

MARINE FISHERIES ADVISORY COMMISSION

March 18, 2021

Held Virtually via Zoom

In attendance:

Marine Fisheries Advisory Commission: Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Bill Doyle, Clerk; Arthur “Sooky” Sawyer; Kalil Boghdan; Bill Amaru; Lou Williams; Tim Brady; and Shelley Edmundson.

Division of Marine Fisheries: Daniel McKiernan, Director; Kevin Creighton, CFO; Michael Armstrong, Assistant Director; Story Reed; Jared Silva; Melanie Griffin; Nichola Meserve; Jeff Kennedy; Kathryn Ford; Bob Glenn; Erin Burke; Anna Webb; Nick Buchan; Kelly Whitmore; Derek Perry; Tracy Pugh; and Steve Wilcox.

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

Massachusetts Environmental Police: Lt. Col. Moran; Lt. Matt Bass; and Capt. Kevin Clayton

Members of the Public: Peter Fallon; Laura Hayes; Drew Kolek; and Allison Lorenc.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the March 18, 2021 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF MARCH 18, 2021 BUSINESS MEETING AGENDA

No amendments were proposed to the March 18, 2021 MFAC business meeting agenda.

Chairman Kane asked for a motion to approve the draft agenda. Kalil Boghdan made a motion to approve the agenda. The motion was seconded by Bill Doyle. The March 18, 2021 MFAC business meeting agenda was approved by unanimous consent.

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

Shelley Edmundson asked the third paragraph on page three be amended to state she is the co-PI on the Atlantic Coastal Cooperative Statistics Program whelk study fleet grant and the third paragraph on page six be amended to clarify channeled whelk spawn do not get dispersed throughout the water column. Jared Silva indicated he would make these corrections.

Chairman Kane asked for a motion to approve the February 18, 2021 amended meeting minutes. Kalil Boghdan made motion to approve the February business meeting minutes as amended by Shelley Edmundson. Tim Brady seconded the motion. The final February 18, 2021 business meeting minutes were approved by unanimous consent.

CHAIRMAN'S COMMENTS

Chairman Kane welcomed everyone to the March MFAC business meeting and thanked the Commission for their attendance. He requested DMF explore providing the MFAC with tablets to help members prepare for and attend these virtual meetings.

COMMISSIONER'S COMMENTS

Commissioner Amidon stated the virtual meeting format has been challenging for many people to navigate. He also noted it allows for increased stakeholder interest and engagement. With this in mind, he thanked the MFAC and DMF for their continued professionalism working in the virtual meeting format.

DIRECTOR'S COMMENTS

The Director began his comments by stating the Atlantic States Marine Fisheries Commission (ASMFC) would be holding a public hearing tonight for Massachusetts regarding the Public Information Document for draft Amendment 7 to the Interstate Striped Bass Fishery Management Plan.

DMF remained highly focused on protected species issues. The agency continued to develop its Incidental Take Permit (ITP) application and prepare for the June trial. DMF also submitted comments on NOAA's draft Biological Opinion on 10 Fishery Management Plans (BiOp) and its draft regulations for the Atlantic Large Whale Take Reduction Plan (ALWTRP). Lastly, following the MFAC's approval of new protected species regulations in January, DMF reached out to commercial trap fishermen regarding the new buoy line modification requirements. DMF Senior Biologist Bob Glenn would speak in more detail on these subjects later in the meeting.

The Director moved on to discuss the Massachusetts Shellfish Initiative (MSI). The MSI's Task Force drafted and was in the process of finalizing a Strategic Plan. This included a series of public meetings where the document was discussed and edited. Dan received a lot of positive feedback on the document, as well as the transparent process by which it is being developed.

For DMF, one of the most important deliverables from this Strategic Plan is the formalization of DMF's ad-hoc Shellfish Advisory Panel (SAP) through legislation. The proposed legislation would provide directives as to the composition of the SAP, as well as a mandate to meet biannually. The DMF Director would chair the SAP and

membership would include other relevant government agencies (e.g., DEP, DAR, DPH, CZM), industry (e.g., dealers, growers, wild harvesters), recreational fisheries, tribes, municipalities, and research and academia. Moving forward the SAP would serve as a forum for shellfish related issues to be discussed among stakeholders and to oversee the fulfillment of the MSI's Strategic Plan. In the interim, DMF intended to convene the ad-hoc SAP on March 29 at 1PM to discuss a number of hot-button shellfish issues.

VIMS recently held a symposium on channeled whelk management. This provided the Atlantic states with an opportunity to understand how whelk fisheries are conducted and managed in other jurisdictions and share relevant research along the coast. DMF staff attended and presented at this symposium. On the subject of whelks, Dan congratulated DMF biologist Steve Wilcox on the publication of a paper on channeled whelk age and growth.

Dan moved on to discuss the NEFMC nominations and congratulated Commission member Mike Pierdinock for being nominated by Governor Baker to fill the obligatory seat currently held by Dr. John Quinn of New Bedford.

Dan stated DMF was working on new recreational permitting system in conjunction with Division of Fish and Wildlife and the Department of Fish and Game. Story Reed also continued to work with IT staff on the development of a new commercial permitting system.

Director McKiernan informed the MFAC that Dr. Kathryn Ford would be leaving DMF for a prominent position with the Northeast Fisheries Science Center. Dan commended Kathryn's contributions as a DMF employee. While Kathryn will be missed by DMF, Dan stated the Fisheries Habitat Program was strong and primed to continue their good work.

The Director then opened the floor to questions.

Bill Amaru was concerned Dr. Ford's departure may impact DMF's ability to address temporal windows for harbor dredging projects along Cape Cod. Dan stated that John Logan and Mike Armstrong will continue Kathryn's work on the matter.

Sooky Sawyer stated the MFAC was listed as being consulted in the Governor's NEFMC nomination letter. However, no one from the agency reached out to him on the subject. He was concerned he missed an opportunity to vote for the NEFMC nomination. Melanie Griffin clarified that DMF typically only consults the MFAC Chairman, but consulting the full commission is something to consider going forward.

Lou Williams and Sooky Sawyer also expressed concern about Massachusetts' shrinking commercial fishing representation on the NEFMC.

Mike Pierdinock thanked Governor Baker, Commissioner Amidon, and Director McKiernan. Mike P. understood the concerns stated by Lou and Sooky regarding

representation from the commercial fisheries. However, Mike P. added it has been a long time since a recreational fishing advocate held a NEFMC in Massachusetts.

Commissioner Ron Amidon stated that representation from regional fishing ports was also something taken into consideration when making nominations. Current representatives from Massachusetts hail from the North Shore and Cape Cod, and Mike P. has ties to both the South Shore and New Bedford.

LAW ENFORCEMENT COMMENTS

Lt. Matt Bass handled the comments for the Massachusetts Environmental Police (MEP). Lt. Bass noted MEP was focused on removing trap gear from the seasonal trap closure area and addressing shellfish management issues along the South Shore and Cape Cod. MEP was also involved in the recent disentanglement of a right whale.

Director McKiernan stated the entangled right whale was found to be carrying about 300' of 5/8" line. Given the diameter and length of the line, it was likely not attributable to a Massachusetts' trap fishery. Chairman Kane thanked Dan for the clarification and frustrated this point was not clearer in media reports.

ACTION ITEMS

Recommendation to Lift the Conditional April Groundfish Closure for 2021
DMF regulations at 322 CMR 8.05 close state waters between Plymouth and Marblehead to commercial groundfish fishing during the month of April. However, this closure is conditional and serves as a fail-safe to prevent the state waters fishery from causing overages of the total annual catch limit (ACL) set by NOAA Fisheries. Accordingly, DMF may annually lift this closure—with approval of the MFAC—should a landings analysis demonstrate that the closure is not a necessary fail-safe.

For 2021, DMF's analysis demonstrated landings were well below the federally allocated state waters sub-components and that allowing commercial groundfish fishing in April would not likely cause an exceedance of groundfish ACLs. Accordingly, Director McKiernan recommended lifting the conditional closure for this calendar year for certain gears.

The 2021 recommendation was complicated by protected species concerns related to potential entanglements of endangered right whales in fixed gear—specifically gillnets—should the closure be lifted for all gears. Sightings data demonstrate right whales have been observed in this area of Massachusetts Bay during April in recent years. For this reason, DMF further recommended conditioning the lifting of the closure to only trawl and hook gear. Certain fixed gears, such as gillnets and longlines set to soak overnight, would remain prohibited.

Dan also explained that the existing overarching mobile gear closures and spawning closures in Massachusetts Bay would remain in place with the condition closure being

lifted. This would restrict fishing access in nearshore waters along Boston and the North Shore and in known cod and winter flounder seasonal spawning grounds within and adjacent to the conditional April closure area.

Mike Pierdinock asked what criteria DMF used to determine whether or not April would remain closed to commercial fishing. Melanie and Dan described the interplay between the state and federal management schemes and explained the decision to lift the closure is based on DMF's annual review of landings by state waters only fishermen in the context of the federally allocated state waters sub-components and ACLs for these stocks. Mike also asked if there was concern for dead discards. Melanie stated that NMFS accounts for discards in the state waters fishery.

Lou Williams disagreed with the Director's recommendation and felt it discriminated against gillnet gear. He argued the risk of whale entanglements in gillnet gear were minimized by gear modifications (e.g., breakaways and anchor systems) adopted by the fleet over twenty years ago. Accordingly, he felt gillnet fishing should not be restricted in this area if the data demonstrated it could be opened for groundfish management purposes.

Bob Glenn noted the state's gillnet fishery fishes in compliance with existing protected species rules. However, DMF's decision was not based on the gillnet fleet's ability to comply with existing rules, but with the risk this gear may pose to right whales and how it may impact the state's ongoing ITP application for its commercial fixed gear fisheries.

Bob then discussed NOAA Fisheries' ongoing rule making to address fisheries interactions with right whales. The agency initiated a framework to systemically review the risk and management of all gear types over a 10-year period of time. Based on the total number of vertical buoy lines deployed, the American lobster fishery was addressed first. Bob expected NOAA fisheries would look other fixed gear fisheries, including gillnets, in 2021 or 2022. Accordingly, what was previously required of the state and federal gillnet fisheries may not be required in the future.

Lou acknowledged this but argued the state should manage the gillnet fishery in tandem with NOAA Fisheries and not take a more conservative, unilateral approach.

Bill Amaru did not support the Director's recommendation. First, he disagreed with the recommendation to open the area due to groundfish conservation and management concerns. Additionally, he disagreed with the Director's approach to managing gillnets separately from other gears.

Ray Kane asked for a motion to approve the recommendation regarding the April groundfish closure. Kalil Boghdan made motion to approve the recommendation. Mike Pierdinock seconded the motion. The vote was taken via roll call vote and failed 4-5. Bill Doyle, Bill Amaru, Sooky Sawyer, Lou Williams and Chairman Kane opposed the motion, while Tim Brady, Mike Pierdinock, Kalil Boghdan and Shelley Edmundson approved the motion.

With the motion failing, Jared Silva informed the MFAC that the April groundfish closure would remain in place for all gear types. There was apparent confusion among Commission members regarding the baseline measure should the motion fail.

While Lou Williams did not support the Director's recommendation, he did not intend to deny other commercial fishermen access to the conditional April closure area. He instead wanted the MFAC to pursue a motion that would provide similar access to gillnets and longlines.

As a point of order, Jared Silva stated the process allows for the Director to make a recommendation and for the MFAC to vote on the Director's recommendation. It does not allow the MFAC to work unilateral of the Director.

Director McKiernan stated his interest in hearing the MFAC consider potentially accommodating gillnets and longlines. If he felt there was substantial support for this, he would consider adjusting his recommendation.

Ultimately, a majority of the MFAC did not support such an accommodation. Accordingly, Chairman Kane called for the Director's initial recommendation to be reconsidered.

Kalil Boghdan made motion to approve the Director's recommendation to lift the April conditional closure for mobile gear and active hook and line fishing. Lou Williams seconded the motion. The vote was taken via roll call vote and was approved 5-2-1. Lou Williams, Kalil Boghdan, Mike Pierdinock, Shelley Edmundson and Tim Brady voted in favor of the motion. Bill Amaru and Sooky Sawyer opposed the motion. Bill Doyle abstained.

Given the variety of concerns raised throughout this debate, Director McKiernan recommended forming a subcommittee to provide suggestions on how to better manage the state waters commercial groundfish fishery. Lou Williams, Bill Amaru, and Mike Pierdinock will be members of this state waters groundfish management subcommittee.

Recreational Gulf of Maine Cod and Haddock Limits

DMF recommended the MFAC adopt recreational Gulf of Maine cod and haddock limits consistent with NOAA Fisheries. For haddock, this would result in an open season that begins on April 1 and closes on the last day of February with a 15-fish bag limit and 17" minimum size. For cod, this would result in an open season of April 1 through April 14 and September 15 – September 30 with a 1-fish bag limit and 21" minimum size. These rules will go into effect for April 1, 2021.

Additionally, the NEFMC's recent action to approve status quo recreational fishing limits included a for-hire bonus season for Gulf of Maine cod that would run from September 8 – October 7. This season was adopted via an interim measure in 2020 in response to the loss of access to the springtime fishery due to COVID related restrictions. DMF

subsequently adopted by permit condition, so it was not codified in regulation. However, there was uncertainty as to whether NOAA Fisheries would approve this bonus season again given COVID restrictions are unlikely to be in place for this calendar year. Accordingly, DMF also sought presumptive approval from the Commission to adopt the September 8 – October 7 for-hire bonus season should it be approved by NOAA Fisheries.

Chairman Kane opened the floor to questions.

Mike Pierdinock stated his frustration with the projected dead discarding of GOM cod constraining recreational fishing access to the abundant biomass of haddock. He was hopeful DMF's work into cod avoidance would begin to improve management in this regard. However, despite these concerns, he supported status quo and appreciated DMF's willingness to pursue the for-hire bonus season should NOAA Fisheries approve it.

Chairman Kane requested a motion to adopt the recreational Gulf of Maine cod and haddock limits. Tim Brady made motion to approve the Gulf of Maine cod and haddock limits as recommended by the Director. Bill Doyle seconded the motion. A roll call vote was taken, and the motion was approved unanimously.

Striped Bass Circle Hook Mandate

DMF recommended the MFAC approve new regulations governing the use of circle hooks in the recreational striped bass fishery. These regulations would: (1) define bait as "any marine or aquatic organism, live or dead, whole or parts thereof"; (2) require the use of circle hooks by all recreational anglers—including those fishing aboard for-hire vessels—when bait fishing for striped bass; (3) exempt from this circle hook requirement any artificial lure with bait attached; and (4) require any striped bass caught on any unapproved method of take to be returned to the water immediately without unnecessary injury.

Director McKiernan provided some background on current requirements governing the use of circle hooks in the recreational striped bass fishery. The above recommendation was designed to comply with Addendum VI to the Interstate Fishery Management Plan for Striped Bass and was consistent with the motions approved by the ASMFC's Striped Bass Board on March 17, 2021. Mike Armstrong stated the ASMFC grappled with how to define bait and artificial lures and apply the use of circle hooks in a rationale manner. Ultimately, Mike was satisfied with how the ASMFC resolved the questions surrounding circle hooks but noted rigged eels would be prohibited under the current rule.

Ray Kane opened the floor to questions.

Kalil Boghdan commended Mike Armstrong for his presentation he gave at the ASMFC webinar on March 17.

Mike Pierdinock thanked DMF for all their work on this circle hook measure. He had hoped to see the rigged eel included within the circle hook exemption, as it is fished like an artificial lure. However, he understood why it was not.

Chairman Kane asked for a motion to adopt the new regulations governing the use of circle hooks in the recreational striped bass fishery. Kalil Boghdan made motion to approve the recommendation provided by the Director. Bill Doyle seconded the motion. A roll call vote was taken, and the motion was approved unanimously.

Prohibition on Trapping for Blue Crabs

Bob Glenn briefed the MFAC regarding DMF's proposal on prohibiting trapping for blue crabs. During the summer of 2020, the Massachusetts Environmental Police (MEP) encountered blue crab traps in the estuaries of upper Buzzard Bay. Routine inspection of this trap gear found the traps incidentally caught and drowned numerous diamondback terrapin turtles. This turtle species is listed as threatened in Massachusetts and is protected under the Massachusetts Endangered Species Act.

Given the overlap of these species' habitat, it is likely that this incidental catch is not uncommon when fishing traps for blue crabs. In response, to this emerging protected species management issue, DMF recommended prohibiting the use of traps to take blue crabs. This prohibition would eliminate this potential source of turtle mortality and would prevent DMF from licensing an activity that may result in the taking of a protected species. While this would eliminate trapping for blue crabs, there are other prevalent and effective active fishing gears and techniques that fishermen may continue to use to catch blue crabs that do not pose a risk to diamondback terrapins. Moreover, DMF does not anticipate that this prohibition would impact other regulated trap gears (e.g., fish pots, lobster traps) because they are not set in warm, inshore estuarine waters.

Ray Kane commended Bob Glenn for providing clarity on these issues at the recent public hearing. There were no comments or questions regarding this recommendation.

Chairman Kane asked for a motion to adopt the DMF's recommendation to prohibit the use of traps to take blue crabs. Bill Doyle made motion to approve the recommendation as provided by the Director. Shelley Edmundson seconded the motion. A roll call vote was taken, and the motion was approved unanimously.

DISCUSSION ITEMS

Update on Protected Species Issues

Bob Glenn briefed the MFAC on protected species management issues. Specifically, he discussed recent comments submitted by DMF to NOAA Fisheries' BiOp and draft ALWTRP rules.

Bob then discussed likely adjustments to buoy line marking rules for the lobster fishery in 2022. DMF was consulting NOAA Fisheries on buoy line marking requirements and was concerned the draft rules in the ALWTRP did not sufficiently differentiate gear set in federal waters from gear set in state waters. If an entanglement was misattributed to state waters, it could have profound impacts on the state fishery.

Lastly, Bob reviewed the state's ongoing outreach to industry on the new weak rope requirements. This included public events to distribute weak rope and weak contrivances to the fleet. Bob thanked MLA and Beth Casoni for getting the information about rope distribution out to fishermen.

Bill Amaru asked Bob to clarify the definition of a 'take'. Bob stated that under federal law a take within a commercial fishery is any interaction with commercial fishing gear. It does not have to cause serious injury or be lethal to be considered a take. Any harassment or harm to a protected species would also be considered a take.

Sooky Sawyer thanked Bob, Dan, and DMF staff for their great work distributing rope up in Gloucester. He added that Justin Wilson was very helpful and knowledgeable.

New England Council Update

Melanie Griffin briefed the MFAC on happenings at the NEFMC.

- In regards to groundfish, the NEFMC was focused on finalizing Framework 62 to set specifications for 2022 – 20224; the development of metrics for Amendment 23's monitoring system review; considering the use of the Cod Stock Structure Working Group's findings in management; and following on the report and peer review on revising ABC Control Rules.
- On scallops, the NEFMC was addressing the use of the 2021-2022 research set-aside to address surveys, bycatch reduction, and the incidental catch of sea turtles; developing Framework 34 to set specifications for 2022-2023; and addressing a petition for Secretarial Action on Limited Access quota leasing.
- For Atlantic sea herring, the NEFMC continued to work on rebuilding the herring resource and developing spawning protection measures for Georges Bank.
- The NEFMC continued to work on Eco-System Based Management and climate resiliency. On the subject of climate resiliency, NOAA was engaging stakeholders regarding the Biden Administration's Executive Order on climate change.

Updates on Shellfish Growing Area Reclassification of Three Bays

Jeff Kennedy provided the MFAC with a brief presentation on the reclassification of shellfish growing areas in Kingston, Plymouth, and Duxbury Bay. In response to a 2018 dye study, FDA has found DMF's classification of these growing areas to be deficient under the National Shellfish Sanitation Program's Model Ordinance (MO). Specifically, due to potential pollution from treatment plant failure, DMF has been instructed to reclassify and downgrade the classification of certain areas adjacent to the treatment plant outfall. Depending on the size of the reclassified areas, the shift in classification

from Approved to Conditionally Approved could limit emerging European Union market access for area oyster growers. Many local aquaculturists oppose this action and find it to be unnecessary, unduly constraining, and overly precautionary. DMF was collecting additional data and evaluating a number of relevant factors, and the agency would continue to work with ISSC, municipal officials, and FDA towards a resolution.

Jeff Kennedy welcomed questions from the commission.

Ray Kane asked if there are issues with the plant's effluent discharge. Jeff stated this action is not being driven by plant performance. Rather, this is a product of the MO's guidelines regarding shellfish growing areas adjacent to treatment plants in the case of potential plant failure.

Bill Doyle thanked Jeff for his efforts. Bill opined that under current management, the plant does not pose a public health risk. Jeff confirmed the plant is well operated and stays within their effluent discharge limits. Bill Doyle encouraged DMF to come up with an accommodation with FDA that works well for everyone.

Mike Pierdinock asked Jeff to identify the location of the outfall pipe on the map of local shellfish growing areas. Mike also asked additional clarifying questions regarding the plant outflows and what that means regarding the conditional closures.

Ray Kane thanked Jeff for the Presentation.

PRESENTATION ON MA OCEAN ACIDIFICATION COMMISSION REPORT

This presentation was delayed to a future meeting due to time constraints.

OTHER BUSINESS

Commission Member Comments

Bill Amaru thanked Director McKiernan for directly contacting concerned fishermen in Provincetown.

Mike Pierdinock requested a CARES relief update at a future meeting.

Ray Kane thanked the Commission for staying engaged.

PUBLIC COMMENTS

There were no public comments made.

ADJOURNMENT

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

MEETING DOCUMENTS

- March 18, 2021 MFAC Business Meeting Agenda
- February 18, 2021 Draft MFAC Business Meeting Minutes
- Recommendation to Lift Conditional April Groundfish Closure
- Overview of Final Rules Affecting Recreational Fishing Limits and Gear
- Recommendation on Gulf of Maine Haddock Limits
- Recommendation on Gulf of Maine Cod Limits
- Recommendation to Amend the Recreational Striped Bass Circle Hook Requirement
- Recommendation to Prohibit Blue Crab Trapping
- Written Public Comment on Proposals Affecting Recreational Fishing Limits and Gear
- March 2, 2021 Public Hearing Slideshow
- Slide Show on Protected Species Update
- Reclassification of Three Bays System Staff Memorandum
- Slide Show on Reclassification of Three Bays System
- DMF Comment Letter to NOAA Fisheries on Atlantic Large Whale Take Reduction Plan Draft Regulations
- DMF Comment Letter on South Fork Wind DEIS

UPCOMING MEETINGS

9 AM
April 16, 2021
Via Zoom

9AM
May 13, 2021
TBD

9AM
June 17, 2021
TBD