachusetts Environmental Police: Capt. Kevin Clayton, Lt. James Cullen

Members of the Public: Jim Agostine; Kalil Boghdan; Mark Begley; Peter Orcutt; Rebecca Taylor; Becca; Samantha Denette; Charmaine; Brian Vanderhoop; Matt Weeks; Craig Keefe; James Ferreira; Chris Newhall; Tyler H; Jennie Wallace; Amalia Harrington; Franz; SBCBA Secretary; Jacob Angelo; Suzanne Phillips; David Slack; Helen Miranda Wilson; Jamie Davenport; Pete Seminara; Amber S; Geoff Gordon; Chloe; Les Hemmila; Bekah Angoff; Henry Lind; Fishermen's Alliance; Paul Werzanski; Walter; Dwight Estey; Wellfleet Shellfishermen's Association; Jude Ahern; Beth G; Scott Soares; Jeffrey Canha; and Dominic.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Dan McKiernan called the March 1, 2022 Shellfish Advisory Panel ("SAP") Business Meeting to order. Jared Silva then reviewed the rules of engagement for virtual business meetings.

REVIEW AND APPROVAL OF MARCH 1, 2022 BUSINESS MEETING AGENDA

There were no requested amendments to the agenda.

Chairman McKiernan asked for a motion to approve March 1, 2022 SAP business meeting agenda. Todd Callaghan made the motion to approve the March 1, 2022 business meeting agenda. Michael Moore seconded the motion. A roll call vote was taken and the motion passed unanimously 19-0.

REVIEW AND APPROVAL OF NOVEMBER 18, 2021 DRAFT BUSINESS MEETING MINUTES

Chairman McKiernan asked for a motion to approve November 18, 2021 SAP business meeting minutes. Michael Moore made the motion to approve the November 18, 2021 business meeting minutes. Dale Leavitt seconded the motion.

Steve Kirk asked for the previously submitted SAP member priorities to be appended to November business meeting minutes.

Ron Bergstrom made a motion to approve the minutes with this amendment. Amy Croteau seconded the motion to approve the amended minutes. A roll call vote was taken and the motion passed 15-0-4 with Mike Devasto, John Lebeaux, Mindy Domb, Steve Kirk abstaining.

CHAIRMAN'S COMMENTS

Chairman McKiernan welcomed Representative Mindy Domb to the SAP. Representative Domb was taking over as the House liaison to the SAP, previously held by former Representative Carolyn Dykema

Dan then discussed DMF's hosting of a virtual shellfish officer training course. This course was historically held in person at Massachusetts Maritime Academy but was cancelled in 2020 and 2021 due to COVID. To avoid cancelling this training for a third straight year, DMF worked with the Massachusetts Shellfish Officers Association ("MSOA") and the Massachusetts Environmental Police ("MEP") to develop a virtual course.

The Chair was interested in forming two sub-committees to work on priority issues. The first sub-committee will investigate the bulk tagging of shellfish by harvesters; the other will address municipal shellfish aquaculture license site transfer rules. He was hopeful these sub-committees could convene before the fall SAP business meeting.

McKiernan stated he was interested in convening the SAP again this spring. The purpose of a spring meeting would be narrow in scope—providing MEPA with feedback on their draft special review process for the licensing of shellfish aquaculture.

DMF Update

DMF Shellfish Program Chief, Jeff Kennedy, provided an brief presentation on personnel changes within DMF's Shellfish Program. Greg Bettencourt had taken over Jeff's former position as the program supervisor for the North Shore. Matt Camisa, a DMF biologist, was taking over as the program supervisor for the South Coast, replacing Greg Sawyer who recently retired. DMF was also looking to hire two new bacteriologists—one reporting to DMF's Gloucester office and the other to the New Bedford office—backfill two Aquatic Biologist positions in Gloucester, and hire another Aquatic Biologist in New Bedford.

SHELLFISH CONSTABLE APPOINTMENTS AND TRAINING

Overview of Section 98 and Shellfish Constable Training

Chairman McKiernan gave an overview of G.L. 130, §98. This section is the enabling statute for municipal shellfish constables, providing these agents with the authority to enforce local and state shellfish laws and regulations. This section also establishes that constable training may be held by the Massachusetts Maritime Academy, who historically conducted the course. Due to COVID, the Maritime Academy cancelled the training in 2020 and 2021. To avoid cancelling the training for a third straight year, DMF worked with MSOA and MEP to develop a virtual training course. Dan briefly described this year's virtual training program. He added that this work has prompted his interest in amending G.L. c. 130, §98 to eliminate reference to the Massachusetts Maritime Academy course and to establish a comprehensive online training program to be used moving forward.

Police Reform and Impacts on Shellfish Constables

In developing this year's training program, there were concerns that shellfish officers would have to comply with the extensive training requirements of the Police Reform Act, as they have the authority to arrest. DMF surveyed municipalities to determine how frequently constables make an arrest and to what extent constables may have received this new police training.

Tom Shields reviewed the results of the survey. He concluded that arrest powers are rarely utilized by shellfish constables, but many constables felt it was important to maintain this authority. To this latter point, Tom recognized a letter from Gloucester Shellfish Constable, Pete Seminara.

Update on Virtual Shellfish Constable Training Course

Henry Lind introduced himself to the SAP. Henry provided a brief presentation on this year's virtual constable training. This year's training will consist of three weeks of morning training sessions on Zoom and a final exam. 47 participants have signed up for the training and there will be 66 presentations given by approximately 50 presenters. Henry stated the virtual format has allowed for more attendees than the in-person training course due to travel times and other logistics. Henry concluded his comments by thanking DMF and all other collaborators who have made this training course happen. Henry welcomed any questions from the Panel.

Mike DeVasto supported the development of the online training program and felt it should be maintained as an online course moving forward. He opined that if the training modules were pre-recorded then each student could complete the training course at their own pace. For this year, he suggested hosting a one-day question and answer session before the final exam.

Ron Bergstrom pointed to a conflict-of-interest training as a potential model for the future training course. Ron opined it was also unlikely for a shellfish constable to make

an arrest. If presented with a scenario that warranted an arrest, the constable would likely rely on local police or the MEP.

Henry Lind highlighted a discussion he had with the program coordinator for the state's ethics training program. Through this discussion he learned the program cost nearly \$1M to put together. Accordingly, he expected there may be funding issues to develop a similar program for constable training.

Steve Kirk asked to what extent MEP may be involved in arrests dealing with shellfish violations in any calendar year. Tom Shields stated DMF's survey focused narrowly on constables given the Police Reform Act training questions. However, DMF could request MEP provide this information.

Mike DeVasto stated the Police Reform Act has made it difficult for police departments to have seasonal employees. He asked if constables were going to need to become sworn officers to make arrests. Tom stated that the arrests the constables made were assisted by local police. The constables are aware of risks involved and they would call in assistance if the situation required assistance. Dan McKiernan added the final decision on sworn officers is up to the Post Commission. The hope is that shellfish constables won't need the training, but it has yet to be resolved.

Dan concluded comments by stating that if any Panel members would like to attend the MSOA training, reach out to Julia Kaplan.

Overview of New Shellfish Constable Database

Julia Kaplan from DMF gave a brief overview of the new shellfish constable database. The database serves as a repository for any constable appointment letters that are sent to DMF as a requirement under G.L. c. 130, §98.

Dan McKiernan asked Henry Lind how many of the students signed up for the MSOA course are constables versus deputy constables. Henry stated there are about 10 constables and about 20-25 deputy constables.

SUB-COMMITTEE ON MUNICIPAL SHELLFISH AQUACULTURE LICENSE SITE TRANSFERABILITY

Chairman McKiernan stated his intent to form a sub-committee to investigate municipal rules regarding the transfer of shellfish aquaculture sites. This work would then describe the breadth of aquaculture license site transfer rules throughout the Commonwealth. He sought up to six SAP members to join this sub-committee and wanted a diversity of stakeholders on the sub-committee.

Ron Bergstrom sought clarification on what DMF hoped to gain from this sub-committee. Dan stated the sub-committee would research each town's rules regarding license site transfers and how they are executed. The end product would likely be a white paper describing the lay-of-the-land.

Mike DeVasto asked if the sub-committee would be tasked with making recommendations for changes in how transferability is managed. Dan stated he wanted to the sub-committee to do the information gathering for debate and discussion at the SAP.

Josh Reitsma expressed his interest in being part of the sub-committee. He suggested the final product be a “review paper” and added that SeaGrant Law Center at Roger Williams could help develop a survey.

SMAST MODELING OF WATERWATER TREATMENT PLANTS

DMF has been challenged with responding to FDA guidance and reclassifying certain shellfish growing areas adjacent to waterwater treatment plant (WWTP) outfalls. This reclassification exercise has the potential to close substantial acreage of shellfish beds to harvest. To date, DMF has been reliant on die studies to calculate dilution and closure areas. However, funding has been allocated to UMass Dartmouth’s School for Marine Science and Technology to conduct hydrographic modeling around WWTPs. These studies may better inform decision making. He expected the modeling of the North and South River complex would be complete this summer. Dan and Jeff then briefly discussed the earmarked funding for these studies.

Steve Kirk sought clarification on the meaning of an what outfall to an area that impacts shellfishing. Jeff provided in depth clarification for Steve.

Todd Callaghan wanted specifics on outputs and dilution lines. Jeff provided Todd with an in-depth clarification. Todd stated he would like to see the models when they’re finished.

DMF POLICY CLARIFYING PROCESSING OF NON-CONFORMING SIZED QUAHOGS

Jared Silva provided the SAP with a background on a new DMF policy regarding the production and sale of value-added quahog products that do not conform to the state’s quahog minimum size regulation. This was developed in response to a request from a New Bedford area processor to import and process quahogs from Virginia that did not conform to the state’s minimum size. Jared discussed the various components of the new policy and what it means for the value-added quahogs being sold in in-state.

Ron Bergstrom asked why a wild harvester cannot harvest or sell quahogs under a 1” shell thickness. Jared stated the minimum size requirement is a conservation standard. Jared then further discussed how this new policy applies only to aquaculture raised quahogs and seafood processors.

Josh Reitsma asked for clarification on the size of quahogs processors could bring in. Jared clarified that Massachusetts aquaculturists can harvest quahogs that are 7/8”

shell thickness. Dealers can then purchase these Massachusetts aquaculture raised quahogs for processing and in-state sale or for the sale of whole live product out-of-state. Additionally, dealers can import non-conforming sized aquaculture raised quahogs provided they conform to any applicable size regulations in the state of harvest.

Mike DeVasto wanted to know what the downside would be to selling half shell clams. Jared stated DMF have not received any requests beyond the scope of the policy at hand. If there is interest in a half shell market at the sub one-inch size it will need to be considered separately.

Seth Garfield asked that the SAP address the bay scallop size and season issue at a future meeting. Chrissy Petitpas stated there is a precedent to issue authorizations to exempt aquaculturists from these restrictions and DMF has been in touch with aquaculturists on the subject. Dan suggested Seth reach out to DMF directly to further discuss his concerns.

OTHER BUSINESS

Dan McKiernan asked Chrissy Petitpas to discuss the MEPA special review process (SRP) for the review of DMF-issued permits for shellfish aquaculture. Chrissy stated the aquaculture permitting landscape is multi-jurisdictional and it can be confusing. One issue is that it is not always clear whether projects are subject to MEPA review. Accordingly, there is interest in streamlining the review process for aquaculture projects which are in open water and using minimal structures. Instead of requiring them to file out an environmental notification form they would instead fill out a form that is listed on DMF's aquaculture website. This form would ultimately go through the MEPA review process. Chrissy highlighted other confounding issues and explained that MEPA is planning to use the public feedback to streamline the process, but also ensuring they are adequately assessing impacts to resources.

Dan stated MEPA may be looking for feedback within the next one or two months. Todd Callaghan stated they wanted it wrapped up by summer's end. Dan stated he would contact the MEPA office and schedule a special meeting of the SAP to review the draft SRP.

Panel Member Comments

Ron Bergstrom asked if DMF has a primer on aboriginal shellfish fishing rights. Dan stated the agency was working with MEP to provide more formal guidance to local shellfish officers.

Dale Leavitt asked for information on the bulk tagging issue. Chairman McKiernan wanted to establish a SAP sub-committee to look at the bulk tagging issue and work on it with MEP and DPH. Dan welcomed Dale to work serve on the sub-committee and asked for any other interested parties to reach out to him to participate.

Steve Kirk discussed the federal infrastructure funds that will be released soon. He suggested looking at the goals of the MSI and seeing if the money could meet the needs.

PUBLIC COMMENTS

Helen Miranda Wilson requested these meetings be held in a manner that would allow attendees to see who else is in attendance. Julia Kaplan explained the Zoom platform does not allow for this feature. Helen then suggested the state's procurement courses as models for the shellfish constable training course. Helen is looking forward to listening in on the sub-committee meetings on the transferability of aquaculture licenses. She concluded her comments by highlighting the Wellfleet's statutes relating the law enforcement.

Dominic Deseata inquired about statistics relating to the shellfish constable arrests. Dan McKiernan stated he would need to go to the communities for that information. He asked if there was any outreach information in other languages besides English. Dan stated that this would be a question for individual towns since they manage the shellfish fishery. Dominic specifically requested Spanish as a language and stated it would be a huge help in the interest of conservation and quality of access to the resource.

Jacob Angelo stated that he appreciates this meeting was held during high tide.

Geoff Gordon asked how the plant outflow are incorporated into the dilution calculations. Jeff Kennedy provided Geoff with an in-depth explanation of how the calculations work. There was ongoing discussion between Geoff and Jeff as Geoff had follow-up questions for Jeff.

Scott Soares strongly recommended that constables have adequate training and the tool, particularly if they continue to have arrest powers.

Chris Newhall is looking to understand the SMAST study and wanted clarification that it will identify the dilution lines and those will be used to set the harvest area classifications. Jeff Kennedy provided Chris with an in-depth answer to his questions. Chrissy echoed some of Jeff's comments. Todd Callaghan also contributed to the conversation and added through the discharge reports, a WWTP owner reports the twelve-month rolling average.

Pete Seminara stated he appreciates DMF's work. Dan thanked Pete for his memo on arrest powers.

Brian Vanderhoop stated he heard there may be funds available through grants for invasive aquatic species. He was wondering if anyone had any foresight in this regard. Todd Callaghan said he will be reaching out to a colleague and will get back to Brian after the meeting.

ADJOURNMENT

Dan concluded his comments by thanking the Panel for their participation and stated he will be reaching out regarding the formation of the sub-committees. Dan wished Henry good luck with the MSOA training next week.

Dan asked for a motion to adjourn the Shellfish Advisory Panel meeting. **Ron Bergstrom made a motion to adjourn. Amy Croteau seconded the motion. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- March 1, 2022 SAP Business Meeting Agenda
- November 18, 2021 SAP Draft Business Meeting Minutes
- G.L. c. 130, § 98
- Memo re: Shellfish Constable Power of Arrest at G.L. c. 130, § 98
- Final 2022 MSOA Constable Training Syllabus
- G.L. c. 130, § 58
- DMF Policy on Importation, Possession, and Processing of Non-Conforming Quahogs
- DMF Updates Presentation
- SMAST WWTP Modeling Presentation
- MSOA Constable Training Presentation
- Summary of Shellfish Constable Interviews Presentation

UPCOMING MEETINGS

May 20th, 2022 via Zoom, 9 AM

APPENDIX
SAP Member Priorities
Shellfish Advisory Panel Meeting
November 18, 2021

Prior to the November 18th meeting in Plymouth, twelve SAP members emailed their three priorities that they think SAP should address. Their listed priorities are provided below.

Joshua Reitsma

Below are 3 of the priority items I had some industry reach out about (not necessarily in order of importance):

1. SAP, DMF, DPH to work with shellfish stakeholders to collectively evaluate possible solutions for direct to consumer sales, with a focus on lessons learned from other states, and/or modifying the dealer definition to make it easier for shellfishermen to safely sell their product. Incentivize opportunity to do so with expanded training and permitting options.
2. DMF and municipalities collaborate to identify ways to bolster closure notification procedures outlined in municipal contaminated area management plans, with consideration for: - Review of systems like Barnstable's "One-Call" for phone and text alerts - Expedited notifications while respecting municipal-specific closures - Mandatory training for municipal staff/constables to support broad implementation of shellfish closure notification
3. Increase state capacity for the in-state testing of shellfish human health hazards: - prioritize funding toward the utilization of existing resources with sister agencies and state universities. Conduct an evaluation of laboratory capacity across state agencies and state universities to determine how existing resources may be leveraged to meet both research and regulatory needs, including: - Evaluate the need for fee-for-service or ISA agreements to utilize resources across agencies/institutions for varied needs. - Evaluate staffing and training needs to certify existing laboratory staff/facilities and maintain NSSP proficiencies of laboratory staff.

Michael DeVasto

Top 3 Priorities

- Evaluate and recommend potential changes to regulations/ guidelines for direct-to-consumer sales opportunities in coordination with NSSP, with expanded training and permitting.
- Prioritize shellfish disease research/monitoring. (neoplasia in hard shell clams)
- Strengthen regulation and/or enforcement in labeling shellfish sales that may allow the use of emerging technology at point of retail sale and use of emerging tagging technology at point of harvest improve traceability

Allen Rencurrel

The three things I would like the SAP to focus on are:

1. Hatches Harbor in Provincetown, MA;
2. Small surf clams at Horseneck Beach in Westport, MA; and
3. Ocean acidification in southeastern MA

Ronald Bergstrom

Priorities

Keeping Massachusetts waters open to shellfishing to the maximum extent possible.

Limiting the appropriation of viable shellfish habitat for private aquaculture.

Prioritizing the marketing of fresh, locally grown and harvested shellfish

Amy Croteau

Top priorities: help move objectives identified in the MSI- specifically those pertaining to DMF to start, more formal participation with ISSC items, help bridge communication gaps between fisheries enforcement and those actively engaged in the fisheries.

Adjust as needed to suit what goes to print.

Alex Hay

My top three priorities:

- Communication/relationship/strategy between MA DMF/Industry and the ISSC (and related FDA, MA DPH)
- Growing area/harvest area classification status – looking forward
- Communication with industry needs – looking forward

Dale Leavitt

As for priority areas, I have two that immediately come to mind and will work to come up with a third, once I review more of the material.

Priority 1 (a long term effort): After having to submit somewhere on the order of 12 separate but highly similar applications to permit my Mattapoisett farm site, I can see there is a dire need for **permit streamlining**, starting at the town level and working its way to the federal level. Everyone wants the same information but most require it in their own format. That is extremely cumbersome and often confusing for the applicant. Honestly, I can't imagine someone with no prior knowledge of the regulatory/permitting environment actually making

their way through the process without external assistance, i.e. a consultant. That is a heavy burden on someone starting out in the shellfish world.

Priority 2 (a short term effort): The pilot bulk tagging program for harvester/dealer's has been successful (I assume) and it is now time to **extend the bulk tagging allowance** into the rank and file harvester's who are selling large (or small) quantities to one buyer. We need to develop a means for all commercial shellfish aquaculture producers to bulk tag product coming off the farm, where it is appropriate to allow it to happen.

Will work on the third but may not get it reasoned out until after COB today.

Bill Doyle

Priorities

To develop a balance between Commonwealth regulations and local regulations that creates parity across municipalities.

To identify short-term and long-term opportunities for water quality improvements and to support these efforts in conjunction with the Legislature and all responsible Commonwealth government branches.

To identify increasing invasive species that pose a threat to the industry and track their migration. To provide a course of action to minimize risk.

To clearly define and adopt the charge of the panel and the steps to be taken.

Stephen Kirk

Top Three Priorities for SAP:

1. Dig in on 208 issues/concerns (MSI Strategic Plan 6.1)
 - a. Develop nutrient trading markets for restoration and aquaculture to improve water quality while supporting industry.
 - b. Need detailed economic analysis and working group of appropriate agencies and stakeholders
2. Create the conditions for shellfish restoration to be a viable tool for municipalities to improve their coastal ecological conditions (MSI Strategic Plan 6.2)
 - a. Allow planting in NSSP classification areas below approved.
 - b. Decouple municipal propagation authority for stock enhancement as mechanism for planting for habitat/ecosystem restoration
3. Funding (MSI Strategic Plan 3.1)
 - a. To DMF and broader shellfish community to effectively manage existing and emerging challenges.

Michael Trupiano

Here are a few priorities/questions as requested.

1. Better understanding and utilization of the depuration plant. There have upgrades to system in lieu of use for multiple species. Not sure where it's all at.
2. Strengthening of soft shell clam resource. Landings have been week for many years now. How do we address?
3. Oyster north of Boston. Is there a natural resource that could be utilized commercially. They may not be priorities but more questions that I think would be interesting to investigate.

Renee Gagne

Top 3 priorities for SAP

1. ISSC/NSSP Issues
 - Increase the State's capacity and commitment to regularly communicate with coastal municipalities about ongoing ISSC/NSSP issues pertaining to classification of shellfish growing areas and aquaculture/Vibrio management.
 - There needs to be better communication between DMF/DPH and the towns about changes to the NSSP Model Ordinance well before they occur. Ideally, towns should be included in state deliberations pertaining to submission of proposals to the ISSC.
 - The recent implementation of seasonal closures of mooring areas has the potential to become a major disruption to commercial and recreational shellfishing on Cape Cod and South Coast communities which could have a devastating impact on local economies.
2. Town Shellfish Constables and water quality specialists should have the opportunity to meet with FDA Shellfish Specialists while conducting Growing Area PEER evaluations.
3. The State should provide funding for the MSOA training course which is mandated under MGL Chapter 130 Section 98. Dedicated funds are needed for planning and facilitation of the two week course which is offered every 2-3 years.

Jim Abbott (communicated by phone)

Increase or at least maintain recreational shellfishermen's accessibility to the waterfront.