MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA
8AM
March 19, 2024
Via Zoom
Login: https://us02web.zoom.us/j/87279471984
Call In: 1-301-715-8592
Webinar ID: 872 7947 1984

1. Call to Order and Routine Business (8:00 - 8:15)
    a. Introductions and Announcements
    b. Review of March 2024 Business Meeting Agenda
    c. Review and Approval of February 2024 Draft Business Meeting Minutes
2. Comments (8:15 – 8:45)
    a. Chairman
    b. Law Enforcement
    c. Commissioner
    d. Director
3. Action Items (8:45 – 11:15)
    a. Horseshoe Crab Management
    b. Commercial Striped Bass Fishing Days and Primary Purchase Requirements
    c. Commercial Menhaden Season and Automatic Trip Limit Adjustments
    d. Commercial Summer Flounder Trip Limits
    e. Adjustment to May Commercial Groundfish Closure
    f. Commercial Mackerel Trip Limit for State Waters
    g. Staying Commercial Whelk Gauge Increase
    h. Commercial Smooth Dogfish Trip Limits
    i. Amendments to Sanitary Shellfish Harvest and Handling Rules
4. Final Permitting Actions (11:15 – 11:30)
    a. Updates to Permit Transferability Rules
    b. Housekeeping Adjustments
5. Emergency Actions to Set Recreational Fishing Rules (11:30 – 12:15)
    a. Black Sea Bass, Scup, and Summer Flounder Limits
    b. At-Sea Filleting of Striped Bass
6. Other Business (12:15 – 12:30)
    a. Upcoming Public Hearings and Business Meetings
    b. Commission Member Comments
    c. Public Comment
7. Adjourn (12:30)

All times provided are approximate and the meeting agenda is subject to change. The MFAC may amend the agenda at the start of the business meeting.

Future Meeting Dates

9AM April 23, 2024 TBD	9AM May 21, 2024 TBD	9AM June 19, 2024 TBD

MARINE FISHERIES ADVISORY COMMISSION
Tuesday, February 13, 2024
Via Zoom

In attendance:
Marine Fisheries Advisory Commission: Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Kalil Boghdan; Shelley Edmundson; Bill Amaru; Arthur "Sooky" Sawyer; Chris McGuire; Tim Brady; and Bill Doyle

Department of Fish and Game: Commissioner Tom O'Shea; and Sarah Maier

Division of Marine Fisheries: Daniel McKiernan, Director; Bob Glenn, Deputy Director; Kevin Creighton, Assistant Director; Story Reed, Assistant Director; Mike Armstrong, Deputy Director; Jared Silva; Julia Kaplan; Ben Gahagan; Brad Chase; Tracy Pugh; Derek Perry; Steve Wilcox; Melanie Griffin; Kiera Lawlor; Stephanie Cunningham; Scott Schaffer; and Nick Buchan.

Massachusetts Environmental Police: Lt. Matt Bass; and Lt. Col. Pat Moran

Members of the Public: Nora Blair; Peter Fallon; Sharl Heller; and Heather Haggerty.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane thanked everyone for their attendance and called the February 13, 2024 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW OF FEBRUARY 13, 2024 BUSINESS MEETING AGENDA

Chairman Kane asked if there were any amendments to the February 13, 2024 MFAC business meeting agenda. No amendments were proposed.

REVIEW AND APPROVAL OF DECEMBER 19, 2023 DRAFT BUSINESS MEETING MINUTES

Chairman Kane asked if there were any amendments to the December 19, 2023 draft business meeting minutes. No amendments were sought.

The Chairman then requested a motion be made to approve the minutes. **Sooky Sawyer made the motion to approve the December 19, 2023 business meeting minutes. Shelley Edmundson seconded the motion. A roll call vote was taken and the motion passed unanimously 8-0-1 with Chairman Kane abstaining.**

CHAIRMAN'S COMMENTS

Chairman Ray Kane welcomed everyone and thanked the MFAC for their continued attendance.

LAW ENFORCEMENT

Lt. Bass handled the comments for the Massachusetts Environmental Police (MEP) and briefly discussed some issues occurring on the North Shore related to the inshore sea scallop fishery and the federal maximum retention program for groundfish. Lt. Bass then highlighted ongoing work to remove trap gear from the seasonal closure area to protect right whales and discussed the deceased right whale off Martha's Vineyard. He then closed his comments with a personnel update.

COMMISSIONER'S COMMENTS

Commissioner O'Shea stated he will be meeting with members from the Gloucester fishing community later this week and discussed NOAA Fisheries' recent Ocean Biodiversity conference in Washington DC. The conference was timely given DFG's ongoing development of a Biodiversity Strategic Plan for Massachusetts. DFG staff would present on this plan later in the meeting.

DIRECTOR'S COMMENTS

Director McKiernan began his comments by highlighting the various issues facing the agency's Shellfish Program. On the personnel side, there were a number of vacancies throughout the program due to turnover and retirements. DMF promoted Chrissy Petitpas to be the Shellfish Program Manager; Chrissy was previously the South Coastal Program Leader and had served as the Acting Program Manager followed Jeff Kennedy's retirement last year. Additionally, DMF Wayne Castonguay was hired to be the North Coastal Program Leader; most recently, Wayne worked for the Ipswich River Watershed Association. Lastly, DMF biologist Alex Boeri moved from the Invertebrate Fisheries Program to lead the Aquaculture Project. Dan felt strongly that these hires created a strong core team, but DMF still needed to backfill the South Coastal Lead position (previously held by Chrissy) and bring on laboratory and field biologist staff. Dan noted these staffing issues underscored a larger agency-wide problem regarding talent retention, which he and Commissioner O'Shea were working to address. Concurrently, the Shellfish Program was also facing serious programmatic issues. DMF had to close the Newburyport Depuration Plant

There were also two significant programmatic issues at present. First, DMF halted depuration activities at its Newburyport plant in late November 2023. Recent storms and coastal erosion had rendered the plant inoperable and in need of significant infrastructure investment. DMF had scheduled a stakeholder meeting for February 15 to discuss the infrastructure issues at the plant and the possibility of re-opening the plant in the future; potential alternatives for affected shellfish harvesters while

operations at the plant are suspended; and the likely ability to upgrade the classification of certain areas within Boston Harbor and return management of the resource to local municipalities. Dan noted that performance in this fishery has waned dramatically in recent years, likely the product of coastwide issues facing the softshell clam resource and the prevalence of neoplasia in areas (e.g., Boston Harbor) where this fishery was historically active. Second, in recent years, the FDA has been requiring DMF systemically address the spatial extent of precautionary safety areas around sewage treatment plant outfalls. This is an ongoing, state-wide effort that has resulted in DMF having to downgrade the classifications of areas proximate to outfalls, which impacts shellfish fishing and propagation opportunities. To minimize the spatial extent of these impacts, DMF has relied on oceanographic modeling by Dr. Chen at SMAST and this modeling has been used to inform classification decisions made around the Fall River, Marshfield, Scituate, and Plymouth outfalls. DMF will soon be similarly reclassifying areas in Buzzards Bay relative to the New Bedford and Fairhaven outfalls. Given the volume of effluent released from the New Bedford plant, the spatial impacts of this reclassification effort will impact waters around most of the southern and western coast of the Bay. DMF will likely also have to substantially increase its water quality testing in adjacent areas to minimize the closure footprint. The impacts related to reclassification are also compounded by the effluent releases from Combined Sewage Overflows following precipitation.

Senator Tarr, along with a bi-partisan group of coastal legislators, filed a bill to modernize Massachusetts' statutes relevant to derelict gear. This bill is consistent with the recommendation of DMF's Derelict Gear Task Force. Dan was hopeful this bill would be passed in the coming months allowing DMF and the MFAC to streamline the permitting and management process for derelict gear removal and disposal.

Dan briefly touched on two ongoing lawsuits. The Massachusetts Lobstermen's Association has sued NOAA Fisheries over their recent action to seasonally close the area of federal waters adjacent to the state waters portion of Massachusetts Bay known as the "Wedge" to fishing traps with persistent buoy lines to protect right whales. Second, a group of Maine fishers has sued the State of Maine over recent ASMFC-mandated regulations requiring vessel tracking devices onboard any vessel with a federal lobster trap allocation.

DMF is hosting public hearings at the end of February to take comment or regulatory proposals affecting a number of different commercial fishing issues. Among the more controversial items is DMF's seasonal closure to protect spawning horseshoe crabs. Additionally, DMF will be holding a public hearing at the Massachusetts Lobstermen's Association annual trade show on March 22 regarding implementing ASMFC-mandated regulations affecting lobster carapace size, v-notch, and escape vent rules, as well as, an allowance for commercial fishers to use of "MA Tracer" weak rope.

Kalil Boghdan asked for clarification regarding the current status of the Newburyport facility. Dan stated the facility is still currently functioning as a DMF laboratory, but the depuration activities have ceased due to damage to wellheads.

Sooky Sawyer asked about scallop permits being transferred to Maine. Dan stated permitting staff will look at recent transfer and activity data and will review it with the MFAC at an upcoming meeting.

Ray Kane and Bob Glenn discussed various weak rope options for trap fishers and the development of the new MA Tracer line. Bob Glenn indicated that DMF will be handing out whale safe gear and marking contrivances at the upcoming Massachusetts Lobstermen's Association's trade show.

Bill Amaru, Chris McGuire, and Director McKiernan discussed offshore wind energy development, happenings at recent Fisheries Working Group meetings, and the pending rollout of the Vineyard Wind Compensation program. DMF staff will provide a more thorough update on wind energy development at an upcoming MFAC meeting.

DISCUSSION ITEMS

Interstate Fisheries Management Update

Nichola Meserve reviewed significant items from the Atlantic States Marine Fisheries Commission's (ASMFC) Winter 2024 Meeting and previewed the ASMFC's Summer Flounder, Scup, and Black Sea Bass Management Board meeting on February 14. At the ASMFC's winter meeting, the Lobster Board initiated an addenda to clarify minimum size standards for Canadian imports, voted to request NOAA Fisheries not implement certain trap caps in LMA 2 and LMA3, and determined to stay management action in response to the 2023 Jonah crab stock assessment. The Striped Bass Board approved Addendum II to Amendment 7 to the Fishery Management Plan. This requires states take action by May 1, 2024 to cut their commercial quota by 7%; adopt coastwide standards to prevent the filleting of striped bass by recreational anglers, with an exception for for-hire operations if racks are retained; maintain current recreational bag limit and slot limit standards for the ocean fishery; and for the recreational fishery in the Chesapeake Bay, implement a 1-fish limit with a 19" to 24" slot limit. The Spiny Dogfish Management Board approved FY24-26 commercial quotas consistent with the Mid-Atlantic and New England Fishery Management Council actions. The American Eel Board initiated an addenda to establish Maine's glass eel quota beyond 2024 and to consider revisions to the coastwide yellow eel commercial cap. The Summer Flounder, Scup, and Black Sea Bass Management Board meeting is set to approve the states' range of proposed recreational management measures for summer flounder, scup, and black sea bass at their February 13 meeting. Staff reviewed Massachusetts' submitted range of options, for which a scoping meeting and comment period was scheduled. DMF will need to proceed with emergency action to comply with the striped bass recreational at-sea filleting standards and implement an approved set of summer flounder, scup, and black sea bass measures. DMF will bring its recommendations to the March 19 MFAC business meeting.

Sooky Sawyer and Dan McKiernan discussed the pending lobster carapace size changes and the anticipated availability of gauges.

Chris McGuire asked when and how managers will get access to the aggregated tracking

information. Dan stated that this is still being worked out among the states and the Atlantic Coastal Cooperative Statistics Program.

Mike Pierdinock raised issues regarding rack disposal relevant to the rack retention requirement affecting striped bass filleting. Mike P. was interested if alternative approaches can be considered (e.g., photos). Nichola stated that such alternatives were not approved in the addendum and could not be implemented, however, most other states already require rack retention and have not reported significant disposal issues. That said, DMF was looking forward to the state's scoping meeting to better understand and troubleshoot these anticipated challenges in Massachusetts.

Kalil Boghdan, Mike Pierdinock, and Mike Armstrong discussed abiotic and biotic factors impacting young-of-the-year production in the striped bass fishery.

Ray Kane closed the discussion by stating that Representative Sarah Peake will be retiring from the state legislature. Ray commended her for her work as the state's legislative delegate to the ASMFC. He is hopeful her predecessor will be just as strong of an advocate.

Federal Fisheries Management Council Update

DMF staff briefed the MFAC on the January 2024 NEFMC meeting. The NEMFC recommended cod and haddock limits to NOAA Fisheries for the upcoming fishing year. For Gulf of Maine (GOM) cod, season and bag limit rules will remain status quo, but there was a recommended 1" increase in the minimum size to 23". rules remain status quo except for a 1" increase to the minimum size. For GOM haddock, it was recommended that last year's split mode measures be abandoned in favor of adopting the current for-hire rules for the whole fishery (April 1 – February 28 season with a 15-fish bag limit, and 18" minimum size. Lastly, there are no expected changes to the Georges Bank cod rules. DMF will adopt complementary regulations by emergency action. Additionally, as stated above, the NEFMC approved spiny dogfish specifications. Lastly, a scoping document for the development of Amendment 10 to the Atlantic Herring FMP has been released and scoping meetings will be scheduled this spring.

Bill Amaru asked if there were any changes coming up regarding winter skate. Melanie stated DMF will follow-up with Bill after the meeting.

Mobile Gear Fishery Issues

Jared Silva discussed its February 1 stakeholder meeting regarding mobile gear fishing in state waters. The meeting's primary purpose was to address a variety of burgeoning issues related to the sea scallop dredge fishery and the retention of sea scallop shellstock. Following the meeting, on February 8, DMF released a comprehensive policy guidance document. The meeting also provided an opportunity for DMF to address the trawl fishery and provide an overview of expected quotas and regulatory changes for the summertime trawl fishery south of Cape Cod in advance of the public hearings scheduled for February 28 and February 29.

DMF also provided a short update on its surf clam dredge pilot program to improve geo-

spatial management through electronic monitoring. DMF would present on this issue in more detail at a springtime meeting.

Ray Kane asked about the status of a graduate student for whelk research. Dan McKiernan stated they are looking for funding within the next funding period of $75,000.

STRATEGIC PLAN DEVELOPMENT FOR DEPARTMENT OF FISH AND GAME PRESENTATION

Commissioner O'Shea introduced Sarah Meier. Sarah was spearheading the Department's strategic planning efforts with Christy Edwards. Sarah discussed the intent of the planning initiatives and the various themes, goals, and strategies.

Kalil and Sarah discussed the timeline for publication. Sarah was hopeful the document development would be completed by the end of the year.

Chris McGuire supported the initiative and noted it points the agencies within the Department to prioritize items that may have been under-served in the past. Sarah and Chris also discussed how this may impact interagency cooperative.

DIADROMOUS FISH PASSAGE WORK PRESENTATION

Brad Chase provided the MFAC with an update on DMF's Diadromous Fisheries Project, focusing on recent fish passage and habitat restoration work.

Mike Pierdinock suggested DMF develop, maintain, and publish an inventory of fishways that need to be improved.

Brad, Chairman Kane and Mike P. discussed funding and how crucial DMF's recreational permit fees are these projects

Brad and Mike P. discussed eel distribution data.

Kalil Boghdan commended Ben Gahagan and thanked him for letting him get involved with the alewife count. Ben Gahagan informed MFAC members of an upcoming conference in Hyannis.

OTHER BUSINESS

Upcoming Public Hearings
Jared Silva discussed various upcoming public hearings and meetings. He stated that the Commission members are encouraged to attend. More information regarding the upcoming public hearings can be found here.

Commission Member Comments
Mike Pierdinock thanked DMF for their continued work.

Bill Doyle asked if there is any hope for recreational herring license. Jared stated that is allowed on a run-to run-basis and it is left up to the towns to determine. Brad stated that four towns requested DMF created management plans thus far. He stated that two of the towns with approved plans, but they have not opened to fishing.

Tim Brady echoed Bill's thoughts on herring and appreciates all the efforts by Brad's team.

Chris McGuire, Shelley Edmundson, and Bill Amaru thanked DMF staff and commended the memos that have been distributed regarding upcoming public hearings.

PUBLIC COMMENTS

No public comments were made.

ADJOURNMENT

Chairman Ray Kane requested a motion to adjourn the February 13 MFAC business meeting. **Sooky Sawyer made a motion to adjourn the meeting. The motion was seconded by Bill Doyle. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- February 13, 2023 MFAC Agenda
- December 19, 2023 Draft MFAC Minutes
- Atlantic States Marine Fisheries Commission Winter Meeting Summary
- Update on Recreational Black Sea Bass, Scup, and Fluke
- Update on Striped Bass Addendum II Implementation
- Review of the Mobile Gear Meeting
- New England Fishery Management Council Meeting Summary

UPCOMING MEETINGS

9AM
March 19, 2024
via Zoom

9AM
April 23, 2024
TBD

9AM
May 21, 2024
TBD

9AM
June 18, 2024
TBD

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Recommendation Affecting Horseshoe Crab Conservation and Management**

Recommendation

I recommend the MFAC approve the following measures to enhance horseshoe crab conservation and management regulations:

1. Enact a prohibition on all harvest of horseshoe crabs from April 15 – June 7 annually to protect spawning crabs.
2. Establish a uniform bait fishery trip limit of 300 horseshoe crabs per calendar day for all limited entry horseshoe crab endorsement holders. The trip limit would then automatically increase to 400 crabs on August 1 if 50% or more of the quota remains available or automatically decrease to 200 crabs if 80% of the quota is taken before September 15.
3. Complement existing federal harvest prohibitions within the boundaries of the Cape Cod National Seashore and the Monomoy National Wildlife Refuge.

These recommendations do not differ from my public hearing proposal as presented to the MFAC in December 2023[1]. The December memorandum contained extensive background information that will not be rehashed here. Rather, the purpose of this memorandum is to explain why I am setting forth the above recommendations and respond to public comment.

Spawning Closure Recommendation

Spawning closures are a tool commonly used in wildlife and fisheries management to allow for spawning activity to occur uninterrupted. These measures are generally advisable—and broadly supported—when spawning animals are particularly vulnerable to harvest. DMF has a long history of championing such closures within Massachusetts waters[2] and supporting similar protections at the federal level.

With regards to horseshoe crabs, DMF has constrained harvest during their spawning period through a series of so-called "lunar closures" since 2010. These lunar closures are a series of five-day harvest

[1] Refer to the December 2023 MFAC meeting materials for more details. Past meeting materials are available at https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

[2] DMF regulations include spatiotemporal closures affecting the harvest of winter flounder, cod, and herring in the Gulf of Maine; delaying the commercial black sea bass season until after peak inshore spawning in May and June; lunar spawning closures for horseshoe crabs; and reducing harvest limits on scup during peak spawning season. Additionally, DMF has more generally prohibited the retention of other egg-bearing invertebrates—edible crabs and lobsters—and protected female lobster spawning stock biomass through v-notching.

prohibitions around each new and full moon from late April 16 – June 30. This management strategy was developed based on the understanding that peak horseshoe crab spawning is tied to new and full moons. Our understanding of this has evolved over the years, and while this may remain a generally solid guidepost, our spawning survey data and the scientific literature regarding horseshoe crab populations in the New England region (Cheng and Watson, 2016; Barlow et al., 1986) demonstrate horseshoe crabs in Massachusetts are available in our shallows and on our spawning beaches from early-May into mid-June and are subsequently vulnerable to harvest outside of the lunar closure periods.

Our coastal beaches provide spawning habitat for horseshoe crabs. This habitat is highly susceptible to degradation due to climate change—sea-level rise, coastal erosion, and resulting shoreline armament. This threatens the long-term viability of horseshoe crab populations along our coast and the ecological functions that they provide. Our two methods for surveying horseshoe crab populations—trawl surveys and spawning beach surveys—do not adequately observe young animals. The spawning beach survey does not observe animals until they reach sexual maturity (~10-years of age and older) and our trawl survey begins to observe animals that are three-to-four years away from maturity (~7 years old and older). Consequently, there is a substantial gap in our understanding of sub-adult populations—and to-date—there are no viable surveys to accurately enumerate young-of-the-year, nor forecast future recruitment. This leaves us without an early warning system to respond to declining recruitment trends that may occur given environmental impacts on spawning habitat or overfishing. With regards to the data provided by Massachusetts spawning beach and trawl surveys, population trends observed are generally positive. However, we are beginning to see some data points revert towards time series medians in the trawl survey (Figures 1 - 4) and declines are also being observed on some spawning beaches (Table 1). This may be routine noise in our survey data, or it may indicate declines in adult populations—we will need additional years of data to draw informed conclusions. However, with all this in consideration, enhancing spawning protections for horseshoe crabs by prohibiting harvest throughout the spawning period, regardless of the lunar calendar, should improve the reproductive success of local populations. I view this as being critically important precautionary measure given the various uncertainties we face.

For these reasons, I have recommended DMF replace the existing lunar closures with a blanket prohibition on all harvest during the period of April 15 – June 7. DMF's spawning beach survey data (2015-2022) demonstrate that this closure will capture approximately 90% of all spawning activity both north and south of Cape Cod (Figures 5 and 6). Additionally, by having the closure go into effect in mid-April, before spawning begins in earnest in early May, Massachusetts will be protecting horseshoe crabs when they begin to become vulnerable to directed harvest as they stage nearshore prior to spawning. If approved, this would bring the Massachusetts bait fishery in line with what is occurring in most other states that allow bait harvest (Table 2) and would make Massachusetts among the most conservative states where biomedical harvest occurs (Table 3) [3].

A public comment period was held from February 7–March 8, 2024, with hearings held in Bourne and Gloucester on February 28 and 29. The spawning closure was the item that generated the most interest. This included substantial and diverse comment from the fishing industry, the biomedical industry, and the conservation community. There is no doubt in my mind that while this issue is complicated, contentious, and challenging, the general public strongly supports enhancing horseshoe crab conservation. This support was evident at both public hearings and in the written comments, which included a Mass Audubon-sponsored write-in campaign of 2,682 emails.

As anticipated in my December 2023 memorandum, enhancing spawning protection is not without negative outcomes. There are about 30 active hand-harvesters who will be disproportionately impacted by

[3] Note that no state prohibits biomedical harvest. Rather this reflects the states from which there are biomedical horseshoe crab landings.

this closure, and we heard from some of these harvesters (and concerned members of the public) regarding how this will impact incomes and way of life. Whelk fishers and bait and whelk dealers expressed concerns regarding how this will impact bait availability for the whelk pot fishery. And the biomedical industry expressed concerns about how this may impact their ability to seasonally access horseshoe crabs in Massachusetts to produce Limulus Amebocyte Lysate (LAL). While my recommendation is ultimately undeterred by these comments, I am compelled to address the various concerns raised and detail the rationale behind my recommendations.

Conservation Community Comments
While the conservation community strongly supports my recommendation, many have also stated that the recommendation is only a "first step" and advocated that it "does not go far enough". To this end, there was additional public support among these stakeholders to extend the spawning closure throughout the month of June and phasing out all harvest of horseshoe crabs. I do not support either of these additional requests.

Based on our spawning beach survey data, extending the spawning closure throughout June would protect upwards of 100% of spawning female crabs, rather than the 90% achieved by my recommended closure. In my view, extending the closure until the end of June provides diminishing returns given the run-on negative impacts it would create for the seafood and biomedical industry. As Figures 5 and 6 show, about 80% of observed spawning occurs in May, then an additional 10% during the first week of June, and then the final 10% during the remaining 23-days in June. Achieving this additional protection would further delay bait and biomedical harvest—turning a seven-and-a-half week closure into a near eleven-week closure—and force our mobile gear fishers fishing three or more miles offshore[4] to discard crabs (that are likely done spawning) throughout June when trawling effort in Nantucket Sound[5] generally ramps up. This diminishes the profitability of this fishery, which is reportedly operating near the margins, and may disincentivize participation. This may not only diminish the horseshoe crabs available to the bait market and biomedical industry, but also our ability to provide fresh, local caught seafood (e.g., summer flounder) to the market.

Additionally, while spawning horseshoe crabs may be available for harvest after June 7, we expect far fewer hand-harvesters will participate in a post-closure fishery than have during the abundant peak spawning period. Foremost because the recommended closure will financially impact hand-harvesters and likely necessitate that they pursue other seasonal fisheries or employment opportunities. This reality was evident in the written public comment from industry and their testimony at the Buzzards Bay hearing. Secondarily, the abundance of horseshoe crabs on spawning beaches and in the shallows is diminished by late-May, and what remains, may not present a viable commercial endeavor. This is supported by hand-harvest landings data that shows most hand-harvest occurring prior to June 1 (Table 4).

Phasing out harvest is also not something I support. First and foremost, LAL production is presently necessary for safeguarding public health globally. Without a viable synthetic alternative in place to handle public health demand, maintaining a viable biomedical fishery is critical. Secondarily, the request is largely incompatible with DMF's mission to, "manage the Commonwealth's living marine resources in balance with the environment resulting in sustainable fisheries and contributions to our economy, stable availability of diverse, healthy seafood, and enriched opportunities to support our coastal culture." Horseshoe crabs are not only an important bait source for the whelk fishery, but they are also a critical

[4] 322 CMR 4.06 prohibits the use of certain mobile gear—including trawls—in the inshore waters between Eastham and Mashpee from May 1 – October 31.
[5] The Magnuson Stevens Act (16 U.S.C. 1856) provides Massachusetts with the authority to manage fisheries within the entirety of Nantucket Sound west of the 70th meridian.

component of the sale-able catch in other fisheries (e.g., inshore trawlers, shellfish dredge). Eliminating this fishery would have deleterious downstream impacts on the seafood industry.

Impacts on Bait Fishery and Hand-Harvesters
The written public comment and public hearing testimony included opposition to the spawning closure given the impacts it would have on hand-harvesters. This included testimony from hand-harvesters, other seafood industry members, the biomedical industry, and the conservation community. However, these impacts are inescapable when expanding spawning protections. As stated in my December 2023 memorandum, an April 15 – June 7 spawning closure will "disproportionately impact hand-harvesters who capture horseshoe crabs as they stage in the shallow waters and come up on the beaches to spawn."

Expectedly, the hand-harvesters have commented on how this is going to impact them financially and threaten their way of life. While there may be some hand-harvest opportunities after the spawning closure in shallow embayments or on spawning beaches where remnant spawners may be accessible, these opportunities are limited and affected fishers will likely need to find other sources of income and employment given the loss of access during peak spawning season. Some hand-harvesters are also whelk pot fishers and take crabs for their own bait needs. This will limit their ability to obtain their bait through their own labor, in turn making them more reliant on bait from bait dealers. These new bait costs could impact the profitability of some whelk fishing operations. However, the extent to which these impacts may be realized is difficult to forecast given the uncertainty facing the whelk fishery, which I will discuss in more detail in the section on bait availability.

There is also a frustration with the inherently allocative aspect of a spawning closure. The hand-harvest fishery takes horseshoe crabs when they are in the shallows staging and on the beach spawning. Many hand-harvesters have historically participated in this fishery and this harvest method drove the landings that were responsible for establishing our bait quota. By implementing a spawning closure, these fishers will lose access to the resource and are not sufficiently capitalized or permitted to target horseshoe crabs with mobile gear at other times of year. Instead, by virtue of a spawning closure, access to the separate biomedical and bait quotas is shifted towards the mobile gear fleet. This frustration is also heightened by last year's action to reduce the bait quota to address burgeoning biomedical medical harvest and that the biomedical quota is allocated to the processors rather than the fishers. Many fishers feel as though conservation is moving the fishery away from the traditional, artisanal participants and towards more industrial and capitalized interests.

I fully understand the concerns raised by the hand-harvesters. However, as fisheries managers, we need to balance the legitimate concerns of various stakeholders and anticipate the challenges we may reasonably face in the future. It is quite clear that the general public believes horseshoe crabs have a significant cultural and ecological value and they strongly support additional conservation. While I do not support their calls for a ban on harvest (bait or biomedical), I do support additional spawning protections. This support is consistent with DMF's general position regarding protecting vulnerable spawning aggregations from harvest. Moreover, it considers the fact that we do not have viable assessment and survey tools to predict recruitment, limiting us to only being able to respond to population declines once they are observed in near-adult population. This limitation may be particularly problematic for horseshoe crabs given their spawning habitat may be negatively impacted by future coastal erosion and beach armament. I am highly concerned about the run-on impacts we may observe across our seafood industry should we be forced to respond to substantial declines in near-adult and adult horseshoe crab populations, and think it is critically important to take a proactive and precautionary management approach to mitigate the risk of such outcomes.

That said, I recognize the hardship this may cause our active hand-harvesters. I support innovative ways to expand our green crab fishery and will strive to streamline and improve management to encourage

green crab trapping. While industry feedback generally suggests horseshoe crabs are the most effective whelk bait, green crabs are commonly used to supplement bait demand, and I'd like to explore making them a larger part of the bait mix. This could offset some of the impacts of horseshoe crab conservation and create market-based solutions to eradicating green crabs—an invasive species and shellfish predator. There was also some public interest in seeking legislative support to provide direct economic assistance to impacted harvesters. DMF does not have authority to allocate such funding, this lies with the legislature. However, DMF would administer such funds if they became available and supports potential funding to outfit displaced fishers with green crab trap gear.

Impacts on Biomedical Processing

The biomedical industry, and advocates for the biomedical industry, also expressed their concerns about the recommended spawning closure and how it may impact their access to horseshoe crabs for LAL production. The record features a public comment from each of the biomedical firms in Massachusetts—Charles River Laboratories (CRL) and Associates of Cape Cod (ACC) —a biomedical industry organization—MassBio—and a write in campaign on behalf of ACC (of just under 200 comments). In these comments, the biomedical industry generally raises concerns about how these actions, particularly the spawning closure, may impact LAL production. To this point, both biomedical firms requested a biomedical exemption to the spawning closure. I will detail my reasons for not recommending such an exemption below.

Unequivocally, LAL production is absolutely critical to public health. Massachusetts has been home to a biomedical fishery since the 1970's, and in 2022, our biomedical harvest of about 175,000 horseshoe crabs accounted for nearly 20% of the coastwide harvest of 911,826 crabs[6]. The success of our biomedical fishery here is due in part to strong working relationships with ACC, and more recently with CRL. I am committed to continuing to work with the biomedical industry to make sure they have access to horseshoe crabs here in Massachusetts outside of the spawning period. With some modest adjustments to prior practices, our biomedical processors should be able to access their full biomedical quota—plus additional horseshoe crabs through the "rent-a-crab program"[7]—in line with historic use. Should a need for in-season adjustments arise, I will be responsive to these concerns. My goal is to work with the industry to create a functional regulatory environment whereby the biomedical quota is fully exploited after the spawning closure and the available bait quota is harvested to meet local bait demand while optimizing their use by also making them available to the biomedical industry.

As depicted in Table 3, there are six states where a biomedical fishery operates—Massachusetts, Rhode Island, New Jersey, Maryland, Virginia, and South Carolina. Several of these states[8] either exempt the biomedical fishery from spawning closures, allow male only fisheries during the spawning closure, or apply only a lunar spawning closure to the biomedical fishery. Therefore, the biomedical processor's request for a spawning closure exemption is not without precedent and it is something that I thoroughly

[6] Table 2. 2022 Atlantic States Marine Fisheries Commission Horseshoe Crab FMP Review. https://asmfc.org/uploads/file/65d5173eHSC_FMP_Review_FY2022.pdf

[7] The "rent-a-crab program" is a colloquial name given to a common informal arrangement between a biomedical firm and a bait dealer to enhance the supply of horseshoe crabs to the biomedical industry and optimize the use and benefit of the horseshoe crabs taken for bait. Through this arrangement, the horseshoe crab is purchased by the bait dealer from a bait harvester; counted against the bait quota; subsequently transferred to a biomedical processor for bleeding; then returned to the bait dealer for sale as bait.

[8] Rhode Island features a biomedical quota coupled with a series of lunar closures around new and full moons in May. New Jersey does not have a biomedical quota, but has seasonal closures to protect spawning crabs. Maryland does not have a biomedical quota and allows a male-only fishery during the May 1 – June 7 period. Virginia does not have a biomedical quota and has a January 1 – June 7 spawning closure from which the biomedical fishery is exempt. Lastly, South Carolina does not have a biomedical closure or a spawning closure but does prevent the storage of female crabs in holding ponds. However, a federal judge recently ordered the South Carolina to restrict harvest from more than thirty beaches from March 15 – June 15; this affects only the biomedical industry because South Carolina does not have a bait fishery.

considered. While an exemption would certainly create a regulatory environment that would enable the biomedical firms to readily realize their biomedical quotas, I remain unconvinced that an exemption is necessary to ensure horseshoe crabs are available to the biomedical industry in line with their historic production. I also have both conservation, management, and enforcement concerns regarding an exemption.

From a biological perspective, an exemption would allow some quantity of horseshoe crabs—conceivably up to the 200,000-crab biomedical quota—to be removed from shallows and beaches as they are preparing to spawn and actively spawning. Irrespective of potential mortality concerns, the ability of these horseshoe crabs to spawn is diminished when they are removed from spawning beaches for processing. Additionally, while we have a general understanding of post-bleeding mortality, we do not have a good understanding of the sub-lethal impacts of bleeding, including their ability to spawn after bleeding. Given that I have championed a precautionary conservation management approach—one that is immediately impacting the livelihoods of about 30 individuals, many of whom are historic participants in the fishery—I think it is necessary to be consistent in its application.

On the management side, I am worried a biomedical harvest exemption during the spawning closure may also result in an early season biomedical quota closure for one or both firms. The run-on impact of this is that it would shift biomedical demand to the rent-a-crab program. As we experienced last year, this can distort the bait market and lead to market gluts. It has been speculated that the substantial mortality event observed on Harding's Beach in 2023 was the result of a release of dead crabs by a bait dealer who could not sell horseshoe crabs due to poor market conditions created by demand being artificially inflated by the rent-a-crab program. While I have been a vocal proponent of the rent-a-crab program—and have urged both biomedical firms to try and bleed every possible bait crab—my intent was not to distort the bait fishery to the benefit of the biomedical industry, but rather to optimize the use of horseshoe crabs destined to become whelk bait.

Lastly, I believe an exemption could serve to unintentionally undermine compliance with the spawning closure. If the closure is applied broadly to all harvest, then any harvest observed violates the closure and is strictly enforceable. However, as we create exemptions, we potentially weaken enforceability by creating a guise for illegal harvest. I am not tremendously worried that an exemption would allow for a large number of crabs to be harvested and sold for bait because this type of activity would be fairly detectable. However, I am worried that it would open the door for discrete quantities of horseshoe crabs to be poached for personal use as bait or unauthorized bait sales.

Other Requests for Alternative Management Approaches to an Extended Spawning Closure
ACC also advocated for DMF to consider two options to maintain a springtime bait fishery: (1) a May-only spawning closure; and (2) no additional spawning closures, but a modest cap on landings (e.g., 20,000 crabs) during the spawning season. There was also some interest in a male-only fishery during the spawning period for both biomedical or bait purposes. I do not support such amendments for the same reasons I do not support a biomedical exemption.

Moreover, with regards to a male only fishery, sex ratios on many of our spawning beaches are not significantly skewed towards males and un-paired or satellite males are not particularly abundant relative to females. Thus, I have two main concerns: (1) there is no reason to assume that un-paired males are not important contributors to reproduction given the relatively high fertilization rates documented for satellite males in the literature (Brockmann et al., 2000); and (2) as un-paired males are not particularly abundant, a male-only fishery would result in the decoupling of spawning pairs disrupting the reproductive process. I am not recommending any of these alternatives at this time.

Bait Fishery Trip Limits

My recommendation regarding bait fishery trip limits is multi-faceted. First, it would establish a uniform 300 horseshoe crab limit per calendar day for any person with a limited entry horseshoe crab endorsement. Anticipating bait harvest would be predominantly driven by mobile gear fishers, this would match their current trip limit, while eliminating the 400 horseshoe crab limit per 24-hour period afforded to hand-harvesters. This could slow the rate at which bait crabs are landed to prevent market gluts and potentially avoid a future mortality event like the one observed on Harding's Beach last year. Second, it would allow the trip limit to automatically increase to 400 horseshoe crabs per day on August 1 if 50% or less of the quota has been landed. This will accommodate additional harvest, should it appear we may underutilize the bait quota. The increase to the 400 horseshoe crab trip limit also lines up with the time of year we would expect bait demand in the conch pot fishery to start to increase given historic pot haul trends (Figure 7). Then lastly, the trip limit would decrease down to 200 horseshoe crabs if 80% of the bait quota is taken on or before September 15. The purpose of this automatic adjustment is to make sure that there is bait quota available to mobile gear fishers, particularly quahog dredge boats, later in the season to prevent regulatory discarding. This trip limit is generally in line with horseshoe crab landings in the quahog dredge fishery.

There was some interest from stakeholders in the biomedical industry and fishery to increase bait crab trip limits to enhance their access to horseshoe crabs through the rent-a-crab program. CRL suggested DMF allow certain bait harvesters—those whose horseshoe crabs are destined to be borrowed by the biomedical firms as part of the rent-a-crab program—to fish under higher trip limits than other bait fishers to optimize the availability of crabs to the biomedical firms from this source. Other commentors suggested a more straightforward approach of simply adopting higher trip limits.

CRL's request for disparate trip limits relative to the rent-a-crab program raises substantial administrative challenges. The rent-a-crab program is an arrangement between a bait dealer and a biomedical firm. While DMF supports this relationship, we do not permit or regulate the activity other than permitting bait harvest and dealers and requiring dealers to report their primary purchases of horseshoe crabs for quota accounting. Accordingly, we do not identify harvesters as participating in the rent-a-crab program because they are not involved in the transactions—it is the dealer that is either participating or not. Additionally, should we venture down the path requested by CRL, it would also immediately raise issues of equity. While it may leverage the utility of the rent-a-crab program it would also directly benefit bait dealers who had working relationships with biomedical firms rather than those that serve as a conduit for bait to move from harvesters to whelk pot fishers.

In most years, our whelk dealers, whelk fishers, and horseshoe crab bait dealers would provide substantial public comment expressing concerns about bait demand in response to measures that would impact the harvest of horseshoe crabs. It is telling that we received fewer of these comments this year. In my opinion, this is the product of there being significant uncertainty surrounding the whelk market and subsequent bait demand for horseshoe crabs. Last year, it was reported that overseas demand for live whelk fell dramatically during the fall, impacting local ex-vessel value along the Atlantic coast. Unfortunately, the market for cooked product is also not large enough to supplement this loss of live-product demand. DMF has received word from dealers that these market conditions will likely persist into 2024. The expectation is that the live whelk market will be able to absorb the springtime harvest, as landings are typically lower during this period, but we will likely see a decreasing market by the fall as the fishery becomes more active. It has also been reported that there are sufficient quantities of bait currently available to supply the springtime whelk pot fishery should the spawning closure be approved.

Projecting performance in the bait fishery in 2024 is difficult, as last year proved to be an outlier and there is substantial uncertainty this year. This uncertainty includes: the status of the whelk market and resulting bait demand; interannual variability in mobile gear fishery participation; how the rent-a-crab program is

used to enhance supply to bio-medical companies; and how hand-harvesters respond to a spawning closure. Given this, I intend to manage the bait quota in a manner that meets local bait demand[9] while optimizing use of the crabs by also making them available to the biomedical industry.

To this end, the recommended in-season adjustments are designed to increase trip limits should the quota be underutilized. This conditional August 1 date occurs at the same time of year when we would expect bait demand to increased based on conch pot fishing effort data (Figure 7). Additionally, I am going to allow horseshoe crabs to be included in the Consecutive Daily Trip Limit Pilot Program[10]. This would let horseshoe crabs to be landed by trawlers in larger quantities without increasing weekly landings. In doing so, biomedical firms can work with dealers to arrange the predictable delivery of larger quantities suitable for bleeding while also avoiding market gluts. Lastly, I would also consider further in-season adjustments at the August MFAC business meeting should bait harvest be far lower than anticipated. Should this occur, I'd also consider responsive regulatory changes to horseshoe crab trip limits for 2025.

Complementing Federal Harvest Closures

Federal rules affecting both the Cape Cod National Seashore and the Monomoy National Wildlife Refuge prohibit the harvest of horseshoe crabs within the park and refuge boundaries (Figures 9 and 10). I have recommended adopting complementary closures as part of DMF's horseshoe crab management regulations. The purpose of this regulatory action is to enhance enforcement and compliance should violations occur by allowing the Massachusetts Environmental Police to enforce the harvest ban in specific geographic areas. I have no reason to think this is a pressing compliance issue, but I view it as a responsible management approach to address non-compliance should it become an issue. Moreover, by adopting this as a state regulation, we can provide better outreach regarding where these federal boundaries are and thereby prevent unintentional non-compliance. The written public comment and testimony at public hearing on this was limited and universally supportive.

Enclosed

Written public comment from fishing industry interests.
Written public comment from biomedical industry interests.
Written public comment from conservation community.
Written public comment from Mass Audubon sponsored campaign.

[9] Recent bait usage surveys and whelk pot haul trends (Figure 8), DMF estimates the state's whelk pot fishery required about 136,000 horseshoe crabs per season from 2013 – 2022. This approximates the current 140,000 horseshoe crab quota. The estimated number of crabs needed to supply bait for Massachusetts whelk pot hauls was derived by multiplying the number of annual whelk pot hauls by 0.33 (a third of a crab). Most respondents to a 2016 survey by DMF and ASMFC of commercial whelk harvesters claimed they used a quarter of a female crab, or half a male. Using sex data provided by bait harvesters, there are 2 females harvested for every male. Using a weighted mean by sex, the average bait use is estimated to be 0.33 crabs per trap.

[10] This program allows permit holders participating in the summertime mixed species trawl fishery south of Cape Cod to land two days' trip limits of certain species (principally summer flounder) that were lawfully caught and retained over consecutive open fishing days.

Table 1. Massachusetts Spawning Beach Survey trends by survey site, region, and survey period (day or night).

Beach	Region	Time of Day	2023 vs Median	10-year trend	5-year trend
Duxbury	Cape Cod Bay	Day	below	decreasing	increasing
Duxbury	Cape Cod Bay	Night	above	decreasing	increasing
Long Beach	Cape Cod Bay	Day	below	NA	decreasing
Long Beach	Cape Cod Bay	Night	below	NA	increasing
Millway	Cape Cod Bay	Day	below	increasing	increasing
Millway	Cape Cod Bay	Night	above	increasing	increasing
Long Pasture	Cape Cod Bay	Day	above	increasing	increasing
Sanctuary Beach	Cape Cod Bay	Day	below	increasing	increasing
Indian Neck	Cape Cod Bay	Day	below	decreasing	decreasing
Indian Neck	Cape Cod Bay	Night	below	increasing	decreasing
Great Island	Cape Cod Bay	Day	below	increasing	increasing
Priscillas Landing	Outer Cape Cod	Day	above	increasing	decreasing
Marsh 2-3	Outer Cape Cod	Day	above	increasing	increasing
Erica's Beach	Outer Cape Cod	Day	below	increasing	decreasing
Stage Harbor	Nantucket Sound	Day	NA	NA	NA
Stage Harbor	Nantucket Sound	Night	NA	NA	NA
Bass River	Nantucket Sound	Day	below	NA	increasing
Bass River	Nantucket Sound	Night	above	NA	increasing
Monomoy	Nantucket Sound	Day	equal	increasing	NA
Monomoy	Nantucket Sound	Night	below	increasing	NA
Warrens Landing	Nantucket Sound	Day	above	increasing	increasing
Warrens Landing	Nantucket Sound	Night	above	increasing	increasing
Tashmoo	Nantucket Sound	Day	NA	increasing	NA
Tashmoo	Nantucket Sound	Night	NA	increasing	NA
Tahanto	Buzzards Bay	Day	NA	increasing	increasing
Tahanto	Buzzards Bay	Night	NA	increasing	NA
Swifts Beach	Buzzards Bay	Day	below	decreasing	decreasing
Swifts Beach	Buzzards Bay	Night	below	decreasing	increasing

*The fourth column indicates whether the 2023 survey data point was above or below the time series median for that site. The fifth and sixth columns indicate whether the survey linear trends are increasing or decreasing over the last ten or five years. Positive trends (above time series medians or increasing survey trends) are shaded green. Negative trends (below time series medians, decreasing trends) are shaded red. Unshaded areas are either equal to the time series median, or inadequately sampled.

Table 2. Current Rules Affecting the Bait Harvest of Horseshoe Crabs Across Atlantic States

	MA	RI	CT	NY	NJ	DE	MD	VA	NC	SC	GA	FL
Bait Fishery	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes
Bait Quota Issued	330,377	26,053	48,689	366,272	162,136	162,136	255,980	172,828	24,036	0	29,312	9,455
Self-imposed Bait Quota	140,000	8,398	48,689	150,000	0	157,122	255,980	172,828	24,036	0	29,312	9,455
Sex restrictions	No	No	No	No	NA	Male only	Male only	Location dependent	No	NA	No	No
2020-2022 Mean Bait Harvest	151,487	Confidential	11,592	90,903	0	148,429	108,945	75,425	2,106	0	0	Confidential
Spawing Closure	5 days around new and full moons from mid-April through June	May harvest prohibited	Hand harvest prohibited (still has mobile harvest)	5-day lunar closures last moon in May and first in June	NA	1/1-6/7	12/1-4/30, no weekends	1/1-6/7	None	NA	None	None

Table 3. Current Rules Affecting the Biomedical Harvest of Horseshoe Crabs Across Atlantic States

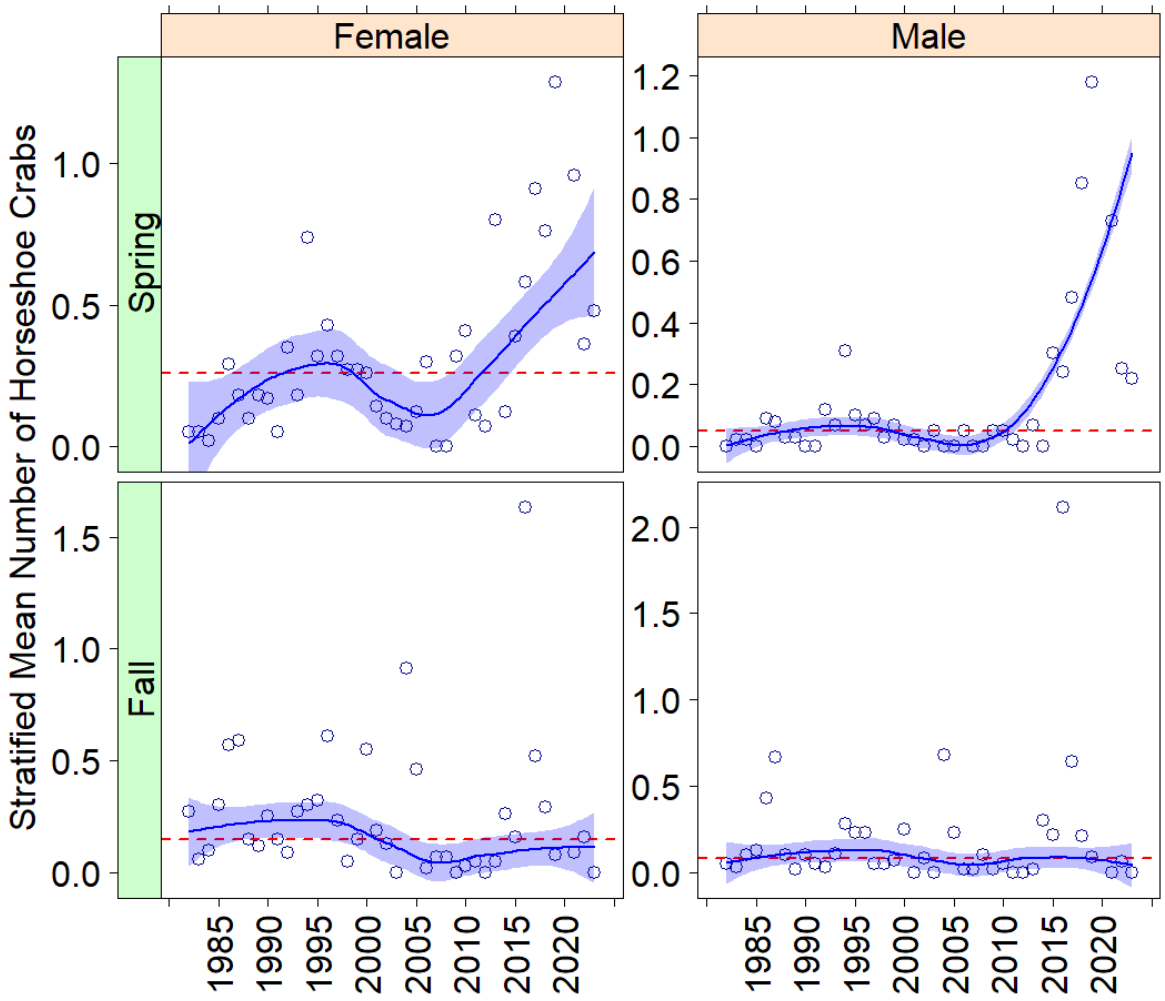
	MA	RI	CT	NY	NJ	DE	MD	VA	NC	SC	GA	FL
Biomedical Fishery	Yes	Yes	No	No	Yes	No	Yes	Yes	No	Yes	No	No
Biomedical quota	200,000	Variable	No	No	No	No	No	No	No	No	No	No
Sex restrictions	No	No	No	No	No	No	Male only bleeding 5/1-6/7	No	No	no holding of females in ponds	No	No
Biomedical Spawning Closure	5 days around new and full moons from mid-April through June	5 day lunar closures around new and full moons in May	No	No	June and July hand harvest, trawl end of June through end of year	No	No	No	No	More than 30 beaches closed to harvest March 15 - June 15.	No	No

Table 4. Hand-harvest landings (in number of horseshoe crabs) by season 2010 – 2023

MA HSC Bait Hand Fishery Annual Landings (# of Crabs)		
YEAR	JAN 1 - MAY 31	JUN 1 - DEC 31
2010	43,815	5,612
2011	28,882	6,303
2012	50,030	3,049
2013	59,716	10,681
2014	49,640	27,395
2015	55,168	12,898
2016	54,554	9,381
2017	46,113	22,441
2018	43,149	27,494
2019	52,044	27,142
2020	54,833	12,019
2021	39,525	13,421
2022	30,342	10,069
2023	77,000*	12,000*

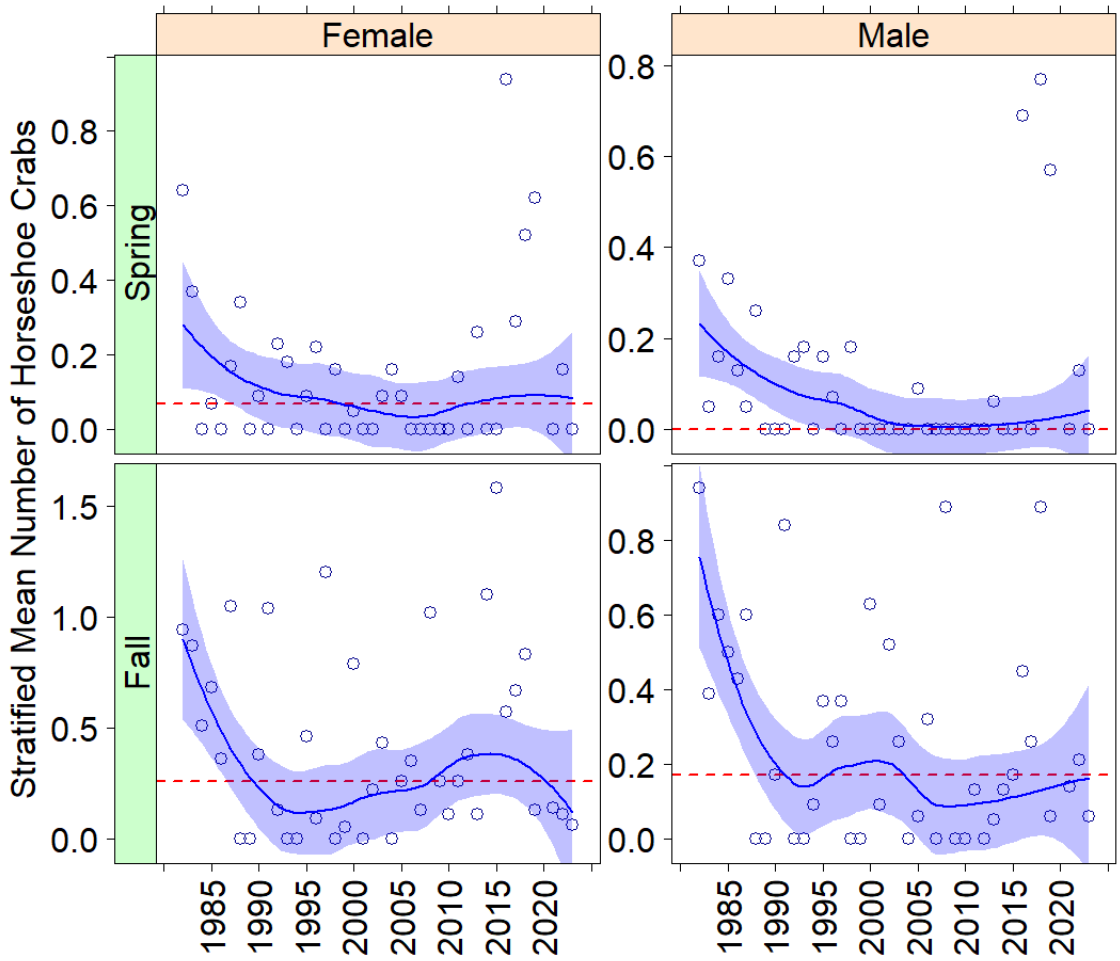
Data Source: MA Trip-Level Reports and NMFS VTRs, as of 2/23/24, *except for 2023 which is estimated from SAFIS eDR reports and historical gear types of the harvesters named in the dealer reports.

Figure 1. Stratified mean number of horseshoe crabs per tow 1982-2023 – South of Cape Cod



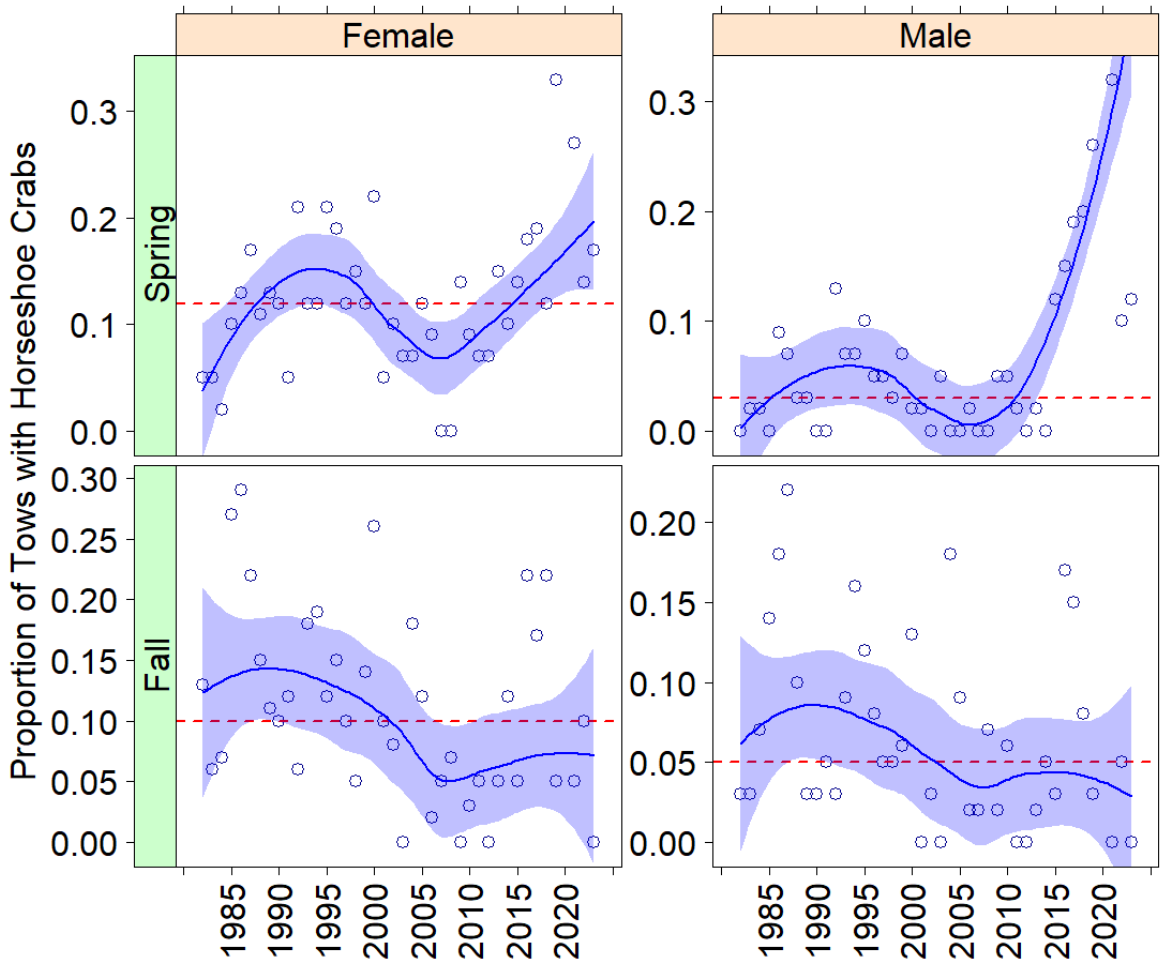
DMF Trawl Survey South and East of Cape Cod. Red, dashed line is the time series median, loess fitted line is blue, the light blue shaded area is an approximate 95% confidence interval for the loess fitted line. Note there was no survey conducted in 2020 (spring or fall) due to Covid.

Figure 2. Stratified mean number of horseshoe crabs per tow 1982-2023 – North of Cape Cod



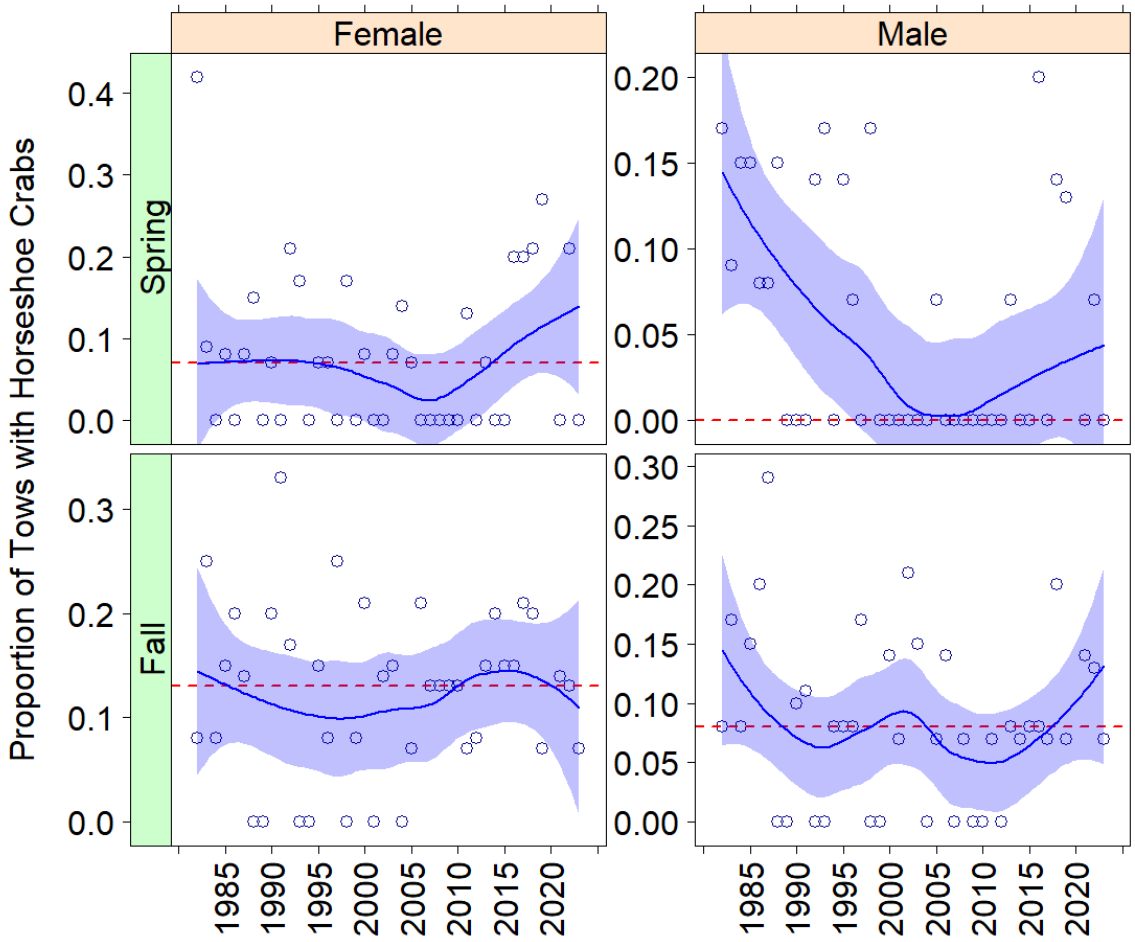
DMF Trawl Survey North of Cape Cod. Red, dashed line is the time series median, loess fitted line is blue, the light blue shaded area is an approximate 95% confidence interval for the loess fitted line. Note there was no survey conducted in 2020 (spring or fall) due to Covid.

Figure 3. Proportion of tows with horseshoe crabs present 1982-2023 – South of Cape Cod



DMF Trawl Survey South and East of Cape Cod. Red, dashed line is the time series median, loess fitted line is blue, the light blue shaded area is an approximate 95% confidence interval for the loess fitted line. Note there was no survey conducted in 2020 (spring or fall) due to Covid.

Figure 4. Proportion of tows with horseshoe crabs present 1982-2023 – North of Cape Cod



DMF Trawl Survey North of Cape Cod. Red, dashed line is the time series median, loess fitted line is blue, the light blue shaded area is an approximate 95% confidence interval for the loess fitted line. Note there was no survey conducted in 2020 (spring or fall) due to Covid.

Figure 5. Cumulative percent of spawning females observed by date during spawning beach surveys in Southern Massachusetts and Outer Cape Cod, 2015-2022

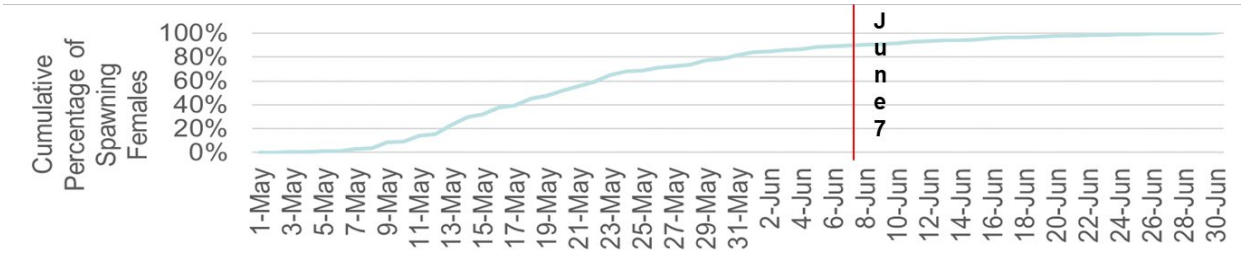


Figure 6. Cumulative percent of spawning females observed by date during spawning beach surveys North of Cape Cod, 2015-2022

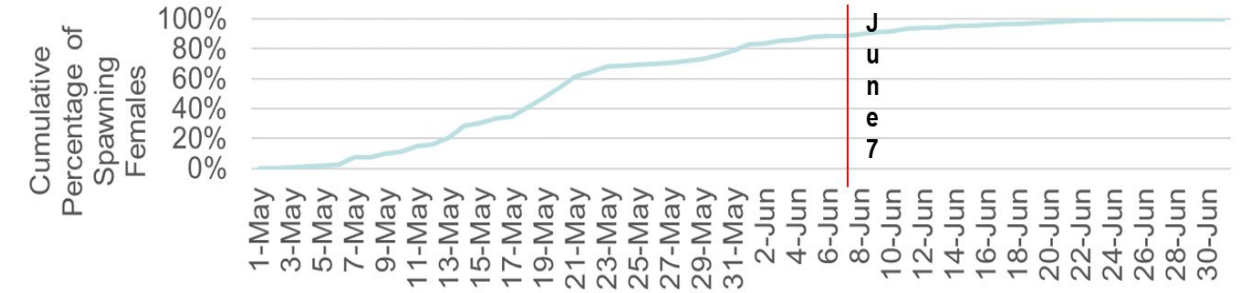
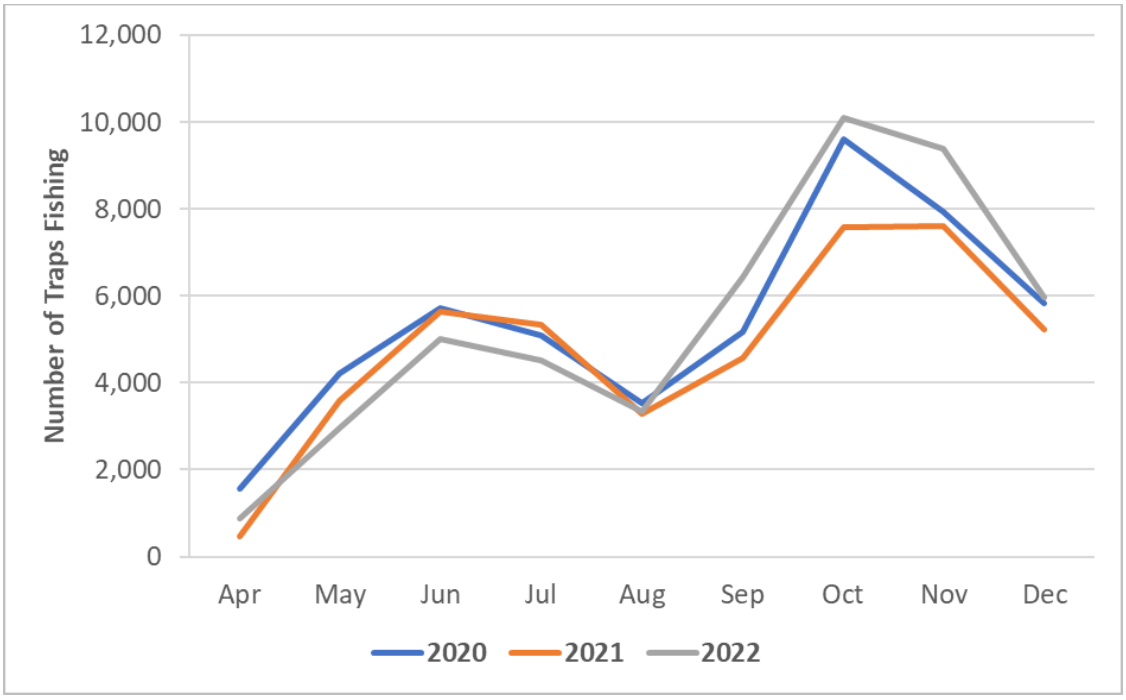
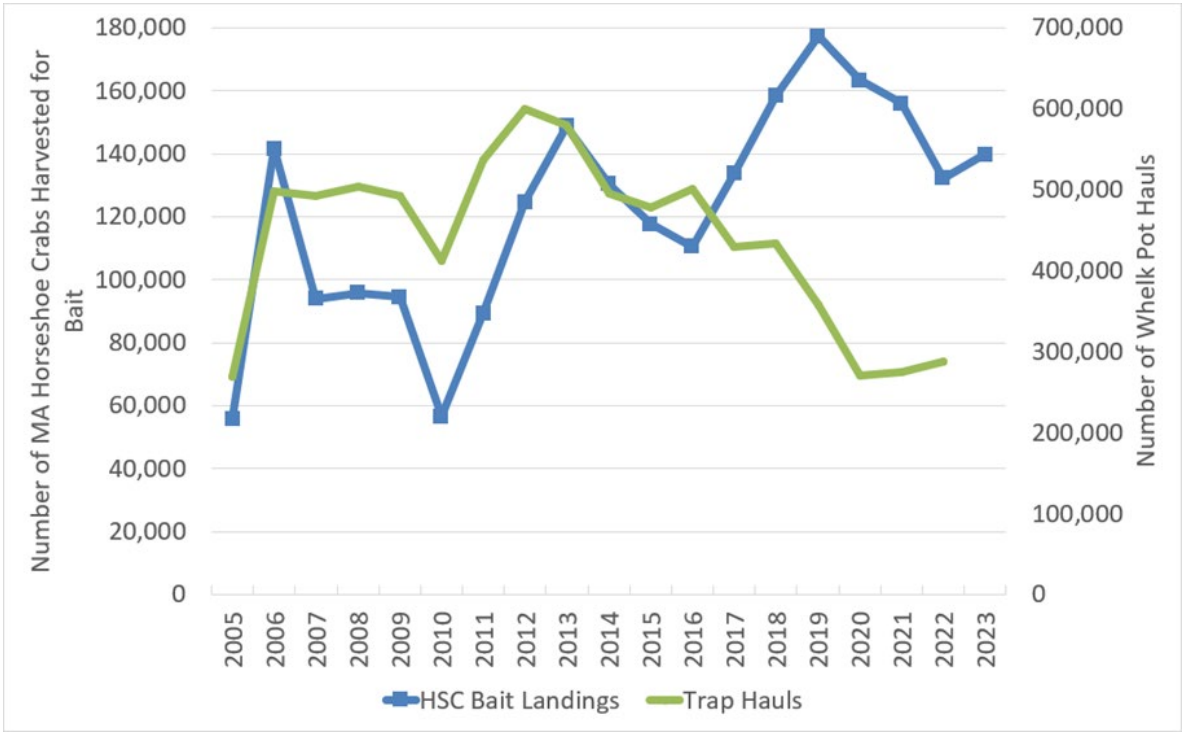


Figure 7. Monthly trends in traps fishing in the conch pot fishery (2020 – 2022).



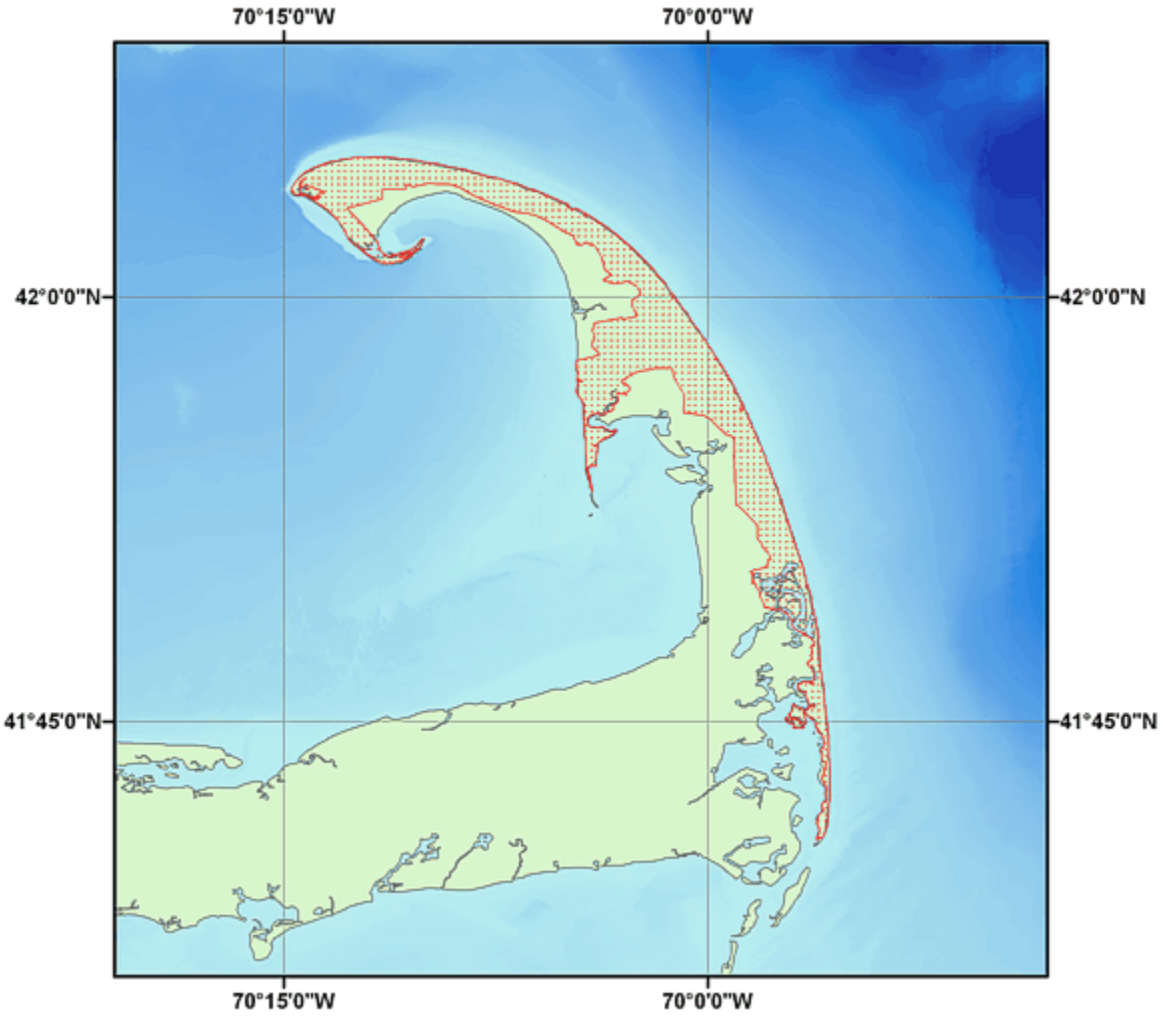
Source: MA commercial catch reports and NMFS VTRs.

Figure 8. Annual trends in pot hauls in the conch pot fishery (2005 – 2022) compared to landings in the horseshoe crab bait fishery (2005-2023).



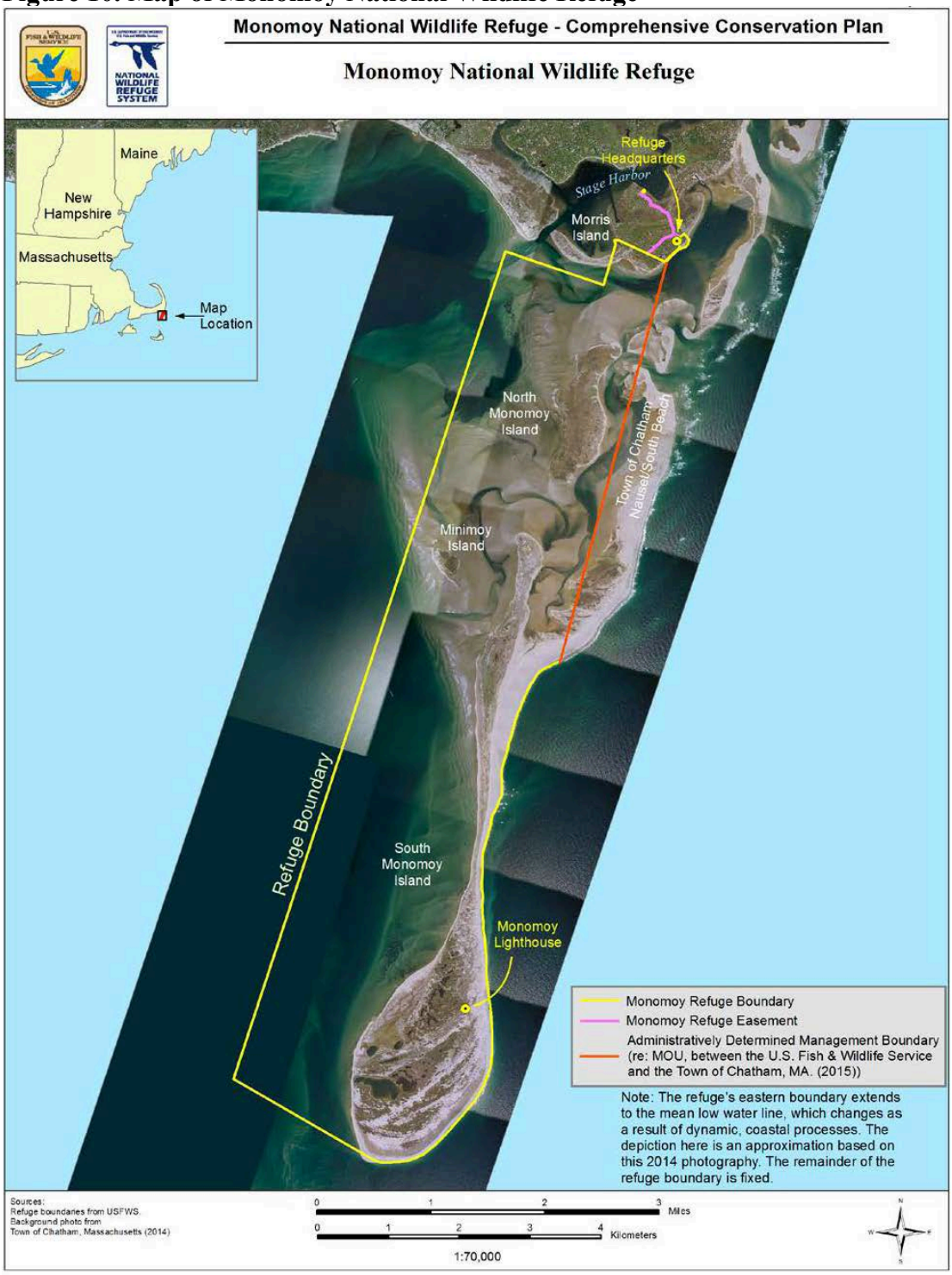
Source: MA commercial catch reports and NMFS VTRs (whelk trap hauls) and SAFIS dealer reports (horseshoe crab landings).

Figure 9 Map of Cape Cod National Seashore Boundary



Source: USGS Publications Warehouse

Figure 10. Map of Monomoy National Wildlife Refuge



Source: Map 1.1, Monomoy Wildlife Refuge Comprehensive Conservation Plan

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS K. O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission

FROM: Daniel McKiernan, Director

DATE: March 13, 2024

RE: **Commercial Striped Bass Fishing Days and Primary Purchase Requirements**

Recommendation

I recommend the MFAC approve the following adjustments to the commercial striped bass fishing regulations to go into effect for this season:

1. Reduce the number of fishing days from three days per week to two days per week to start the season by eliminating Monday as an open fishing day and retaining Tuesday and Wednesday.
2. Automatically add Thursday as an open fishing day on August 1 provided at least 30% or more of the quota remains available.
3. Require that both commercial fishers and primary buyers be present at the primary purchase transaction.
4. Require that primary buyers tag fish upon taking possession at primary purchase.

Background

The Atlantic States Marine Fisheries Commission recently approved Addendum II to Amendment 7 of the Atlantic Striped Bass Fishery Management Plan. Among other things, this addendum implements a 7% cut to each state's commercial striped bass quota effective in 2024. Accordingly, Massachusetts quota is being reduced from 735,240 pounds to 683,773 pounds. This quota cut, in addition to early August quota closures in the 2022–2023 fishing seasons, prompted DMF to consider adjusting commercial fishing limits. Additionally, DMF received comment from the Massachusetts Environmental Police (MEP) at the MFAC's Law Enforcement Focus Group meeting this past fall regarding a variety of enforcement challenges in the commercial striped bass fishery. This included the likely front-loading[1] of fish on closed commercial fishing days; boating safety issues related to night fishing; and chain-of-custody problems related to commercial fishers dropping off fish at dealer facilities that were not staffed. The MFAC's Striped Bass Focus Group discussed these various issues with DMF and DMF drafted a public hearing proposal for the MFAC's December 2023 meeting[2]. A public comment period on this proposal was held during February 7–March 8, 2024 with hearings on February 28 and February 29 in Bourne and Gloucester.

[1] The term front-loading refers to the practice of illegally catching fish during a closed fishing day and storing that fish for sale on the next available open fishing day. With regards to this memorandum, the context would be fish taken over the weekend for sale on Monday.

[2] Refer to the December 2023 MFAC meeting materials for more details. Past meeting materials are available at https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

My recommendation today is largely consistent with the public hearing proposal and informed by the public comment received. Recall my December 2023 memorandum to the MFAC described potential rule changes rather broadly allowing for public comment to inform the final recommendation. With regards to open fishing days, I proposed reducing the number of days to two days per week to start the season then automatically increasing to three days per week as early as August 15. I also sought comment on the sequencing of open fishing days, with a stated preference to exclude Monday. Then to address certain discrete management issues experienced in recent years as the epicenter of the fishery has moved from Cape Cod to Cape Ann, I proposed requiring primary buyers and harvesters be present at the primary purchase; mandating primary buyers tag striped bass upon receipt at the primary purchase; and considered creating a landing window or an alternative definition to an open fishing day (i.e., certain prescribed 24-hour period rather than a calendar day) to better accommodate the practice of night fishing.

Open Fishing Days

Current rules have been in place since 2021 (Table 1). These rules allow for three fishing days per week (Monday–Wednesday) beginning on the first open fishing day on or after June 16. The open fishing day schedule automatically moves to five days per week (Monday–Friday) on October 1 should quota remain. The daily trip limit is 15-fish for boat-based activity and 2-fish for all other permit holders and the minimum size is 35" (to size segregate the fishery from the recreational fishery). In 2021, we closed the commercial fishery on October 1, after 46 open fishing days. The 2022 and 2023 saw more rapid quota use compared to 2021. In 2022, DMF closed the commercial striped bass fishery after August 5, providing 20 open fishing days, and we ultimately ran an overage of about 5%. After accounting for this overage, our 2023 quota was reduced from 735,240 pounds to 700,379 pounds. The 2023 fishery closed after August 9 with a slight underage (97% quota use) [3], providing 22 fishing days. With the large 2015 year-class beginning to age into the commercial fishery this season, I expect performance will be at least as strong as it has been the last two years. Given these factors, I would expect the fishery to close in early- to mid-August, if not sooner. This is inconsistent with our longstanding goal of maintaining a commercial fishery throughout the summertime period to provide fresh, local caught seafood to the market.

Reducing the number of fishing days per week from three days to two days will extend the season later into the summer. However, the specific open fishing days and their sequence may also influence landings. Figure 1 demonstrates that Mondays are frequently the largest landing day of the week during the past two years (2022 and 2023). I suspect this is because its proximity to the weekend encourages some harvesters to illegally front-load fish during weekend days for sale to the market on Monday. While removing Mondays will not end the practice of front-loading, it should impede it by: (1) having the day prior to the first open fishing day be a weekday, when people generally have more constraints on their time; and (2) increasing the time-span between the weekend and the first open fishing day, making the front-loaded product less marketable[4]. In turn, this should slow weekly landing rates and improve compliance. While adopting non-consecutive open days would further slow landings, it would also constrain the practice of night fishing that is common on the North Shore and one that I want to continue to accommodate. I therefore support having the two open fishing days be consecutive and I think Tuesdays and Wednesdays represent the best open fishing days. This was informed by public comment from dealers and commercial fishers. Particularly compelling was testimony from commercial fishers

[3] Ultimately, 676,995 pounds (97%) of the 2023 overage-adjusted quota was taken, which approximates the quota under Addendum II.

[4] DMF received a public comment at the Gloucester public hearing regarding the practice of front-loading. The commentor stated the practice of front-loading hurts Massachusetts seafood industry by increasing the utilization of the quota and contributing to early season closures, while also having product of a diminished quality enter the consumer market. The commentor went on to argue that the seafood industry should self-police this issue. As fish that have been stored on ice for extended period of times is visibly discernible from freshly caught fish, industry should demand that front-loaded fish is either rejected by the primary buyer or purchased at a severely diminished value. This sentiment was shared among those at the public hearing.

who also run charter boat operations. They strongly preferred open fishing days on Tuesdays and Wednesdays rather than Wednesdays and Thursdays because their charter operations typically ramp up for the weekend on Thursdays.

Public comment on the matter of open fishing days was diverse. While reducing the number of fishing days per week was broadly supported, there was some interest in maintaining three open fishing days, particularly at the Buzzards Bay public hearing. The argument is that a single weather event can wipe out a week's worth of fishing if limited to two consecutive open fishing days and if several of these events were to occur over the course of the season then the quota may go underutilized. Therefore, the preference of these fishers was to take the quota early, rather than not at all. This is a reasonable argument and contributes to my recommendation to add a day starting August 1 should at least 30% of the quota remain. I had initially proposed having this go into effect no sooner than August 15; however, I think an August 1 conditional date is better. This conditional date addresses the quota underutilization concerns expressed by the proponents of a three-day-per-week fishery and is consistent with much of the comment received by North Shore fishers who preferred starting with two-days and then increasing to three-days based on quota use[5]. The 30% threshold was chosen because it would indicate slower than anticipated catch rates and the likelihood that we may not timely utilize the quota if we retained a two-day fishing week[6].

The public discourse on adjusting how open fishing days apply—such as moving away from a calendar day and to a 24-hour day or providing a landing window after an open fishing day—was interesting, albeit a bit convoluted. Generally, there was a public interest in accommodating night fishing and avoiding safety and compliance issues related to landing prior to the end of the calendar day[7]. However, there was little consensus on how best to accomplish this given the diversity of fishing practices and how tides can impact fishing activity. Ultimately, I think it is best to maintain the current calendar day schedule, as it is well understood by our permit holders and moving to a different approach may not solve the problems it intends to fix while also creating some level of confusion that would result in unintentional non-compliance. Moreover, I think we can address some of the possession limit enforcement and compliance issues eliminating Mondays as an open fishing day and adopting my recommended requirements at primary purchase.

Primary Purchase Requirements

My two recommendations regarding the primary purchase of striped bass are responsive to the experience of the MEP over the past two years. With the recent shift in the commercial striped bass fishery from Cape Cod to Cape Ann (Figure 2), there have been changes in fishing behavior and how the primary sale is conducted. With regards to fishing, we have seen an increase in night fishing resulting in a race against the clock to land and sell the fish by the end of the calendar day. Additionally, from Boston north, it is common for fish to be offloaded at the dealer's facility, whereas south of the Cape, fish are typically sold at the landing site (or nearby parking lots) onto the back of refrigerator trucks. What has been observed in

[5] North Shore fishers expressed an interest in taking the quota by late August before the fish depart their water. While these fish may cease being available along the North Shore towards the end of the summer, Cape Cod fishers generally have access to them into October. Additionally, while the local summertime market may wane after Labor Day, the 2021 data in Figure 1 show the ex-vessel value remained at its seasonal average throughout September.

[6] Under the current quota of 683,773 pounds, the 30% threshold approximates 205,000 pounds. Daily catch rates in 2022 and 2023 were about 30,000 fish per day. With the large 2015 year class entering the commercial size range, we would expect that catch rates would at least be similar (if not higher). Therefore, if more than 30% of the quota remains on August 1, daily catch rates are not matching recent performance and our performance expectations. In this scenario, adding a third day as a failsafe would increase the probability that we take the quota. If less than 30% remains, then landings are likely on track to take the quota by the end of the summer and further adjustments are not warranted.

[7] Interestingly, Rhode Island is seemingly grappling with the same issue and has proposed consecutive 24-hour fishing days running from 8PM on Monday to 8PM on Thursday, and alternatively, a selling window that would accommodate the sale of fish from 12AM on Tuesday to 8PM on Thursday.

Newburyport, Gloucester, and Boston is that fishers are leaving fish at dealer facilities during the nighttime or early morning hours when they are not staffed, and the fish remain untagged until personnel arrive in the morning. As a result, the chain of custody between the fisher and the dealer is broken resulting in the MEP being limited to holding the dealer responsible for any non-compliant fish observed on their premises. Alternatively, in some instances, the fish are being tagged by the harvester at the unattended dealer facility, a technical violation of our striped bass tagging regulations. To improve enforcement and compliance, I am recommending the MFAC approve requiring both the primary buyer and the commercial fisher be present at the time of primary purchase and that the primary buyer tag the fish upon receipt at this transaction.

The existing regulations govern the primary purchase regulations broadly, stating "the first commercial transaction by sale, barter, or exchange of any striped bass after its harvest". The understood intent of this regulation was that both parties would be present at this exchange, and when drafted, it likely did not contemplate a situation whereby fish would be left in the entry way of an unattended dealer facility in the middle of the night. I do not support the continuation of this practice as it creates unnecessary enforcement issues and undermines the purpose of the striped bass tagging program. DMF did not receive any public comment from dealers requiring the dealer be present at the transaction, which indicates to me that dealers understand this is the cost of doing business and likely prefer it to being held responsible for any non-compliant fish on their premise. Several commercial fishers objected to the action because it may complicate how and when they sell the fish to market should the dealer not staff the facility until the morning. While I understand these concerns, I think if this regulation is approved, these problems will solve themselves because seafood dealers will staff their facilities to accept striped bass, as has been indicated by some prominent dealers to DMF in private conversations. Some Boston-based commercial fishers supported accommodating the practice of having dealers allocate tags to fishers so fishers can tag the fish at the dealer facility should it not be staffed. While this at least provides some accountability as compared to dropping paper slips in totes of fish, I do not support a regulatory change to allow this. Consistent with my reasoning above, I think the best approach is to ensure both the fisher and the dealer are present at the primary purchase transaction. Moreover, I think this creates an environment that provides the dealers with too great of an ability to control participation in the fishery.

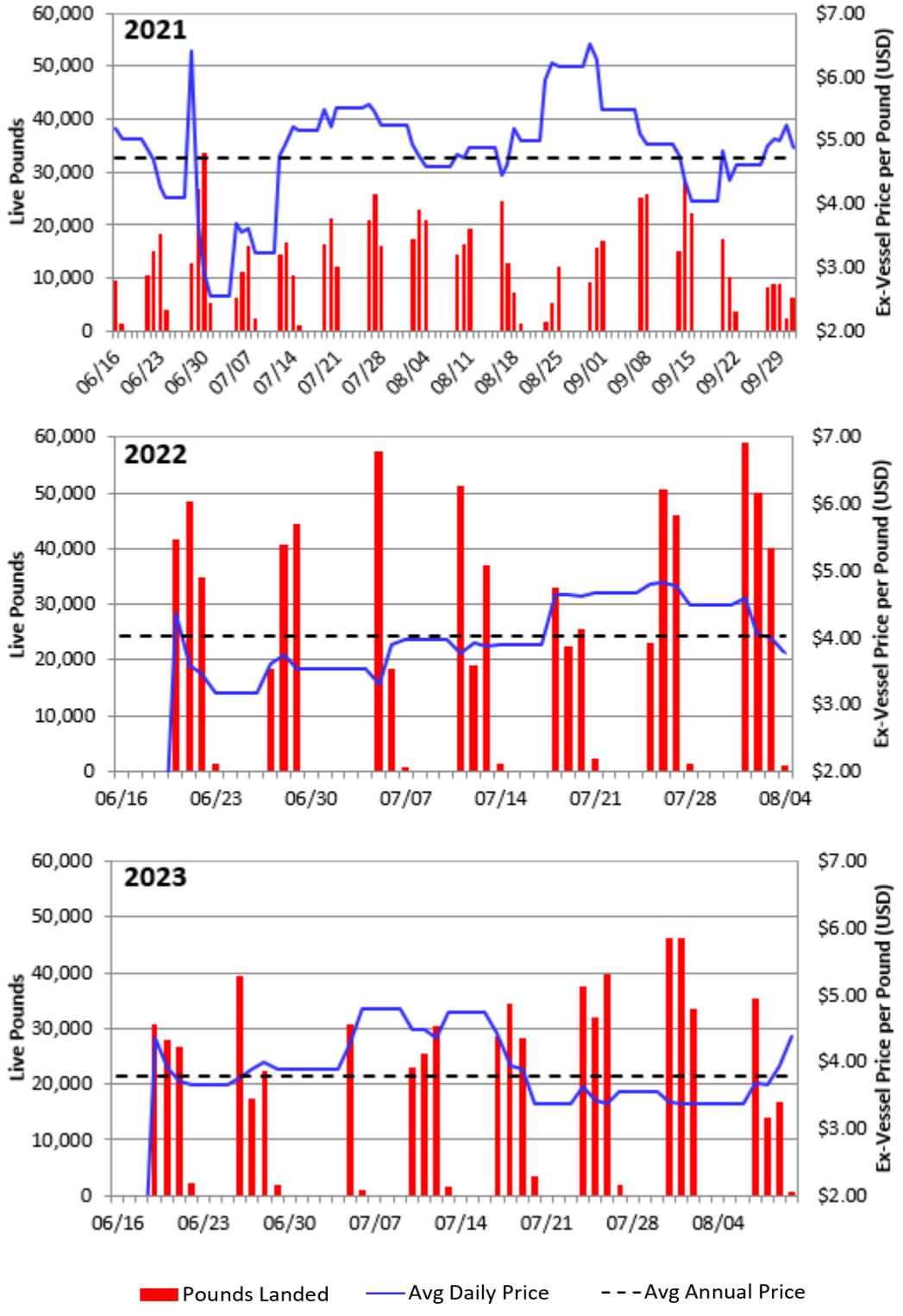
At present, current regulations do not require dealers tag their fish immediately upon receipt. Rather the rule states, dealers are to tag striped bass prior "prior to departing any ramp, pier, parking lot or other location of primary purchase." This standard was adopted as part of the initial tagging regulations back in 2013 and was designed to accommodate dealers in the formative years of the tagging program. At the time, logistical challenges were expected related to tagging fish in trucks at primary purchase locations facing substantial congestion. The rule does not adequately address the time-of-tagging requirement for primary purchases occurring at brick-and-mortar facilities. Given the recent geographic shift in this fishery resulting in more diffuse points of sale, it is also reasonable to mandate more expedient tagging at truck-based purchases. While we did not receive any dealer comments on this issue, we have had private conversations with some of the larger primary buyers and they have reported that immediate tagging is now common practice. Adopting my recommendation would make our striped bass fishery more enforceable and accountable and not unduly burden industry. That said, I am going to continue to work with staff and the MFAC's Striped Bass Focus Group to develop a potential harvester tagging program, which is the ideal approach for comprehensive chain-of-custody and the model adopted by most Atlantic coastal states with a commercial striped bass fishery.

Enclosed
Written public comment.

Table 1. Recent Regulatory History for Commercial Striped Bass Fishery

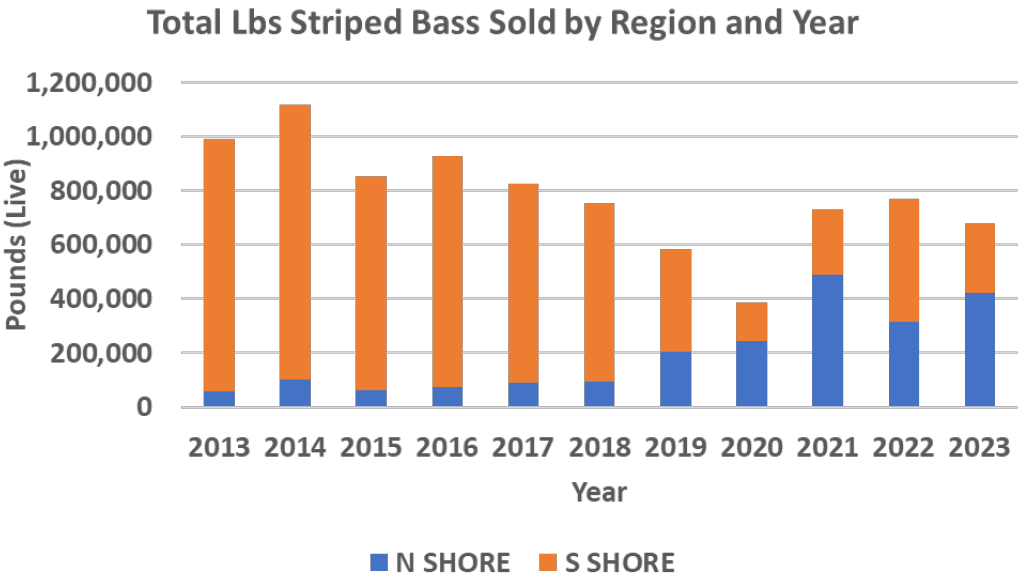
Years	Base Quota	Season	Open Days	Bag Limit	Size
2005–2013	1,159,750 lb	July 12–Dec 31	Tue–Thu	30 fish	34” min
			Sun	5 fish	
2014	1,159,750 lb	June 23–Dec 31	Mon–Thu	15 fish (vessel) 2 fish other	34” min
2015–2019	869,813 lb	June 23–Dec 31	Mon/Thu	15 fish (vessel) 2 fish other	34” min
2020	735,240 lb	June 23–Dec 31	Mon–Wed	15 fish (vessel) 2 fish other	35” min
2021–2023	735,240 lb	June 16–Sept 30	Mon–Wed	15 fish (vessel) 2 fish other	35” min
		Oct 1–Nov 15	Mon–Fri		

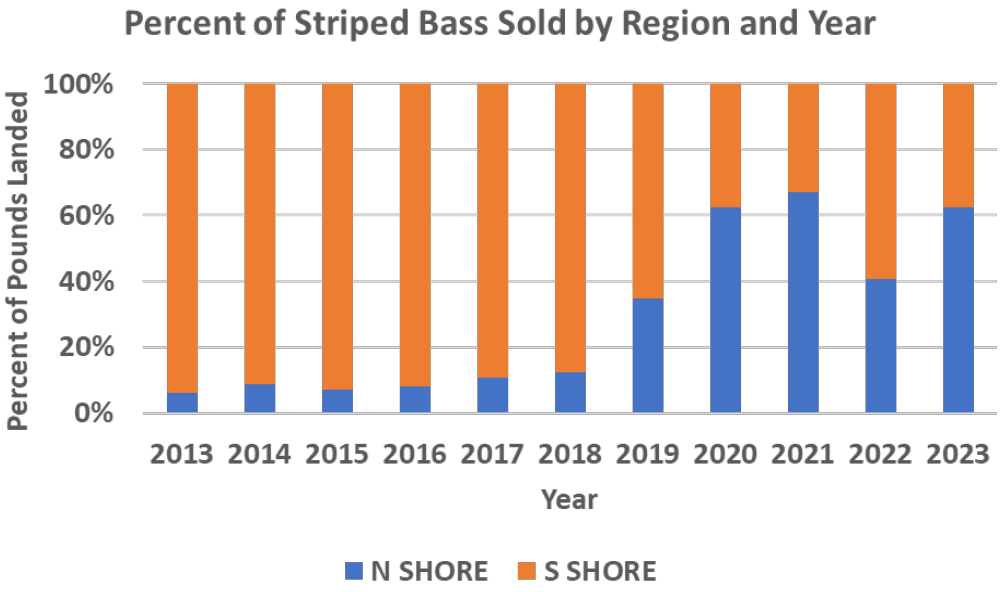
Figure 1. Daily Landings (live pounds) and Average Ex-Vessel Price, 2021–2023



Source: SAFIS Dealer Reports, as of 11/20/23

Figure 2. Regional Landings Trend by Year, 2013–2023*





Source: SAFIS Dealer Reports, as of 11/20/2023
* 2023 Preliminary
North Shore includes Essex, Suffolk, and Norfolk Counties
South Shore includes Plymouth, Bristol, Barnstable, Dukes, and Nantucket Counties

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS K. O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Commercial Menhaden Management Recommendation**

Recommendation

I recommend the Marine Fisheries Advisory Commission vote in favor of the following commercial menhaden management revisions for 2024:

1. Replace the June 15 start date for the purse seine fishery with a May 15 start date;
2. Add a conditional date of September 1 to the 50% quota use trigger, such that if 50% quota use does not occur until September 1 or later, the limited entry trip limit will remain 120,000 pounds through 90% quota use (then drop to 25,000 pounds through 100% quota use); and clarify that Friday remains closed to purse seining as long as the 120,000-pound limit remains in effect; and
3. Add a conditional date of October 15, such that if at least 10% quota remains at that time, the limited entry trip limit increases to 360,000 pounds, with a requirement for vessels to notify the Division at least 48-hours in advance of landing.

These recommendations differ from my public hearing proposal as presented to the MFAC in September 2023[1] in several ways, as informed by public comment. First, my public hearing proposal had considered a June 1 start date, rather than May 15 as recommended herein. Second, my public hearing proposal included the adoption of a conditional date of July 1 to begin the 25,000-pound trip limit, which is not recommended herein. And lastly, my public hearing proposal did not consider the October 15 conditional date as recommended herein. All of these revisions respond to the industry input to prioritize full quota utilization over season length for 2024, after the fishery took less than 30% of its allowable quota in 2023.

Table 1 provides a summary of these recommendations.

[1] Refer to the September 2023 MFAC meeting materials for more details. Past meeting materials are available at https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

Table 1. Summary of recommended changes for 2024, compared to 2023.

Purse Seine Season Start	Trip Limits and Quota Use Triggers (Limited-Entry Fishery)	Purse Seine Open Days *(area and date specific exceptions omitted)*
~~June 15 for all purse seine landings~~ May 15 for all purse seine landings	• 120,000-lb trip limit until 50% quota use. • 25,000-lb trip limit from 50% quota use through 90% quota use, provided 50% quota use occurs prior to September 1. If 50% quota use occurs on or after September 1, the 120,000-lb trip limit applies through 90% quota use. • 6,000-lb trip limit from 90% quota use through 100% quota use, provided 90% quota use occurs prior to September 1. If 90% quota use occurs on or after September 1, the 25,000-lb trip limit applies through 100% quota use. • All gears except purse seine may continue at 6,000-lb incidental catch/small-scale fishery trip limit after 100% quota use. • If on October 15 more than 10% of quota remains, a 360,000-lb trip limit applies, with a 48-hour advance notification requirement for landing.	Monday – Thursday ~~until 50% quota use~~ while a 120,000-lb or larger trip limit applies; then Monday – Friday ~~until 100% quota use~~ while a 25,000-lb or 6,000-lb trip limit applies.

Background and Rationale

DMF made numerous changes to the season, open days, trip limits, and gear restrictions for the state's 2023 commercial menhaden regulations in response to changes within the interstate fishery management plan.[2] The specifics of these changes were formulated in large part based on trends in menhaden distribution and resulting fishery performance that had held steady for numerous years. However, the availability of menhaden in Massachusetts was significantly altered in 2023 (likely environmentally driven), resulting in less than 30% of the state's quota being taken.

DMF therefore took several proposals to public comment this winter to increase access to the quota under various resource conditions while still upholding prior objectives to balance the various fishery participants' interests. A public comment period was held from February 7–March 8, 2024, with hearings held in Bourne and Gloucester on February 28 and 29. The revisions to my public hearing proposal were informed by comment received primarily at the Gloucester-based public hearing, where notably the industry members in attendance represented the full range of small, mid, and large-scale operators, plus written comment. (Comments regarding menhaden at the Bourne-based public hearing were not germane to the proposals.)

Purse Seine Start Date: May 15

DMF had proposed a June 1 start date for 2024 because this was the start date applicable in 2022—a year in which landings achieved the 2024 quota level (albeit with different trip limit triggers than in 2023). We moved to June 15 in 2023 based on quota projections that had the small-scale purse seine fishery extending into late-September with the date change and other revisions enacted (as opposed to ending in early September without the date change), which aligned with multiple DMF objectives for equitable distribution of resource access and supply of bait. However, the season change in 2023 was not without opposition from some stakeholders, particularly the large-scale operators, that feared volatility in resource distribution and subsequent quota underutilization. In hindsight, these concerns were warranted, and continued to dominate the public comment for 2024 management, but from across the spectrum of fishery participants at all scales of operation. They emphasized that continuous, seasonal nearshore availability of

[2] Refer to the May 2023 MFAC meeting materials and meeting summary for more details. The Director's recommendations for 2023 menhaden management were unanimously approved by the MFAC.

menhaden should not be assumed and urged rolling back the start date sufficiently to ensure that the fishery could access the fish when present. Many fishery participants voiced concern of future state-by-state quota reallocation efforts that could otherwise result in a smaller share for Massachusetts.

Specifically, a start date of May 15 for 2024 garnered considerable support from menhaden fishery participants, although a date as early as May 1 was also suggested and supported by some of the larger scale participants and bait dealers. I can support May 15 as the start date, a whole month earlier than in 2023, given that we also now have the 50% quota use trigger to scale the fishery down to the 25,000-pound trip limit. This date also matches the default date for lifting the Massachusetts state waters trap/pot gear closure, when bait demand increases. While this could result in a summertime quota closure for purse seines if prior year fishery trends resume, this appeared to be well understood at the hearing, and I am willing to defer to the industry's prioritization on full quota utilization over season length. Recreational fishery participants at the meeting had mixed views as to whether catching the quota earlier would benefit or hinder their interests with regards to ecosystem impacts and the availability of their target species.

Do Not Adopt a July 1 Conditional Date for 25,000-pound Trip Limit to Commence
In tandem with the earlier start date, DMF had proposed adding a conditional date of July 1 for the onset of the 25,000-pound trip limit, such that if the earlier start date led to 50% of the quota being taken very quickly, the fishery would "take a pause" and scale down to the 6,000-pound limit until ramping back up to the 25,000-pound trip limit on July 1. This concept was suggested as an alternative to the later season start date during public comment on the proposed 2023 rules, and hence formulated into the 2024 proposal. However, the public comment last month was not supportive of this approach, indicating that the potential instability in the trip limit would be too disruptive to operations once the fishery gets going. Again, priority was placed on quota utilization over season length, and so I am not recommending the adoption of this quota management tool.

Add a September 1 Conditional Date for 50% Quota Use Trigger and Purse Seine Closure Clarification
In response to low quota utilization in 2023, DMF used an in-season adjustment to waive the 50% quota use trigger in mid-September such that the 120,000-pound limit would continue until 90% quota use. Given that the fishery came well shy of 50% quota utilization in 2024, this in-season adjustment had no impact, but its merits remain hence I proposed to codify it this year. The purpose of the 50% quota use trigger—to slow down catch during the summertime period and extend the season—is moot by the time September arrives; whereas maintaining the 120,000-limit into the fall when ample quota remains might encourage the landing of menhaden caught outside of state waters. It simply was not envisioned during the trigger's development that 50% of the quota would not be taken during the first month of the fishery given recent fishery trends, yet the past year has demonstrated the need for the triggers to be responsive to variable resource availability conditions. As part of this change, we will clarify that Friday remains closed to purse seining for as long as the 120,000-pound trip limit remains in place; this was the original intent, but it was written into the rule in relation to the quota use trigger not the trip limit itself. Commercial fishery participants supported this modification in their comments, whereas recreational interests generally disagreed with any rule changes that could increase quota utilization.

Add an October 15 Conditional Date for Increased Trip Limits and Landing Days if 10% Quota Remains
This recommendation for a 360,000-lb limited entry trip limit beginning on October 15 should 10% of the quota remain was not initially proposed by DMF, but results from public input received at the Gloucester public hearing. Certain industry members with large scale operations that are permitted in multiple states along the Atlantic coast requested a late season trip limit increase if sufficient quota remained (like it did in 2023) that would make it economical for them to land fish in Massachusetts that had been caught farther south (e.g., off New Jersey). This would help with quota utilization (if needed) and put bait in the freezer for the following year. Even though they would not be active, the small and mid-sized operators at

the Gloucester hearing were in support for the sake of full quota utilization. The recommended 360,000-lb limit is three times the limited entry fishery's starting trip limit and in the range of what was requested (i.e., 7-10 truckloads, with each truck representing 40,000 pounds). Under the current quota, at least 1.08 million pounds of quota would need to remain to activate this trip limit, allowing for each of the few large-scale operators to partake. Given the magnitude of the limit though and the potential for one landing event to cause a rather significant quota overage, there would also be a 48-hour advance notification requirement prior to any landing to facilitate quota monitoring and a timely closure.

Other stakeholder groups, such as recreational fishers, are not expected to be impacted by this recommended measure. There was some industry support for this to go into effect as soon as September. However, my preference is for this allowance to land large quantities of menhaden caught in other jurisdictions (e.g., federal waters) occur after the resource has migrated out of our local waters to not exacerbate existing user group conflicts. Note that should we enter into this conditional fishing period, the Friday–Sunday purse seining closed days will also be lifted. The closed days are designed to ameliorate inshore user group conflicts with recreational fishers. However, when the resource migrates offshore and to our south in the fall, these closed days no longer serve their intended purpose. By lifting them, we can prevent potential safety issues that may arise by limiting when these vessels can land.

Addressing User Group Conflict

The menhaden fishery persistently presents a user group conflict over the extraction forage fish and this commonly plays out between commercial seiners and recreational anglers. In Massachusetts, Boston has historically been the epicenter for this user group conflict, likely due to the compounding impact of day-to-day marine congestion on the harbor. Further, the reduced availability of menhaden in local waters in 2023 heightened the conflict last year. Throughout the 2023 season, DMF received repeated complaints of egregious behavior by both commercial seiners and recreational fishers. These complaints are difficult to verify, so on occasion, we place staff on a seiner or ask the Massachusetts Environmental Police to monitor an area. Staff have reported that photos and video presented to DMF as evidence of seiners fishing in concentrations of recreational fishers were actually documenting vessels lining up to receive bait from seiners or target fish after the seiner arrived at a school. This type of gamesmanship is counter-productive and further confounds management. That said, I do not doubt there is a conflict at hand that warrants further attention.

While DMF did not bring forward any particular proposals to public hearing, we did solicit public input on the topic of additional measures that could better control user group conflict in Boston Harbor. A large number of Boston Harbor area charter boat operators attended the Gloucester public hearing to describe the negative impacts of forage fish removal on their operations and seek immediate relief by way of further restrictions on when and where purse seining may occur in Boston Harbor[3]. Of particular interest was the implementation of a permanent closure inside a line drawn from Deer Island to Long Island to Squantum. Similar written comment has also been received.

As I stated at the Gloucester public hearing, I have no intention of adopting the requested permanent closure of Boston Harbor. However, I am willing to meet with the stakeholders, hear out the various concerns, and work to find potential common ground from which we can potentially reduce the severity of the conflict in Boston Harbor[4]. Moreover, I would like to create a focus group of the Commission

[3] At the Gloucester public hearing, DMF eventually requested the public stop providing testimony on the Boston Harbor conflict. This was done to keep the hearing moving as we were behind schedule and needed to move through a busy agenda. Moreover, at the request of the for-hire industry, DMF had already committed to holding a stakeholder meeting on the conflict prior to finalizing the 2024 Inshore Net Permit Conditions that control seining in Boston Harbor.

[4] Note that in response to this ongoing user group conflict, DMF has already prohibited seining on Fridays (in addition to the statewide closed fishing days of Saturday and Sunday) when the trip limit is set at 120,000 pounds; prohibited the use carrier

dedicated to working with DMF on this matter and have it potentially include Mike Pierdinock, Sooky Sawyer, Bill Amaru, and Kalil Boghdan. My staff has scheduled this meeting for March 27, 2024 at 10AM at our Cat Cove facility in Salem. The majority of purse seine restrictions remain implemented by permit conditions; hence it is still possible that this meeting could lead to some modifications to the purse seining restrictions in 2024. I will advise the MFAC of the outcomes as soon as possible.

Enclosed:
Written public comment

vessels within the inner and outer Boston Harbor; restricted seining within certain discrete areas in Boston Harbor; and eliminated the ability of seiners to fish in Boston Harbor when incontrovertible evidence was presented to DMF that a seiner aggressively and dangerously entered a concentration of recreational fishers.

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Commercial Summer Flounder Trip Limit Recommendations**

Recommendation

I recommend the MFAC approve the adjustments to commercial summer flounder trip limits enumerated below and described in Table 1. Should this action be approved, I expect these rules would remain in effect through 2025.

1. For the Period I fishery (January 1–April 22), reduce the trip limit from 10,000 pounds to 5,000 pounds.
2. For the Period II summertime fishery (April 23–September 30), adopt a quota use trigger that would reduce the trip limit to 400 pounds for net gear and 250 pounds for hook gear if 75% of the quota is taken before August 1.
3. For the Period II fall fishery (October 1–December 31), change the quota use trigger from 5% to 10% quota remaining and reduce the trip limit from 10,000 pounds to 5,000 pounds should at least 10% of the quota remain on October 1.

Table 1. Recommended Changes to Summer Flounder Trip Limits for 2024 and 2025

Season	Gear Type	Trip Limit	Fishing Days	Min Size
Jan 1 – Apr 22	Nets	~~**10,000**~~ **5,000 lbs.**	Sun – Sat	14"
Apr 23 – Aug 31	Nets	600 lbs. **If 75% of quota is taken before August 1, limit is reduced to 400 pounds.**	Sun – Sat	14"
	Hooks	400 lbs. **If 75% of quota is taken before August 1, limit is reduced to 250 pounds.**		
Sept 1 – Sept 30	Nets	800 if > 20% of quota 600 if =< 20% of quota	Sun – Sat	14"
	Hooks	800 if > 20% of quota 400 if =< 20% of quota		
Oct 1 – Dec 31	All	**5,000** ~~10,000~~ if > **10%** ~~5%~~ of quota 800 if =<**10%** ~~5%~~ of quota	Sun – Sat	14"

This recommendation is generally consistent with my public hearing proposal with two minor modifications based on additional analysis and public comment. First, my September 2023 memorandum

to the MFAC[1] included proposals to nominally reduce the trip limits during the summertime period. After further analysis of recent fishery performance, I decided the proposal was likely unnecessary to prevent an early season closure. Accordingly, it was not included in the draft regulations brought out for public comment, and instead, I informally sought feedback from industry as to whether they felt a nominal trip limit decrease was necessary to buffer against an unlikely—but potential—early season closure. Ultimately, I am not recommending any changes to these trip limits. Secondarily, in the draft regulations, I proposed modifying the quota use trigger to increase the trip limits for all gear types on September from 20% remaining to 25% remaining to prevent an early season closure. However, based on public comment and additional analyses, I support maintaining the status quo 20% threshold.

Lastly, I intend to renew the Consecutive Daily Trip Limit Pilot Program that allows vessels participating in the summertime mixed species trawl fishery south of Cape Cod to land two days' trip limits of summer flounder that were lawfully caught and retained over consecutive open fishing days. This program would also include black sea bass, horseshoe crabs, whelk, and smooth dogfish (if approved by the Atlantic States Marine Fisheries Commission[2]). Implementing this pilot program does not require MFAC approval, but I would appreciate your feedback on the subject.

Background and Rationale

The 2023 stock assessment was released last summer. This assessment demonstrated that while the stock is not overfished, overfishing was occurring despite recent catch limit underages. This is because the prior assessment overestimated abundance, in large part due to the promising 2018-year class being much smaller than initially assessed. Moreover, recruitment has been consistently below average since 2011. Using the new assessment, the Mid-Atlantic Fishery Management Council (MAFMC) and Atlantic States Marine Fisheries Commission (ASMFC) set the 2024/2025 quota at 8.79 million pounds—a 42% reduction from the 15.27-million-pound coastwide quota in 2023. Because the coastwide quota is dropping below 9.55 million pounds, the level at which quota is reallocated per Amendment 21, Massachusetts will only receive its baseline quota share of 6.82%, rather than the near 9% we have been receiving the past two years[3]. This brings the Commonwealth's summer flounder quota to about 600,000 pounds for 2024 and 2025, as compared to the near 1.36-million-pound quota we experienced the past two years. Note the anticipated quota levels for 2024 and 2025 are only slightly below quota levels from about 10–15 years ago when there was substantially more effort in the commercial fishery.

As we are experiencing a near 56% decrease in the commercial quota from 2023 to 2024, I proposed a series of adjustment to the commercial fishing trip limits. The purpose of these adjustments was to fully utilize the state's quota in a manner that allows fisheries to be profitable and should keep the summertime fishery open into September. A public comment period on this proposal was held during February 7–March 8, 2024 with hearings on February 28 and February 29 in Bourne and Gloucester

Period I Trip Limit Reduction

In November 2023[4], the MFAC unanimously approved my in-season adjustment recommendation to reduce the Period I (January 1–April 22) trip limit for 2024 from 10,000 pounds to 5,000 pounds. This

[1] Refer to the September 2023 MFAC meeting materials for more details. Past meeting materials are available at https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

[2] Recall from this month's smooth dogfish memorandum that Coastal Shark Board approval is required for any state to increase its smooth dogfish trip limit and including smooth dogfish in this pilot program likely constitutes a trip limit increase.

[3] Amendment 21 modified the state-by-state quota allocations in a manner meant to increase equity across states when the stock is in a strong condition. When the coastwide quota exceeds 9.55 million pounds, the additional quota is allocated in equal shares of 12.375% to all states (except Maine, New Hampshire, and Delaware which share 1% of the additional quota). Coastwide quota up to 9.55 million pounds is allocated according to the historic shares based on 1980–1989 landings, or 6.82% for Massachusetts.

[4] Refer to the November 2023 MFAC meeting materials for more details. Past meeting materials are available at https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

action was taken in response to the pending quota reduction for 2024. The purpose was to set the trip limit at a level where offshore fishing would remain profitable, but DMF could reasonably manage the Period I quota allocation (30% overall) and prevent the Period I fishery from exceeding its allocation and reducing the quota allocation available to the Period II (April 23–December 31) fishery. This action was also informed by conversations that staff had with fishery participants. Consequently, I similarly proposed to reduce the Period I trip limit to 5,000 pounds in regulation, allowing us to avoid the in-season adjustment process for 2025.

In terms of performance, the 2024 Period I fishery was open at the 5,000-pound trip limit for approximately six weeks. In early February, DMF projected the fishery would reach its 30% allocation and reduced the trip limit to 100 pounds on February 6. Upon a final tally, the Period I fishery took about 25% of the total quota. Note that it is challenging to project quota consumption in this wintertime fishery. Participating vessels are trip fishing offshore and DMF wants to ensure those vessels can land their trips but we also do not want to encourage a spike in landings that may cause an allocation overage impacting the quota available to the Period II fishery. Accordingly, we take a conservative approach and err on the side of slightly underutilizing the Period I allocation. An additional benefit of this approach is that it provides a buffer for landings of incidental catch to continue to trickle in through the remainder of the period without threat of exceeding the Period I allocation.

Ultimately, I take a positive view of how this fishery performed in 2024 and think it is appropriate to continue managing it in this fashion in 2025. I generally think industry is in agreement with this approach as well, as we received limited public comment on it and the comment we did receive was supportive.

Summertime Trip Limits and Quota Use Triggers
First and foremost, I am not recommending any changes to the current trip limits during the summertime fishery (April 23–September 30). This decision to maintain the existing 600-pound trip limit for net fishers and 400-pound trip limit for hook fishers is informed by the recent performance of this fishery and quota allocation available to it.

For 2024, Massachusetts summer flounder quota is 599,507 pounds, with a similar quota expected in 2025. This results in the Period II fishery being allocated approximately 420,000 pounds. Based on the performance of the 2024 Period I fishery to-date, I expect the 2024 allocation will be higher—between 425,000 and 435,000 pounds. The likely available allocation to the summertime fishery in 2024 and 2025 approximates the fishery's recent performance.

Landings in the summertime fishery have only exceeded 420,000 pounds twice in the past five years (Table 2). In 2019, the fishery landed almost 470,000 pounds and in 2022 the fishery landing almost 429,000 pounds. In the other three years, landings did not exceed 400,000 pounds and the 2023 fishery took only 339,223 pounds. Additionally, we ran a series of projections (Figure 1) that looked back at how the fishery performed over the past three summers (2021–2023) in an attempt to determine when the 2024 fishery might close assuming 425,000 pounds of quota remain available for Period II. In the figures, the blue line plots weekly landings from that year and the orange line plots what weekly landings would be if they increased by 20%.[5] Based on the projections, we anticipate we would only reach a quota closure during the summer fishery under conditions similar to 2022 with a closure likely occurring in September.

Another data point to consider is there is not a direct relationship between trip limits and daily landings. In the trawl fleet, which is responsible for more than 85% of the summertime summer flounder harvest,

[5] This 20% figure was based on the trip limit increase from the 2021 and 2022 limits to 2023—as DMF increased the baseline summertime trip limits from 500 pounds for netters and 300 pounds for hook fishers to 600 pounds for netters and 400 pounds for hook fishers—and to account for any potential increase in activity above the 2023 baseline.

the average vessel lands about 300 pounds of summer flounder per trip and about 1,000 pounds of summer flounder per week. Only a few fishers take advantage of the full 600-pound daily limit. This difference between actual landings and allowable landings is likely related to differences in vessel size and power and the large quantities of filamentous algae being encountered by the vessels in coastal waters. Therefore, if there is a spike in effort, we would expect the landings to increase in a manner that is proportionate to average daily landings (i.e., 300 pounds) rather than daily allowable landings (i.e., 600 pounds). These data also underscore the fact that while this fishery is open seven days per week, most fishers are only fishing for and landing summer flounder a few days per week.

Public comment and testimony on maintaining the trip limits was mixed. Fishers and dealers generally supported the action. However, some others preferred nominally reducing trip limits to buttress against an early season closure. This interest in a conservative approach was driven by the fleet anticipating several additional trawlers may join the fishery this year, particularly at the current 600-pound limit, and this increase in effort may contribute to higher than anticipated landings.

While I understand this concern, I think the above performance analysis demonstrates there is room for moderate growth in the performance of this fishery without the threat of an early season closure. Rather, my preference is to maintain the existing trip limits and then build-in a quota use trigger that would reduce trip limits should the fishery perform above expectations to the extent that an early season closure is likely. My recommendation here is to reduce the trip limit by 33% to 400 pounds for net fishers and 250 pounds for hook fishers if 75% of the quota is taken before August 1. This will allow the fishery to open in the spring with a high trip limit to take advantage of the higher ex-vessel value usually observed during the early season[6] (Figure 2). Then, should we be approaching full quota utilization during the latter half of the summer, an automatic trip limit reduction can occur to allow fishing to continue later in the year. My goal here is to allow trawlers to continue to retain and land summer flounder into at least mid-September when the resource typically migrates offshore so that vessels can continue to profitably operate in this fishery while the resource is available and vessels targeting horseshoe crabs later in the season (for bait or biomedical purposes) will not be forced to discard summer flounder.

There was also some interest in reducing the number of open fishing days per week to achieve the goal of slowing quota consumption. I do not support this for the same reasons that I do not favor a trip limit reduction. Moreover, I strongly prefer the seven days per week schedule because it provides a substantial benefit to small boat operators (both trawlers and hook fishers) whose activity is constrained by weather.

The hook and line fishery contributes only nominally to overall landings during the summertime fishery. Annually, there are 15–20 hook fishers who collectively land a few thousand pounds per week with a very few anglers landing more than 200 pounds per day. Accordingly, I do not think that maintaining the trip limit at 400 pounds for this gear type will have a substantive impact on overall landings and will benefit a very small number of commercial anglers who are capable of taking this quantity of fish. This was supported by the hook fishers who provided public comment.

I am recommend we maintain the existing automatic trip limit increase to 800 pounds for all gear types on September 1 should at least 20% (~120,000 pounds for 2024 and 2025) of the quota remain available. In the public hearing notice, I proposed raising the quota use trigger to at least 25% (~150,000 pounds) of the quota remaining to prevent an early season closure. However, after further consideration, I do not think this is necessary. Over the past three years (Table 3), data show several thousand pounds of summer flounder are landed per week from late-April through early-June when most trawlers targeting squid; then

[6] Primary buyers have informed DMF that the higher early season price is supply driven, as other states with large quotas generally start their directed fisheries later in the year. For instance, Rhode Island will start their season with a 200-pound trip limit and 1,400-pound weekly aggregate limit and may increase the limit as the season goes on to utilize their quota.

in mid-June, when trawlers switch over to large mesh, landings increase to about 21,500 pounds per week on average for the next 15 weeks through mid-September; and then landings taper off significantly at the end of September. As we have previously, let us assume there will be 425,000 pounds of quota remaining at the outset of Period II on April 23. Based on recent landing trends, and assuming no additional effort moves into the fishery, I project we will have taken just under 75% of the quota by September 1, triggering a trip limit increase. This indicates that the effort has not increased to the extent that we will take the full quota before September 30. Therefore, I see no purpose in taking the more conservative management approach. Rather, my preference is the more modest threshold to increase the trip limit to 800 pounds with the goal of attracting more vessels to remain in the fishery through September enhancing the utilization of not only the summer flounder quota, but the bait and biomedical horseshoe crab quotas.

Lastly, I am going to renew the Consecutive Daily Trip Limit Pilot Program[7] for June 1, 2024. I think this pilot program has been successful in reducing steaming time, fuel consumption, and overhead costs while providing commercial fishers with more flexible access to allowable catch. In effect, it has allowed the fleet to fish more efficiently without causing derby like conditions. For 2024, the program will continue to accommodate multi-day trip limits for summer flounder and black sea bass, and as described elsewhere, will be expanded to include horseshoe crabs and smooth dogfish.

Fall Trip Limits and Quota Triggers
Historically, Massachusetts has not allocated any quota to the fall fishery (October 1–December 31) and in most years the fishery is subject to a quota closed by the end of September. However, given the elevated quotas we experienced in recent years coupled with the declining performance in the summertime fishery, a large quantity of quota has remained available during the fall season. This has provided offshore trawlers with an opportunity to land fish caught in the federal zone in Massachusetts. As demonstrated by Table 2, we have seen substantial growth in landings during this period since 2019. With the quota reduction, it is unlikely that large amounts of quota will remain available to the fall fishery. Rather, these offshore trawlers will have to land their fish in other states where they may be permitted (e.g., Rhode Island, New York), as they traditionally have.

While my preference is to take the quota before the fall starts[8], should quota remain the fall fishery must be managed in a manner that that allows participants to profitably exploit the quota while preventing a potential quota overage that would come off next year's quota. Accordingly, I am recommending we change the October 1 quota use trigger from >5% quota remaining (roughly 30,000 pounds this year) to >10% quota remaining (roughly 60,000 pounds this year) and reduce the trip limit that applies should more than 10% of quota remain on October 1 from 10,000 pounds to 5,000 pounds (while maintaining an 800-pound trip limit if 10% or less of the quota remains). DMF received limited public comment and testimony on this aspect of the proposal and the comment received was generally in agreement with it.

Enclosed
Written public comment.

[7] This program allows permit holders participating in the summertime mixed species trawl fishery south of Cape Cod to land two days' trip limits of certain species (principally summer flounder) that were lawfully caught and retained over consecutive open fishing days.
[8] Figure 2 shows a sharp decline in ex-vessel during the fall period. This is reportedly due to the large quantity of fish being landed along the Atlantic coast with states to our south (e.g., Virginia and North Carolina) opening their directed fisheries with high trip limits to accommodate offshore vessels.

Table 2. Annual Quotas and Landings by Season for 2019 – 2024 (live pounds)

Year	Period I Jan 1 - Apr 22	Summertime Apr 23 - Sep 30	Fall Oct 1 - Dec 31	Annual Total Landings	Annual Quota
2019	24,145	469,955	58,470	552,569	741,532
2020	175,983	396,562	129,799	702,344	795,584
2021	274,611	310,485	129,325	714,422	1,025,159
2022	218,366	428,888	228,902	876,156	1,393,790
2023	326,369	339,223	315,523	981,115	1,359,363
2024*	155,881				**599,507**

Data Source: SAFIS eDR, 3/8/24
*To date, 3/8/24

Table 3. Average Weekly Summer Flounder Landings (live pounds) for 2021-2023 and Participation by Gear Type During Summertime Fishery (April 23 – September 30)

Week Start	Avg Total Landings	Avg Trawl Landings	Avg Trawl Percentage	Avg # Hook Participants	Avg # Trawl Participants
23-Apr	217	217	100%	0	3
30-Apr	564	564	100%	0	3
7-May	1,108	*	>85%	1	8
14-May	3,605	*	>90%	1	11
21-May	3,700	*	>90%	1	16
28-May	6,760	*	>90%	2	17
4-Jun	11,936	11,275	94%	5	22
11-Jun	22,254	20,288	91%	18	26
18-Jun	22,876	20,110	88%	15	25
25-Jun	23,176	19,248	83%	16	24
2-Jul	17,910	15,550	87%	15	23
9-Jul	21,833	18,509	85%	17	24
16-Jul	22,648	19,070	84%	11	21
23-Jul	22,094	19,213	87%	15	23
30-Jul	23,982	22,181	92%	14	24
6-Aug	20,341	17,801	88%	15	21
13-Aug	19,848	14,647	74%	18	21
20-Aug	24,524	21,187	86%	19	22
27-Aug	24,995	21,820	87%	17	23
3-Sep	21,604	21,221	98%	13	17
10-Sep	16,905	15,798	93%	9	21
17-Sep	17,519	14,746	84%	4	16
24-Sep	9,135	*	>90%	2	12

Data Source: SAFIS eDR, MATL Trip Reports & NMFS VTRs, 2/21/24

[1]Preliminary: 2023 Harvester data are not yet available, thus gear is estimated from previous reports.

*Confidential

Figure 1. Projected 2024 closure date using A) 2021, B) 2022, and C) 2023 landing trends. Projected dates assume no change to the fall fishery. Data Source: SAFIS Dealer Reports, March 2024.

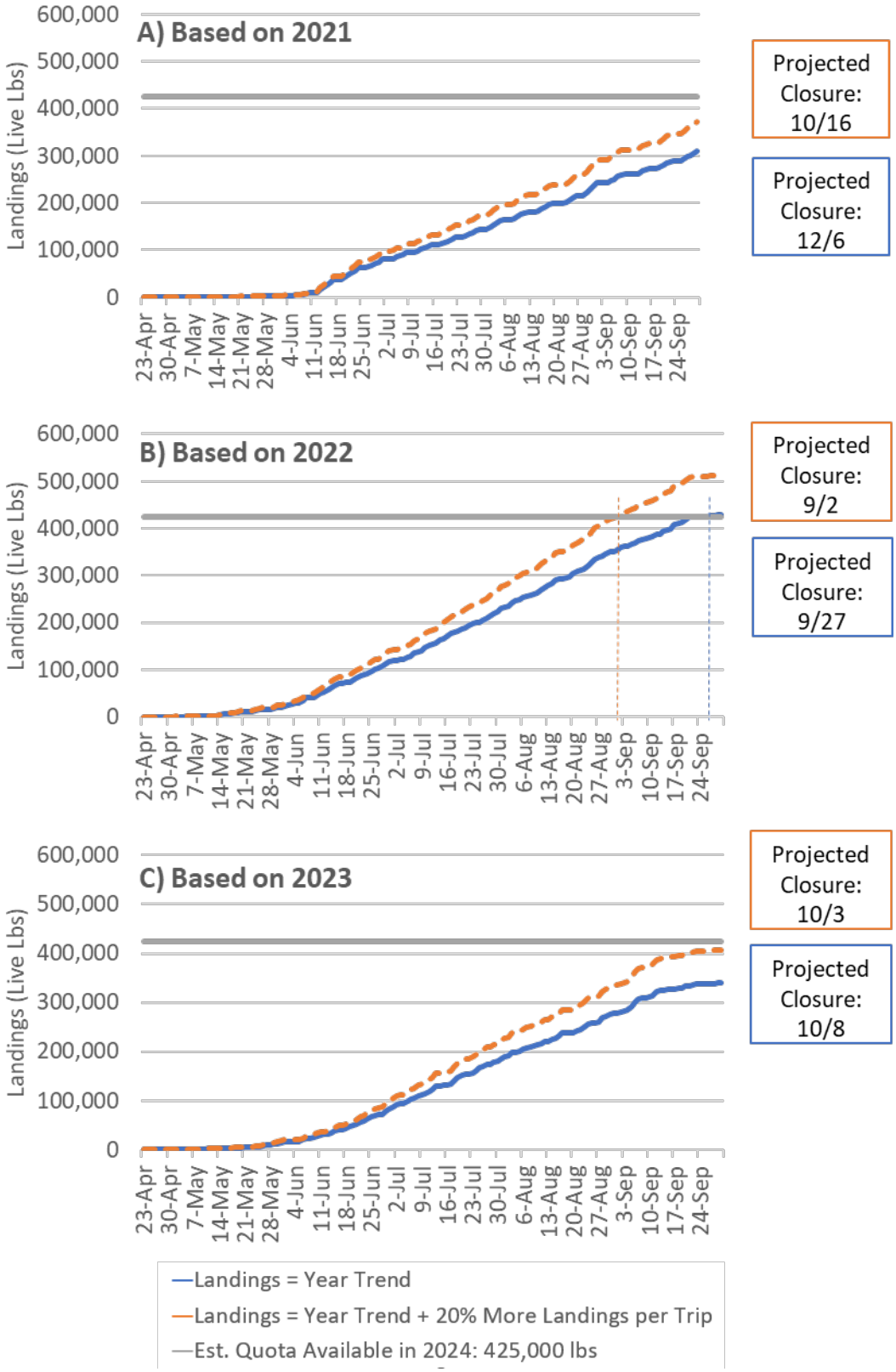
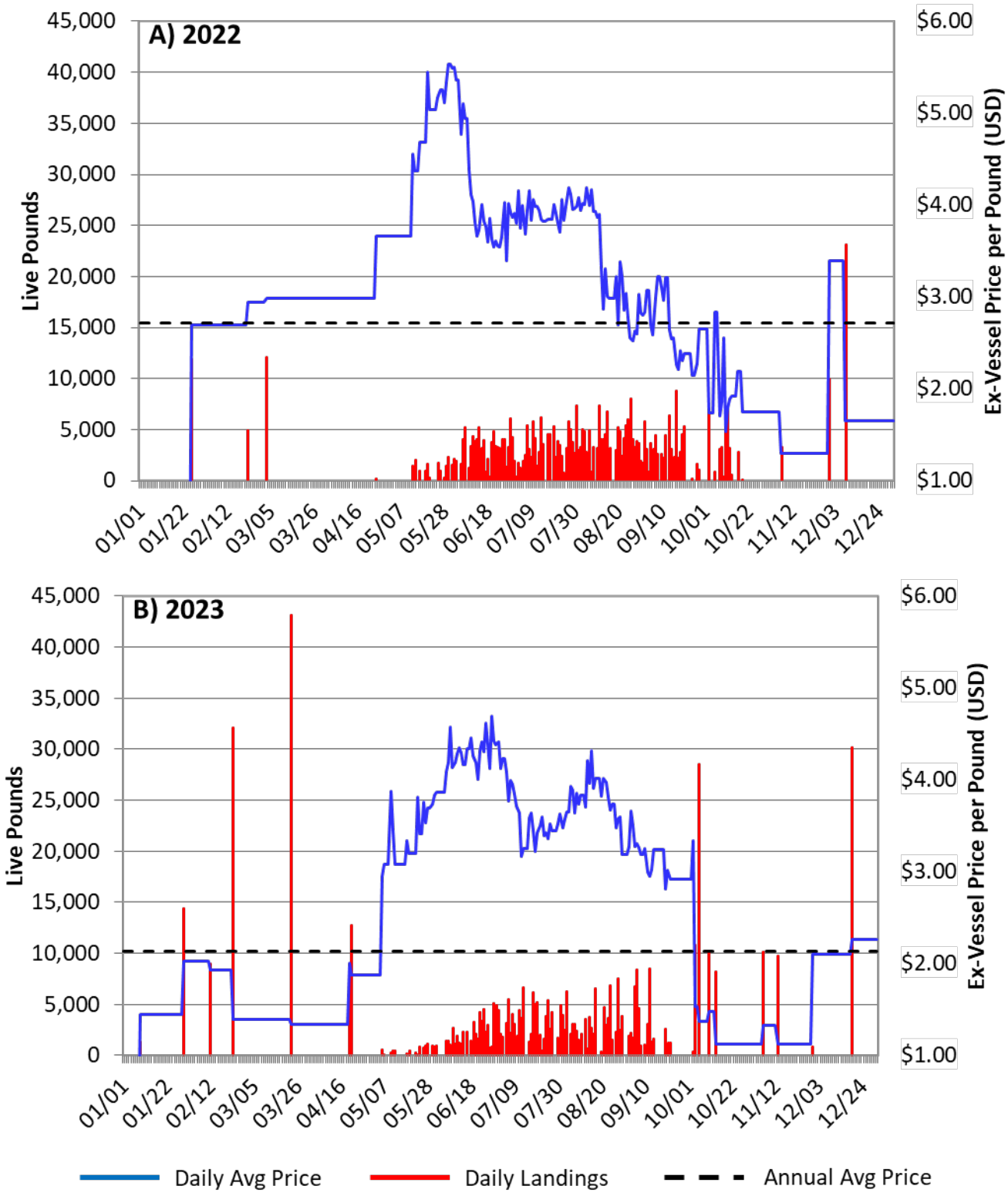


Figure 2. Daily landings and average price trends across A) 2022 and B) 2023. Data Source: SAFIS Dealer Reports, March 2024.



The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2023

SUBJECT: **Recommendation to Adjust Spatial Extent of May Commercial Groundfish Closure**

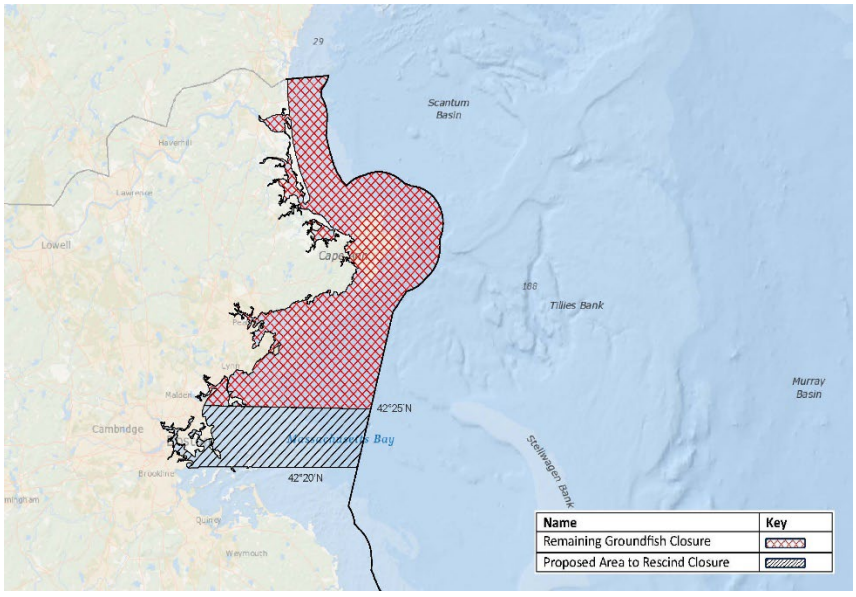
Recommendation

I recommend the MFAC vote in favor of moving the southern boundary of the May commercial groundfish closure from 42° 20' north latitude (Boston Harbor) to 42° 25' north latitude (Nahant). If approved the May commercial groundfish closure will occur from 42° 25' north latitude (Nahant) to the Massachusetts/New Hampshire maritime border (Figure 1). This recommendation is consistent with my public hearing proposal as presented to the MFAC in December 2023[1].

Background and Rationale

Under the federal Northeast Multispecies (Groundfish) Fishery Management Plan (FMP), NOAA Fisheries accounts for the portion of a stock's Total Annual Catch Limit[2] (ACL) caught in state waters by non-federal vessels by approving a State Waters Sub-Component[3] ("sub-component"). These state waters sub-components cover expected catch for all New England states (i.e., not state-specific) and are based generally on the most recent three-year average of catch. The sub-components are

Figure 1. Recommended May Closure



[1] Past MFAC meeting materials are available at: https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources.

[2] NOAA Fisheries describes the ACL as "a level of catch intended to ensure overfishing does not occur. ACLs are set less than or equal to the overfishing limit and acceptable biological catch."

[3] Sub-components are implemented for those stocks with catch in state waters; offshore stocks like Georges Bank yellowtail flounder do not have a state waters sub-component.

neither allocations, nor hard quotas with real-time monitoring. However, NOAA Fisheries and the New England states conduct annual year-end[4] catch accounting to reconcile groundfish catch reporting and determine what catch is attributable to the state-waters-only fishery and the utilization against the sub-components. Payback of any overage is not required of the New England states should their aggregate catch of any stock exceed that stock's sub-component. In the event of a sub-component overage, there is no impact if the ACL is underutilized, but should an ACL be exceeded, then federal accountability measures are triggered potentially affecting federal permit holders and the recreational fishery[5]. Therefore, the expectation is that states will manage their state-waters-only fisheries in a conservative manner to ensure sub-components are not exceeded, particularly for certain highly utilized stocks given the potential for triggering accountability measures.

While these sub-components are for all the New England states, state-waters-only catch from other states is nominal and Massachusetts is responsible for the lion's share of harvest of the sub-components in the Gulf of Maine (GOM) management area[6]. The management of the state waters groundfish fishery in Massachusetts is a complicated partnership, whereby DMF aims to support federal conservation and management objectives—as required under the Magnuson-Stevens Act (16 U.S.C. 1856)—while also addressing issues specific to our state waters fleet. This results in a highly complex regulatory environment that includes a series of input and output controls (e.g., trip limits, size limits, closures) designed to control effort and mortality and protect spawning fish, as well as a limited entry permitting scheme that limits the use of certain gears (e.g., trawls and gillnets) and the harvest of groundfish species by non-federal permit holders (State Waters Groundfish Endorsement or "GE")[7].

The state-waters-only fishery involves a small number of participants and activity has waned in recent years. This reduced activity is likely the product of limited state waters groundfish fishing opportunities, economics favoring other fishing activity (e.g., lobster, scallops), and the non-transferable status of the state gillnet endorsement forcing attrition. Much of the landings occur in the summer months and are driven primarily by the few remaining gillnet fishers (four were active in FY22, which is half those active in FY19) and a handful of trawlers. While there is some trawl fishing effort as well, many of the previously active trawlers have either stopped fishing or now fish under a federal groundfish permit. More recently, hook fishing activity has increased, but it still remains a small component of overall landings. Effort from the existing fleet is expected to continue to decline as permit holders retire out or pursue other state or federal fishing opportunities. Given this low level of activity, the activation of new fishing effort in this fishery can demonstrably impact landings and create situations whereby sub-components may be exceeded and this latent effort is a concern[8].

In my December 2023 memorandum to the MFAC, I described in some detail my expectations for the state waters groundfish fishery for the upcoming fishing years (FY24 and FY25). This was based on an analysis of FY2022 landings (i.e., the most recent complete fishing year); recent trends in performance and effort; and the sub-components for FY24 and FY25. In summary, I expect we will not fully utilize the sub-components for the key commercially viable species (Table 1). Accordingly, we have some flexibility to modestly increase fishing opportunity.

[4] The federal fishing year (FY) runs from May 1 – April 30.
[5] The commercial sector fishery is subject to pound-for-pound payback and the recreational fishery is subject to rule changes to constrain catch.
[6] Groundfish catch in the Southern New England Management Area—i.e., all state waters south of 42° 00 north latitude excluding Cape Cod Bay—by Massachusetts permit holders is generally limited to a nominal harvest of Southern New England winter flounder caught incidentally in the commercial trawl fisheries in Nantucket and Vineyard Sound
[7] Federal groundfish permit holders may fish within the waters under the jurisdiction of the Commonwealth under their federal permit and in compliance with all relevant state fishing regulations (e.g., trip limits, closures) and gear permitting requirements (e.g., must hold Coastal Access Permit to fish mobile gear or gillnet permit to fish gillnet gear).
[8] For example, the trawlers who have switched to primarily federal fishing still separately retain a state-only vessel and associated GE and can readily move back into the state waters fishery.

Table 1. FY22 state waters (SW) catch compared to expected FY24 and FY25 sub-components (pounds)

Stock	FY22 SW Catch*	FY24 Sub-Component	Percent Utilization	FY25 Sub-Component	Percent Utilization
GOM Cod	54,454	105,822	51%	TBD	N/A
GOM Haddock	64,154	105,822	61%	103,617	62%
Witch Flounder	13,669	41,888	33%	41,888	33%
GOM Winter Flounder	143,300	337,307	42%	337,307	42%
GOM Yellowtail Flounder	41,888	66,139	63%	61,729	68%
Plaice	7,055	61,729	11%	57,320	12%

*Source: NMFS Greater Atlantic Regional Fisheries Office Final Year End Report September 26, 2023, run date of September 10, 2023

With this in mind, I moved forward a request from a Gloucester-based gillnetter to amend the spatial extent of the May groundfish closure by moving the southern boundary from Boston north to Nahant. This action will likely increase access to groundfish stocks during the month of May and reduce steaming times for North Shore-based vessels. If approved, the relative impact of the action is uncertain, but I anticipate it will be modest and it will not produce an overage of any of our sub-components. This is because a variety of regulatory controls would remain in place constraining fishing effort (e.g., trip limits, winter flounder and cod spawning closures, mobile gear closures, gillnet closures to protect right whales), and catch and effort are also limited by fishable bottom and the seasonal presence of target species. Lastly, the closure area will also continue to encompass the Eagle Ridge spring spawning cod aggregation off Marblehead[9].

A public comment period on this proposal was held during February 7–March 8, 2024 with hearings on February 28 and February 29 in Bourne and Gloucester. Written public comment and testimony at the public hearings was generally supportive of DMF's proposal to adjust the boundary of the May closure. Some commercial fishers requested DMF move the southern boundary further north to the prior boundary at 42°30' north latitude (Marblehead). DMF has previously denied similar industry requests given the poor status of the GOM cod resource and that such an action would remove the protection provided to the Eagle Ridge spawning cod aggregation. Accordingly, DMF is not reconsidering this position now.

DMF also received industry requests to enhance access to available winter flounder and yellowtail flounder set-asides through either: (a) a pilot program to allow dayboat trawlers with a GE to land two days' trip limits of regulated groundfish species that were lawfully caught and retained over consecutive open fishing days—similar to the Consecutive Daily Trip Limit Pilot Program in the summertime trawl

[9] Work by senior DMF biologist, Micah Dean, has demonstrated there are two discrete sub-populations of GOM cod that exhibit different seasonal peaks in spawning activity—the so-called "spring spawners" and the so-called "winter spawners." The relative importance of these two cohorts to the overall stock has changed over time. At present, nearly all recruitment comes from the winter-spawning cohort, but as recently as the early 2000s, the spring spawning cohort accounted for most recruitment. Conserving both cohorts is critical for the recovery of the GOM cod stock.

fishery south of Cape Cod[10]; or (b) a doubling of the winter flounder and yellowtail flounder trip limits[11]. My strong preference is to further investigate a potential pilot program. DMF has conducted a similar program for the summertime mixed trawl fishery since 2019 and I have observed how it has allowed the fleet to fish more efficiently without causing derby like conditions. Moreover, many of the participating vessels seeking this opportunity have experience fishing in the pilot program south of the Cape as they toggle between these fisheries seasonally. Given my support for this program, I have tasked staff with analyzing the potential for such a pilot program in the fall and winter groundfish trawl fishery north of Cape Cod and I will provide the MFAC with a final decision on this matter later this summer.

[10] This program allows permit holders participating in the summertime mixed species trawl fishery south of Cape Cod to land two days' trip limits of certain species (principally summer flounder) that were lawfully caught and retained over consecutive open fishing days.

[11] Trip limit adjustments would require a regulatory change subject to a separate round of rulemaking. If supported and approved, changes would not likely go into effect until early-2025. Moreover, increasing winter flounder trip limits would require the approval of the Atlantic States Marine Fisheries Commission (ASMFC) Winter Flounder Board (Board). The Board last adjusted winter flounder trip limits in 2014, increasing the limit from 250 pounds to 500 pounds based on a request from Massachusetts. The current 500-pound trip limit was established by specification in 2023 and remains in effect through 2025. I am doubtful the Board would reconsider these specifications and support additional increases at this time. Based on the results of the most recent assessment, the ASMFC's Winter Flounder Technical Committee has advised against further liberalizing Gulf of Maine winter flounder trip limits as the stock has not responded to low levels of exploitation and increasing harvest could jeopardize recovery.

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Recommendation to Adopt Commercial State Waters Trip Limit for Atlantic Mackerel**

Recommendation

I recommend the MFAC vote to establish a commercial state waters trip limit for Atlantic mackerel of 5,000 pounds until 80% of the fishing quota is taken that is then reduced to 2,500 pounds for the remainder of the fishing year. Like existing sea scallop and groundfish rules, this would apply to all state permit holders as well as federal permit holders when fishing in state waters. Exempt from this trip limit would be weir fishers who infrequently encounter large quantities of Atlantic mackerel in their gear. I am not recommending to adopt a trip limit specific for weirs at this time, but am willing to reconsider it in the future if warranted.

This recommendation is consistent with my public hearing proposal as presented to the MFAC in December 2023[1], with the addition of the weir exemption as informed by public comment.

Background and Rationale

In December 2023, the Mid-Atlantic Fishery Management Council (MAMFC) adopted Atlantic mackerel Acceptable Biological Catch[2] (ABC) limits and specifications for FY2024 and FY2025 to limit directed fishing without creating excessive regulatory discards. Particularly relevant for state waters is the newly established federal open access trip limit of 5,000 pounds until 80% of the quota is taken that is then reduced to 2,500 pounds for the remainder of the fishing year. DMF supported this action at the MAFMC and seeks to adopt a state waters trip limit to complement the federal open access trip limit. The purpose of this complementary action is to: (1) manage the state-waters-only portion of this fishery in a manner that does not undermine federal conservation and management objectives—as required by the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1856); and (2) control possible displacement into state waters by vessels aiming to avoid federal open access catch limits.

Landings data demonstrate that most state waters-only trips do not exceed 1,000 pounds of Atlantic mackerel. Accordingly, this action should not constrain ongoing fishing activities. The limit was also generally supported by industry at the recent public hearing son February 28 and February 29 in Buzzards Bay and Gloucester (no written comment was received). At the Buzzards Bay hearing, a highliner and

[1] Past MFAC meeting materials are available at: https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources.

[2] NOAA Fisheries defines Acceptable Biological Catch or ABC as "a scientific calculation of the sustainable harvest level for a species or species group and is used to set the upper limit on the range of potential total allowable catch."

historic participant stated his support for the measure but argued that if additional conservation is needed down the road the interests of long-standing participants should be prioritized. At the Gloucester hearing, DMF also received testimony in support of this action from North Shore commercial fishers and bait dealers. However, local Gloucester-based weir operators requested an exemption to the trip limit for weir gear. These fishers stated that the north shore weirs infrequently catch quantities of Atlantic mackerel that exceed the proposed trip limits and argued for an exemption from the trip limit because weirs are not a directed gear, they may intermittently catch large quantities of Atlantic mackerel, and they should be allowed to land the mackerel they catch.

Under state law[3], weirs are jointly managed by DMF and local authorities. Municipalities authorize the construction and regulate the use of fish weirs within their waters; whereas DMF permits the use of the gear to commercial harvest fish and establishes baseline state-wide regulations for marking weirs and establishing buffer zones around weirs. In 2022[4], DMF issued 10 weir permits and only 3 were active state-wide. Given the small scale of this fishery, landings data are confidential[5]. However, DMF can state: (1) weirs can land Atlantic mackerel in excess of the recommended 5,000-pound trip limit but not higher than 25,000 pounds; (2) there were larger landings and more frequent landing events exceeding 5,000 pounds prior to 2018; (3) since 2018, landings are lower and there are no landing events exceeding 5,000 pounds; and (4) recently active weirs were set in Nantucket Sound and around Cape Ann and mackerel catch occurred in both locations.

I am supportive of accommodating the requested exemption and have incorporated it into my final recommendation. From a policy perspective, I believe this exemption is consistent with DMF's purpose in adopting these complementary regulations. Given existing controls governing weir fishing, the sporadic and artisanal nature of the weir fishery, and the above-described fishery performance trends, I do not believe this exemption will undermine federal conservation goals, nor will it provide a viable outlet for displaced fishers to avoid open access catch limits. Moreover, there is precedent to accommodate this exemption, as we've similarly exempted weirs from menhaden, scup, and black sea bass trip limits. I considered capping this exemption at 25,000 pounds, consistent with the federal limited access trip limit, but decided it was no necessary to do so. Weirs are not likely to catch this quantity of fish and they do not present a viable alternative for displaced federal permit holders. Accordingly, my preference is to not adopt a weir specific trip limit but rather allow the weirs to land mackerel in large quantities should they catch them and reconsider this position should it prove problematic[6].

[3] G.L. c. 130, §29.
[4] Gear type is best determined through harvester catch reports. The QA/QC process for 2023 harvester reports is ongoing. Therefore, 2022 data are being used.
[5] G.L. c. 130, §21
[6] In all likelihood, if the weirs encounter such large quantities of fish again the status of the Atlantic mackerel stock is likely improved and more liberal limits will likely be considered at the federal and state level.

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Recommendation to Stay Scheduled Whelk Gauge Increases**

Recommendation

I recommend the MFAC approve staying the schedule to increase the whelk gauge size until 2027. If approved, the 1/8" gauge increase (from 3 1/8" to 3 1/4") scheduled for 2024 will be delayed until no sooner than 2027 (Table 1). This recommendation does not differ from my public hearing proposal as presented to the MFAC in December 2023[1].

Table 1. Proposed adjustments to schedule for increases to whelk gauge size

Gauge Size	3 1/8"	3 1/4"	3 3/8"	3 1/2"	3 5/8"
Current Schedule	2021 - 2023	2024 – 2026	2027 – 2029	2030 – 2032	2033
Recommended Schedule	2021 – 2026	2027 – 2029	2030 – 2032	2033 – 2035	2036

Background and Rationale

Since the early 2010s, DMF has been concerned about the status of the whelk resource in Massachusetts. During the early 2000s, there was a rapid escalation of catch and effort in the so called "conch pot" fishery for channeled whelk[2]. Fishery dependent data indicated there was a substantial reduction in catch per unit effort after 2010 and a truncation in the sizes of whelk caught to around a minimum size standard that was not based on a biological metric[3].

To address a lack of basic life history data to inform management, DMF conducted two size-at-maturity studies (2013 and 2015) that demonstrated no female channeled whelks in Massachusetts' waters were sexually mature at the existing minimum size. In fact, female channeled whelks did not start becoming sexually mature until they were at a shell width of about 3 1/2" and did not reach 50% size at maturity until they reached a shell width of 3 7/8". In 2018, DMF completed a stock assessment for channeled

[1] Refer to the December 2023 MFAC meeting materials for more details. Past meeting materials are available at https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

[2] This was likely driven by changes in fishing behavior in response to the environmentally driven collapse of the Southern New England lobster stock.

[3] The original minimum size standard of 2 7/8" was set in the late-1980s based on dealer input regarding the smallest sized whelk they could process and market.

whelk in Nantucket Sound[4]. The assessment concluded the resource was overfished and overfishing was occurring. The results of the size-at-maturity studies and stock assessment prompted DMF and the MFAC to gradually increase the size-at harvest for whelks (both channeled and knobbed whelks) with the goal of eventually setting size at harvest at 50% size-at-maturity for channeled whelk (Table 2). While this management scheme has evolved over time, DMF regulations currently manage size-at-harvest through a minimum gauge size and method of measurement, with the gauge size currently scheduled to increase by $^{1}/_{8}$" every three-years until 2033[5]. This gradual approach recognized that this is a slow growing animal and was designed to offset anticipated economic impacts by allowing near legal sized whelks to recruit into the fishery before the next gauge increase would occur.

This management program has been the subject of routine criticism since it was first discussed around a decade ago. Given the documented differential growth rates—females growing larger than males—stakeholders have raised concerns that the fishery will eventually be harvesting exclusively female whelks and this may skew sex ratios in the population and potentially jeopardize any long-term recovery. Accordingly, there has been a persistent interest in other options (currently undefined) for conservation and management strategies.

Despite the gradual management approach, effort and landings over the past decade are greatly diminished (Table 3 and Table 4, Figure 1). While DMF believes this is likely the result of persistent overexploitation, industry contends it has been driven (at least in part) by the continuous gauge increases, which result in large numbers of undersized whelks being routinely discarded. Industry is concerned that further gauge increases will continue to depress landings and effort, leading to the loss of shoreside infrastructure necessary to support the fishery. Thus far the economic viability of the fishery has largely been buoyed by increasing ex-vessel values driven by overseas markets, but this past fall revealed a weakening of the live market and a reduced ex-vessel value.

DMF staff have held routine meetings with industry representatives, MFAC members, SMAST researchers, and local state legislators to discuss the management of the conch pot fishery for channeled whelk. Recently there has been a strong interest for an SMAST PhD student to conduct a Management Strategy Evaluation (MSE) to help all stakeholders better understand what various management alternatives DMF could consider. Once funded, DMF anticipates it may take three-years for the work to produce preliminary results that could be used for management. While concerns remain about the long-term viability of this resource and this fishery, I support staying the gauge schedule for at least the next three-years to reconsider the scheduled gauge increases based on the progress of the MSE.

DMF recently held a public comment period from February 7–March 8, 2024 and public hearings on February 28 and 29, 2024 in Bourne and Gloucester and the comment received generally favored the stay.

---

[4] Channeled whelk primarily occur in the inshore waters south and west of Cape Cod. Nantucket Sound has historically been and remains the primary harvest area for channeled whelk.

[5] The minimum shell width for whelks was increased from 2 $^{3}/_{4}$" to 3" through two annual $^{1}/_{8}$" increases in 2014 and 2015. The MFAC did not support further changes until DMF completed a second size-at-maturity study and demonstrated the results confirmed its initial 2013 size-at-maturity study. This second study concluded in 2015, and in fact, confirmed the results of the 2013 study. In response to enforcement issues, DMF amended its whelk minimum size management strategy in 2017. This included adopting a standardized "any orientation" method of measurement and regulating size-at-harvest through a minimum gauge size rather than shell width given the asymmetry of the animal. Through this change, DMF adopted a 2 $^{7}/_{8}$" minimum gauge that corresponded to an animal with a shell width of roughly 3 $^{1}/_{10}$", slightly larger than the prior 3" minimum shell width standard. DMF then adopted a 10-year schedule to increase the minimum gauge size from 2 $^{7}/_{8}$" to 3 $^{5}/_{8}$" through a series of six biennial $^{1}/_{8}$" gauge increases beginning in 2019 and concluding in 2029. The terminal minimum gauge size of 3 $^{5}/_{8}$" roughly corresponds to a 3 $^{7}/_{8}$" animal, a size at which DMF's studies found 50% of female channeled whelks would be sexually mature. Under this schedule, the gauge size was increased again in 2021 to 3 $^{1}/_{8}$". Prior to the scheduled increase in 2023, DMF amended the schedule so that it would occur every three-years thereby delaying the next increase to 2024.

Notably, the written record includes comment letters from Massachusetts Senator Mark Montigny and Representative Antonio Cabral, as well as the Massachusetts Conch Association and other industry members supporting this recommendation. However, individuals from the horseshoe crab conservation community expressed concerns regarding the stay given the reportedly poor status of the whelk resource and that continued exploitation of this resource would continue to generate demand for horseshoe crabs as bait.

Enclosed
Written public comment.

Table 2. Approximate shell width and percent size-at-maturity at each scheduled gauge size

Gauge Size	2 7/8"	3"	3 1/8"	3 1/4"	3 3/8"	3 1/2"	3 5/8"
Approximate Shell Width	3 1/10"	3 3/16"	3 5/16"	3 7/16"	3 5/8"	3 3/4"	3 7/8"
Percent size at maturity	0%	0%	0%	0%	5%	20%	50%

Table 3. Annual CPUE in conch pot fishery for channeled whelk, 2000 - 2021 (live pounds/trap-haul)

Year	CPUE
2000	5.14
2001	5.75
2002	5.26
2003	6.57
2004	6.64
2005	5.44
2006	5.16
2007	5.43
2008	5.36
2009	5.59
2010[1]	5.84
2011[1]	5.82
2012[1]	4.94
2013[1]	4.12
2014[1]	4.10
2015[1]	3.89
2016[1]	3.33
2017[1]	2.82
2018[1]	2.90
2019[1]	2.79
2020[1]	3.41
2021[1]	2.65
2022[1]	3.10

SOURCE: MA Commercial Catch Reports and NMFS VTRs

[1]Potentially lower due to permit holders not distinguishing between lobster and conch traps (increases effort in denominator)

Table 4. Dealer reported MA channeled whelk landings and value, 2005-2022

Year	Live Pounds[1]	Est. Value	Price/lbs.[2]
2005	1,354,823	$1,454,295	$1.07
2006	2,420,485	$3,104,622	$1.28
2007	2,496,500	$2,466,229	$0.99
2008	2,701,413	$3,212,108	$1.19
2009	2,847,046	$3,720,139	$1.31
2010	2,505,860	$3,949,373	$1.58
2011	3,042,873	$6,127,104	$2.01
2012	3,649,276	$6,274,158	$1.72
2013	2,275,298	$5,699,101	$2.50
2014	1,825,889	$4,866,230	$2.67
2015	1,698,660	$4,843,976	$2.85
2016	1,654,283	$4,861,039	$2.94
2017	1,132,393	$3,382,969	$2.99
2018	1,327,778	$4,667,283	$3.52
2019	1,091,291	$4,145,536	$3.80
2020	948,788	$3,154,889	$3.33
2021	766,872	$3,064,022	$4.00
2022	917,700	$3,803,336	$4.14
2023*	893,854	$2,922,532	$3.27

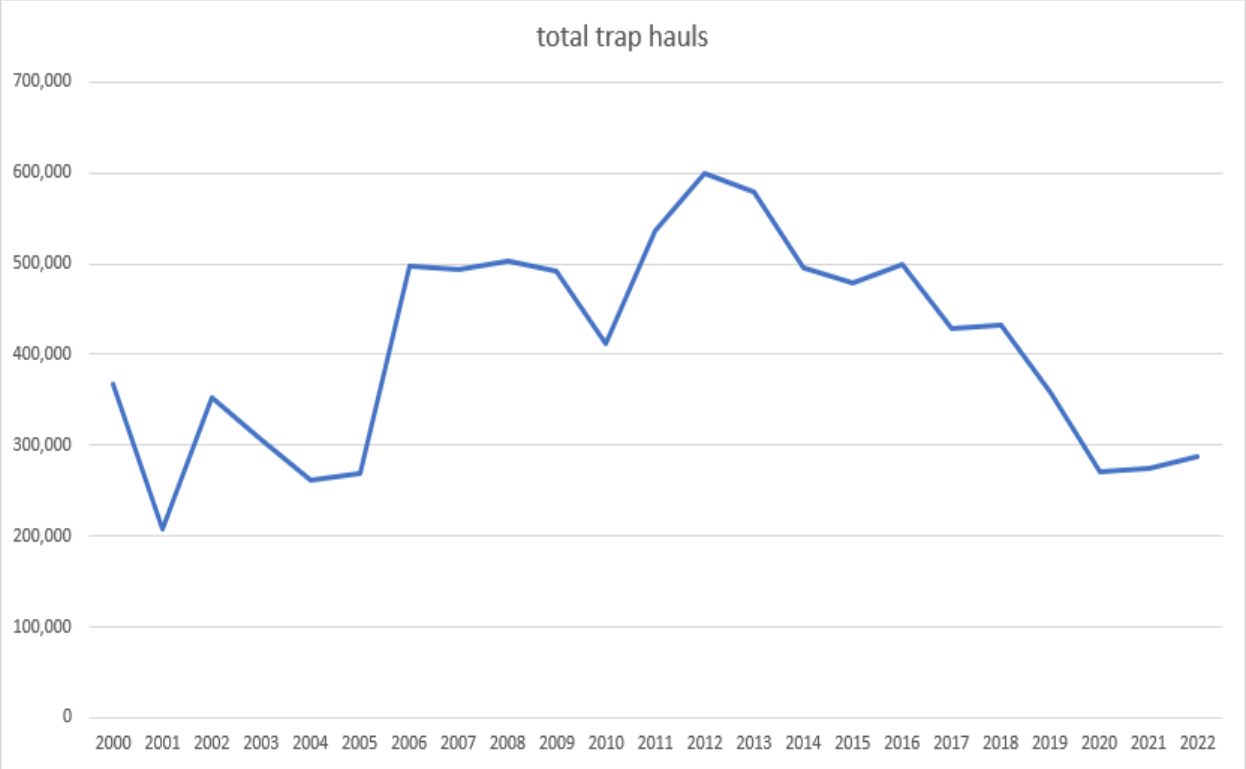
SOURCE: SAFIS Dealer Reports, 12/4/2023, ED

[1]All landings reported in bushels were converted to whole pounds (includes shell weight), at 1 bushel = 62.8 lbs.

[2]There are issues in early years of the timeseries with correctly reporting the different whelk species potentially further influencing the average price calculations.

*Preliminary; data through 12/2/2023.

Figure 1. Annual Number of Total Whelk Trap Hauls, 2000 - 2022



Source: MA trip-level reports and NMFS VTRs, 12/4/2023

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Recommendation to Increase Smooth Dogfish Commercial Trip Limit**

Recommendation

I recommend the MFAC vote in favor of increasing the regulatorily established commercial trip limit for smooth dogfish from 100 pounds to 300 pounds. This recommendation does not differ from my public hearing proposal as presented to the MFAC in December 2023[1].

Additionally, DMF received a public comment from industry to include smooth dogfish in DMF's ongoing Consecutive Daily Trip Limit Pilot Program. This program allows permit holders participating in the summertime mixed species trawl fishery south of Cape Cod to land two days' trip limits of certain species (principally summer flounder) that were lawfully caught and retained over consecutive open fishing days. DMF is pursuing this requested accommodation with the Atlantic States Marine Fisheries Commission's (ASMFC) Coastal Sharks Management Board (Board). Should the Board approve it, DMF will allow the landing of two daily trip limits of smooth dogfish as part of the pilot program for 2024.

Background and Rationale

In 2014, Addendum II to the Interstate Fishery Management Plan for Coastal Sharks implemented state-by-state quota allocations for smooth dogfish. These quota allocations were based on landings during 1998–2010, with Massachusetts receiving 0.433% of the coastwide quota. The addendum did not establish trip limits, but instead authorized states to do so in a manner that best meets their needs contingent on approval by the Board.

Since 2007—prior to Addendum II—Massachusetts' smooth dogfish trip limit was set at 100 pounds and our smooth dogfish quota has been 17,195 pounds since 2017. During the 2017–2022 time-period, less than 25% of the state's quota was landed each year, and landings have been as low as 4%. During last winter's public hearing process, DMF received public comment requesting we consider increasing the smooth dogfish trip limit to 300 pounds. The requestor opined that such an increase would allow trawlers participating in the summertime mixed species trawl fishery south of Cape Cod better access to the quota. DMF presented this trip limit request to the Coastal Sharks Management Board in the summer of 2023, and it was approved. Subsequently, DMF proposed an in-season adjustment to the smooth dogfish trip limit to 300 pounds and this adjustment was unanimously approved by the MFAC and implemented

[1] Refer to the December 2023 MFAC meeting materials for more details. Past meeting materials are available at https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

effective July 11, 2023. While the 2023 landings data are confidential pursuant to G.L. c. 130, §21[2], I can say that several vessels took advantage of this trip limit increase in 2023 and we improved the utilization of the state's quota.

For 2024, DMF proposed to codify this 300-pound trip limit by regulation. The public comment received on this proposal was nominal and limited to the favorable testimony provided at public hearing in Buzzards Bay. The favorable public testimony also included the above-stated request that DMF consider including smooth dogfish in the Consecutive Daily Trip Limit Pilot Program, which DMF will explore and authorize if approved by the Board.

[2] G.L. c. 130, §21.

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

CC: Massachusetts Shellfish Advisory Panel

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Recommendations on Changes to Shellfish Regulations**

Recommendations
I recommend the MFAC approve the following amendments to the state's shellfish regulations:

1. Revise icing requirements for oysters during the Control Season for *Vibrio parahaemolyticus*, so that ice is to be applied in a manner that continuously and completely covers loose oysters or bags of oysters and exempts commercial fishers from icing requirements if primary buyers take on the burden of icing at landing and within the time-to-icing window.
2. Clarify that only ice made from potable water may be applied to shellfish, including during land-based overwintering.
3. Specify that the most specific alpha-numeric sequence for a shellfish growing area shall be recorded on the shellfish harvester tag.
4. Adopt a uniform state-wide night closure for the commercial harvest of shellfish. The closure would apply from one-half hour after sunset to one-half hour before sunrise, except that shellfish harvested in state regulated mobile gear fisheries could continue to occur between 6AM and 6PM during the period of November 1 through the last day of February.
5. Allow the primary sale of shellfish to occur at a municipally managed site as an alternative to the landing site as approved by DMF.

***Vibrio* Management Plan for the Harvest and Handling of Oysters**
State regulations at 322 CMR 16.07 establish the protocols and performance standards consistent with the state's *Vibrio parahaemolyticus* (*Vp*) Control Plan, required by the National Shellfish Sanitation Program and approved annually by the Massachusetts *Vibrio* Working Group (DMF, DPH and MEP) to minimize the public health risk associated with *Vp* and the consumption of raw oysters. This includes a variety of risk controls during harvest and handling designed to minimize temperature abuse to prevent elevating risk and record keeping requirements to verify compliance with risk controls and aid in illness traceback.

The existing regulations generally require oysters to be adequately iced prior to leaving the point of landing and within two hours from time of harvest or first exposure in an intertidal area. This requirement is more stringent—requiring adequate icing within one hour from time of harvest or first exposure in an intertidal area—for certain growing areas during the peak summertime period (July 1 – September 15).

This is done to prevent temperature abuse and inhibit the growth and proliferation of the *Vp* bacterium in oysters. Further, the current regulation prescribes several methods to comply with this adequate icing requirement. This includes: (1) surrounding mesh bags of oysters with at least two inches of ice between each bag and between the bags and the sides and bottom of an icing container and applying three inches of ice on top of the mesh bags; (2) placing loose oysters into an icing container with at least two inches of ice between the loose oysters and the sides and bottom of the icing container and applying three inches of ice on top of the loose oysters; or (3) fully submerging oysters into an icing container holding an ice slurry or cold water dip that is at or below 45°F.

In 2023, the *Vp* Working Group agreed to adopt the less prescriptive icing standards preferred by industry within the *Vp* Control Plan. This included: (1) mesh bags containing oysters be completely surrounded by ice, including at the bottom of the container and each level of bags, so that each bag is continuously and completely covered with ice; (2) loose oysters in a container of ice be completely surrounded by ice, including at the bottom of the container and each level of bags, so that each bag is continuously and completely covered with ice; and (3) exempting harvesters from icing requirements if the primary buyer takes on the burden of icing at the landing site and within the time-to-icing window. Unfortunately, given the 2023 *Vp* Control Plan was not approved and implemented until May 18, 2023, DMF was unable to amend its regulations for the 2023 *Vp* Control Season. Rather, MEP exercised their discretion in the field to enforce icing rules at the less prescriptive *Vp* Control Plan standard and DMF committed to industry that regulations would be updated for the 2024 season.

The public hearing proposal therefore sought to make the modifications to the icing regulations consistent with this commitment. However, for 2024, DMF anticipates the *Vp* Working Group will again amend the *Vp* Control Plan to address industry-driven concerns regarding the specificity of the icing rules. Specifically, commercial fishers have noted that they are challenged by the "completely surrounded" requirement as it does not allow bags of oysters to be placed next to each other unless there is ice between the bags and it does not account for the fact that ice will melt and move. Rather, industry's preference is for this language to be further refined so that oysters, or bags thereof, need to be "completely and continuously covered" with ice. This preference is evidenced in the written public comment and public hearing testimony.

While the change from "completely surrounded" to "continuously and completely covered" has not yet been approved or implemented into the *Vp* Control Plan, I anticipate this will occur later this spring. To avoid potential administrative delays resulting in the *Vp* Control Plan again being out of phase with the *Vp* regulations, I am recommending the MFAC approval DMF to file regulations consistent with the expected language (i.e., "continuously and completely covered"). This is consistent with the intent of the proposed regulations and responsive to the public comment received on the proposal.

My final recommendation on the remainder of the issue (i.e., icing by primary buyers) remains unchanged from the proposal brought to public hearing which was supported in public comment.

In discussing the *Vp* Control Plan, DMF received a comment from a prominent grower-dealer regarding offsite culling. Under existing regulations, aquaculturists may offsite cull oysters during the *Vp* Control Season provided the oysters are returned to the grant site, segregated as such, and resubmerged for a period of 10-days. After this 10-day re-submergence period, the oysters may be harvested, tagged, and brought to market. The grower-dealer sought an exemption to allow for market-grade oysters offsite culled at his dealer facility (both his oysters and oysters belonging to other growers who are authorized to cull at his facility) to be immediately brought to market rather than re-submerged. This individual's facility has a sophisticated culling machine and he opined that the activity could be managed through an Intermediate Processing Plan approved by DPH. In my view, this is a reasonable request. However, it complicates shellfish tagging rules and shellfish minimum size rules, as not all product that is brought to

market may be sold and some may be returned to the license site after culling. Accordingly, I intend to assemble a Focus Group of the Shellfish Advisory Panel—including industry members, DPH, and the local constable—and the Massachusetts Environmental Police to develop a potential pilot program for this upcoming *Vp* Control Season.

Sanitary Icing of Shellfish

Some aquaculturists have argued that DMF regulations at 322 CMR 16.04 do not restrict the application of non-potable ice beyond market bound product. This issue came to a head in early 2023 when DMF learned of some aquaculturists applying resurfaced rink ice to their oysters destined for overwintering. DMF responded to this by providing industry with a written interpretation of its regulations which concluded state regulations prohibit the icing of shellstock with ice obtained from any source other than an approved source that uses potable water and properly maintained ice machines. This interpretation is consistent with the National Shellfish Sanitation Program's Model Ordinance [§II, c. VIII.02.H.(1)], which specifies "any ice used in storage or cooling of shellfish during harvest shall be made from a potable water source…" with the term 'harvest' being defined as "the act of removing shellstock from growing areas and its placement on or in a manmade conveyance or other means of transport."

DMF's public hearing proposal aimed at improving the regulatory language to remove any remaining confusion regarding the state's prohibition on the application of non-potable ice to shellfish. While generally supported in public comment and public hearing testimony, some aquaculturists continue to argue that we should accommodate the use of rink ice for overwintering. Proponents site it is a historic practice and a cheap source of ice and question the public health risk.

DMF does not support this position. The application of any non-potable ice, but particularly rink ice, to shellfish is unacceptable. This ice does not meet the potable water standard required by the model ordinance. Further, it has likely been exposed to biological and industrial contaminants and other potential adulterants; the application of this ice to shellstock runs counter to safe food handling practices and could erode public confidence; the existing 14-day re-submergence requirements were not intended to address the purification of shellstock adulterated in this manner; and there are no studies into the purification process that would safely justify a re-submergence accommodation in this scenario. DMF will continue to work with the industry and the dealer sector to obtain grants to make free or cheap ice available to the aquaculture industry throughout the state. This is the best way forward to protect public health and maintain consumer confidence in Massachusetts' oysters.

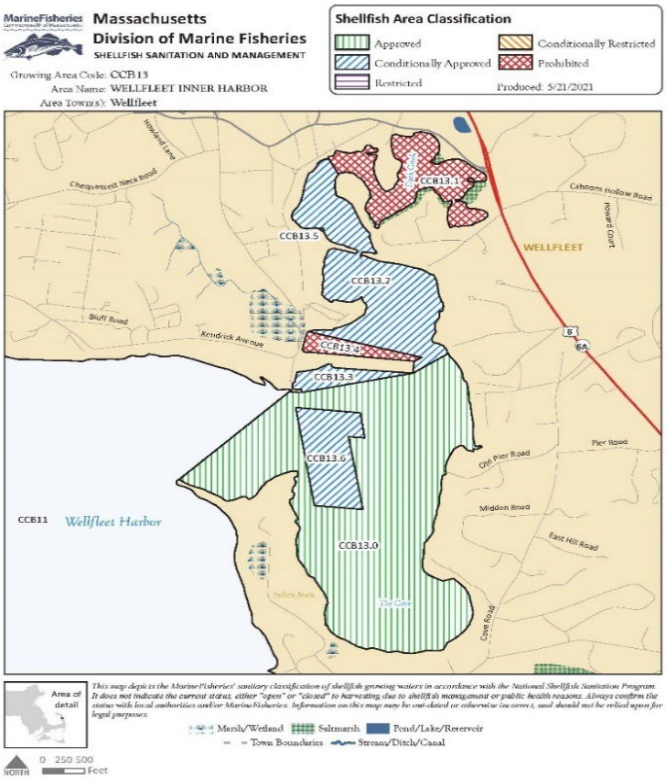
Recording of Shellfish Growing Area on Harvester Tag

In Massachusetts, shellfish growing areas are identifiable by an alpha-numeric sequence. In many instances, a single shellfish growing area may be divided into several sub-areas each having their own discrete quality classification that governs the type of harvest activities that may occur. These sub-areas are identifiable by the decimal place in the assigned alpha-numeric sequence. For instance, one of the most productive shellfish growing areas in the state—Wellfleet Harbor—is identified as "CCB13" and contains seven sub-areas with classifications that include "Approved", "Conditionally Approved", and "Prohibited" (Figure 1). In other instances, a shellfish growing area may stand alone and not be divided into sub-areas. In such cases, the area's sole alpha-numeric sequence includes a "0" in the decimal position. This recognizes the shellfish growing area may be divided into sub-areas in the future.

The National Shellfish Sanitation Program's Model Ordinance [§IV c. III.04] requires all market-bound shellstock to bear a harvester tag, which includes information regarding the harvester and the harvest activity (e.g., time, date, and area of harvest). These tags are part of a chain of record keeping requirements that provide traceability from the harvester to the end consumer and are used in product recalls. With regards to recording the area of harvest on the harvester tag, the Model Ordinance specifies it be "the most precise identification of the harvest location or aquaculture site as is practicable."

DMF implements this aspect of the Model Ordinance through regulations at 322 CMR 16.05. With regards to area of harvest, the regulations state "the shellfish growing area name and number from where the shellfish was harvested." While the intent of the regulation is generally well understood as apply to the most specific alpha-numeric sequence—and this requirement is clearly stated in DMF's annual Shellfish Harvest, Handling, and Transport Affidavit—the regulatory language could be more. In some instances, harvesters still only record the most general alpha-numeric sequence (e.g., CCB13) and not the sub-area (e.g., CCB13.0). This unnecessarily confounds the efficacy of the shellfish tagging program and may inadvertently enhance the public health risk associated with consuming shellfish.

Figure 1. Shellfish Growing Area Map for Wellfleet Harbor (CCB13)



For these reasons, I recommend amending 322 CMR 16.05 to make clear the regulation refers to the most specific alpha-numeric sequence for the shellfish growing area from which the shellfish were taken. This is consistent with the Model Ordinance and DMF's longstanding interpretation of its regulations. Not surprisingly, public comment on this clarification was nominal and supportive.

State-Wide Night Closures

Historically, night fishing for shellfish has been prohibited through a myriad of state laws, state regulations, and local regulations and bylaws. Night fishing is generally understood to be any fishing activity that occurs between one half hour after sunset to one half hour before sunrise. Additionally, state managed mobile gear fisheries for shellfish (sea scallops, surf clams & ocean quahogs) further define night fishing as between 6PM and 6AM during the winter months (November 1 through the end of February). These rules are designed to prevent non-compliance with the state's sanitary harvest and handling requirements to protect public health, as well as state and municipal controls for managing the resource. In recent months, there has been some interest in Massachusetts adopting a state-wide standard to enhance enforcement and compliance by allowing the Massachusetts Environmental Police to issue state citations for night fishing in municipally managed shellfish fisheries. In turn, this would promote public health and safety and potentially bolster justification for smaller safety zones around Wastewater Treatment Plants.

DMF believes this recommendation is broadly supported by industry and enforcement. This is evidenced by the fact we received limited public comment and testimony on the subject and that which we received supported it. While the recommended state-wide closure will apply from one half hour after sunset until one half hour before sunrise, DMF will continue to allow state managed shellfish dredge fisheries to occur from 6PM to 6PM during the winter period, consistent with the public comment received.

Primary Sale of Shellfish at Municipal Site
DMF regulations at 322 CMR 16.04 require the primary sale of shellfish (i.e., that initial transaction between harvester and dealer) occur only at the landing site or at the primary buyer's physical location. The purpose of this is to limit the extent to which harvesters may handle and transport shellfish after landing to safeguard public health (e.g., preventing opportunities for time-to-temperature abuse and cross-contamination and avoiding direct-to-public sales where traceability is undermined).

Last year, the Town of Barnstable raised an issue regarding this regulation. The Blish Point landing site in Barnstable Harbor is extremely congested during the summer months creating public safety concerns and making it very difficult to accommodate primary transactions. Rather, the town requested DMF allow them to use a municipally managed and monitored lot less than one-mile away as a site for primary transactions. DMF reviewed the request and exempted the requirement that dealer trucks conduct primary transactions at the landing site through an authorization. However, a regulatory fix is warranted as we anticipate other municipalities may be interested in such an accommodation. Accordingly, I recommend to clearly codify an allowance for primary purchases to also occur at municipally managed sites approved by the Director. DMF believes this recommendation is broadly supported. This is evidenced by the fact we received limited public comment and testimony on the subject and that which we received supported it.

Enclosed
Written public comment.

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Final Regulatory Actions on Permitting Rules**

Final Permitting Regulations
I am moving forward with the following adjustments to DMF's permitting regulations:

1. Relax the transferability standards for Sea Bass, Tautog, and Fluke endorsements by amending the actively fished threshold from four-out-of-the-past-five-years to two-out-of-the-past-five-years.
2. Allow the transfer of latent, but otherwise transferable endorsements, in a transfer to an immediate family member.
3. Modernize the definition of the term "immediate family" to include step and adoptive relationships.
4. Allow for the electronic display of commercial fishing permits.
5. Eliminate the outdated reference to the Coastal Lobster Permit waiting list.

The first two regulatory changes are substantive and will allow for greater transferability of limited entry permit endorsements. The remainder of the regulatory changes can generally be classified as housekeeping. These actions are consistent with my public hearing proposal presented to the MFAC at their September and November 2023[1] business meetings and were supported by public comment during the recent February 7–March 8, 2024 public comment period and February 28 and 29, 2024 public hearings in Bourne and Gloucester.

As these are permitting regulations to be promulgated pursuant to G.L. c. 130, §80—rather than G.L. c. 130, §17A—they do not require approval of the MFAC. However, prior to finalizing these measures, I wish to hear your perspectives and generally seek consensus.

Permit Transferability Regulations
Over the past year, DMF has worked with the MFAC through a Permitting Focus Group to examine DMF's limited entry permitting program to determine potential pathways to enhance the ability for new and existing commercial fishers to access certain fisheries. Our limited entry program is governed by a series of long-standing laws, regulations, and policies modeled after the Coastal Lobster Permit transfer program. DMF generally limits the transfer of latent permits by requiring all permits and endorsements,

[1] Past MFAC meeting materials are available at: https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources.

or some combination thereof, to be "actively fished" during four out of the last five years to be eligible for transfer. In some cases, actively fished in a given year is further defined by regulation or policy with a minimum threshold (e.g. one trip limit in aggregate in a year for Fluke, Sea Bass, and Tautog endorsements). These criteria were modeled after the longstanding Coastal Lobster Permit transfer regulations.

This program has successfully limited access to our fisheries and prevented the activation of latent fishing effort. However, in doing so, it has also created substantial barriers around transfers and likely inflated the value of commercial fishing permits and endorsements in transfers making it a capital-intensive endeavor to gain access to fisheries. DMF, based on feedback from the MFAC's Permitting Focus Group, identified two areas to begin refining the agency's permit transfer program to enhance permit transferability.

Immediate Family Transfers
The Coastal Lobster Permit transfer regulations include an exception allowing the transfer of latent permits (i.e., those that have not been actively fished for four out of the past five years) between immediate family members. This is a long-standing exception, supported by the lobster industry. Despite DMF emulating its limited entry permit endorsement transfer regulations after the Coastal Lobster Permit transfer regulations, a similar exemption does not exist for the transfer of limited entry endorsements. In recent years, DMF has received numerous requests for immediate family member transfers on certain endorsements, and in some instances these requests have been denied because the endorsement(s) is latent and not otherwise transferable (e.g., through DMF's Bundling Policy). DMF will be amending its regulations to accommodate the transfer of latent, but otherwise transferable, limited entry endorsements among immediate family. We expect this will help keep family businesses and traditions intact. The limited public comment received on this item was supportive.

Actively Fished Criteria for Fluke, Black Sea Bass and Tautog Endorsements
DMF is relaxing the transferability standards for Sea Bass, Tautog, and Fluke endorsements by moving to a two-out-of-the-past-five-year standard for actively fished rather than a four-out-of-the-past-five-year standard. As described in Figures 1 – 3 below, relaxing this standard may more than double the number of potentially transferable endorsements based on activity alone[2] and additional permits may ultimately be transferable once the endorsement bundling policy is applied. Additionally, more than half of these potentially transferable permits are held by individuals 60-years of age or older who may be looking to retire out of commercial fishing.

As stated in my November 2023 memorandum, I believe this change is a great first step in enhancing the potential supply of transferable permits to benefit industry and I do not believe it will compromise the current system to a point where we substantially increase effort and participation to a point that fishery performance is negatively impacted (e.g., early quota closures, loss of profitability). I think this perspective was supported by the public comment received. The testimony at the Buzzards Bay and Gloucester hearings strongly supported these adjustments. Interestingly, many North Shore fishers were interested in obtaining these endorsements given the northward shift of distribution of these regulated species. Lastly, we did not receive comments from existing fishery participants expressing concerns about how this may impact fishery performance or devalue their permit.

[2] Actively fished in a given calendar year for each of these endorsements is defined by existing DMF policy as having landed and sold at least one trip limit, in aggregate, during that calendar year. While there have been recent annual adjustments to possession limits for fluke and black sea bass, the following thresholds were used as proxies for this analysis: 300 pounds for fluke, 250 pounds for black sea bass, and 120 pounds for tautog.

Fluke, Sea Bass, and Tautog endorsements are being considered first because they are quota monitored fisheries with low barriers to entry (e.g., infrastructure investment) and are accessible to persons seeking to enter the commercial fishing industry. Additionally, rod and reel fishing effort targeting these species is an activity that can vary from year-to-year. This can in turn make the current four-out-of-five-year standard a high bar to reach. While we need to continue to have thoughtful discussions about how to attract new entrants into commercial fishing and allow existing commercial fishers to develop diversified permit portfolios, we also need to collect data to determine how these actions impact permit transferability and fishery performance. Accordingly, over the next several years, DMF will monitor the impacts of these changes on Massachusetts fisheries. Should this prove effective, I may consider similar changes to permit transferability rules for more industrial gear (e.g., mobile gear, fixed gear). However, to be transparent, increasing access to more industrial fisheries is significantly more challenging given protected species mandates and how increasing effort in more industrialized fisheries may impact quota use.

Also, as discussed in the November 2023 memo, I intend to address an issue relevant to the transfer of Coastal Lobster Permits. Currently, in order to be considered transferable an LMA 1 Coastal Lobster Permit has to have landed and sold at least 1,000 pounds of lobster or landed and sold lobster on at least 20 occasions as evidenced by harvester and dealer reporting in four out of the past five years. The scenario that came up involves Coastal Lobster Permit holders who are also permitted in other fisheries (e.g. sea scallops) and choose to prosecute one of those fisheries in a given year instead of lobstering. If the permit holder chooses to do this and foregoes lobstering completely for two or more years in a span of five consecutive years, then the Coastal Lobster Permit would no longer be considered transferable. The case was made that an otherwise full-time commercial fisher is being penalized for a business decision to prosecute another fishery for which they are permitted. To address this, DMF could adopt other alternative transferability criteria to allow for the transfer of a Coastal Lobster Permit that does not meet the actively fished criteria if the permit met other commercial fishing thresholds (e.g., permit holder had more than $20,000 of ex-vessel sales in another fishery in a given year). I intend to preliminarily raise this matter in informal discussions with the industry at the upcoming annual trade show weekend seminars hosted by the Massachusetts Lobstermen's Association.

Housekeeping Regulations

Immediate Family Definition
While reviewing the immediate family member transfer exception, DMF determined its current definition of "immediate family member[3]" is outdated and does not reflect the diversity of modern family structures. Accordingly, I am enacting a more inclusive definition that would include step and adoptive relationships, consistent with other definitions in state law and regulation. DMF did not receive any public comment or public testimony on this action.

Electronic Display of Commercial Fishing Permits
In 2023, DMF moved over to a new commercial permit processing system. This new system generates commercial fishing permits in a PDF format allowing them to be printed on standard 8.5" x 11" paper stock. As a result, DMF no longer prints and distributes commercial permits on perforated card stock. Existing regulations require commercial fishers sign a hard copy of their permit and produce this signed hard copy upon demand. Historically, this resulted in commercial fishers signing the wallet-sized card stock permit sent by DMF, often laminating it for safe keeping. This practice has become more difficult with the shift to standard paper stock as it is large and more difficult to maintain and keep on your person. Electronic display can be readily accommodated through phone technology and is something DMF

[3] At 322 CMR 7.00, immediate family is defined as, "the legal father, mother, wife, husband, sister, brother, son, daughter, grandparent, or grandchild."

already allows in its permitted recreational fisheries. Accordingly, I am modernizing regulations to allow the electronic display of commercial fishing permits beginning in 2024. The limited public comment and public testimony received supported this action.

Waiting List for Coastal Lobster Permits
DMF's Coastal Lobster Permit transfer regulations at 322 CMR 7.03 contain a section that describes a waiting list for Coastal Lobster Permits. This is a remnant regulation dating back to when the Coastal Lobster Permit was first established as limited entry. DMF no longer maintains a waiting list and I am seeking to strike this outdated regulation. DMF did not receive any public comment or public testimony on this action.

Enclosed
Written public comment

Figure 1. Fluke Activity

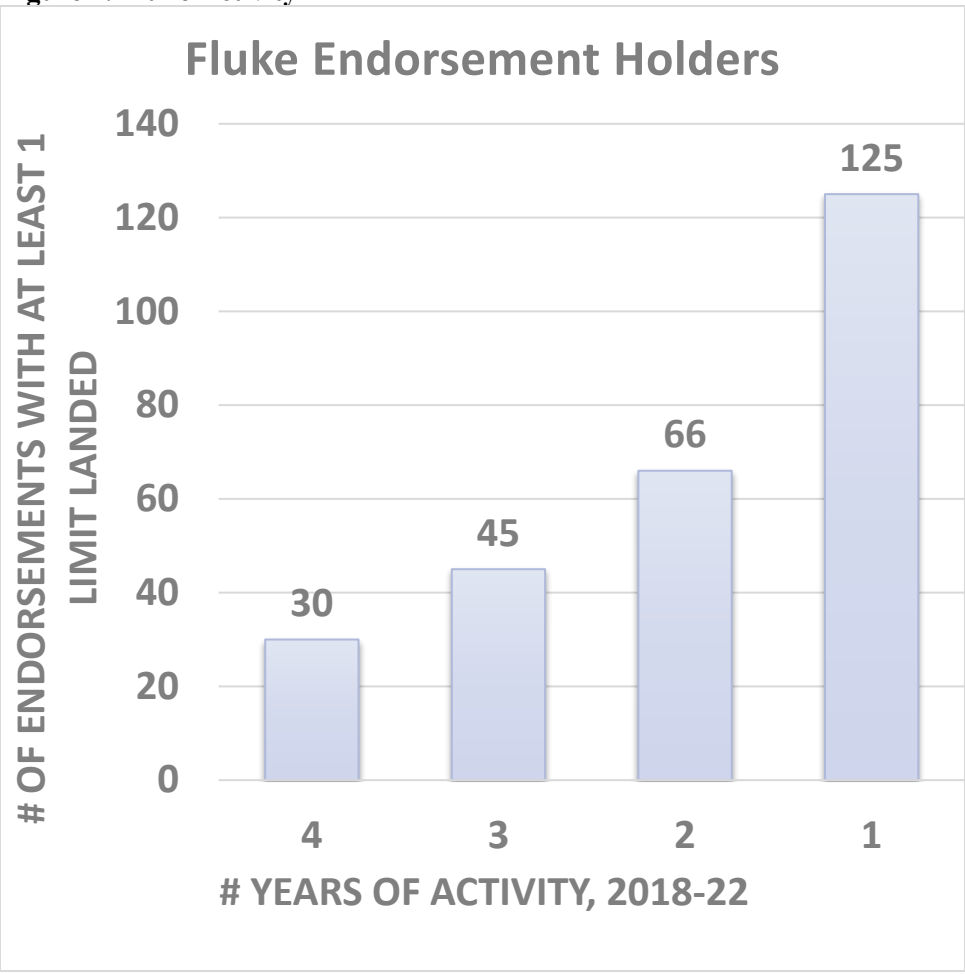


Figure 2. Sea Bass Activity

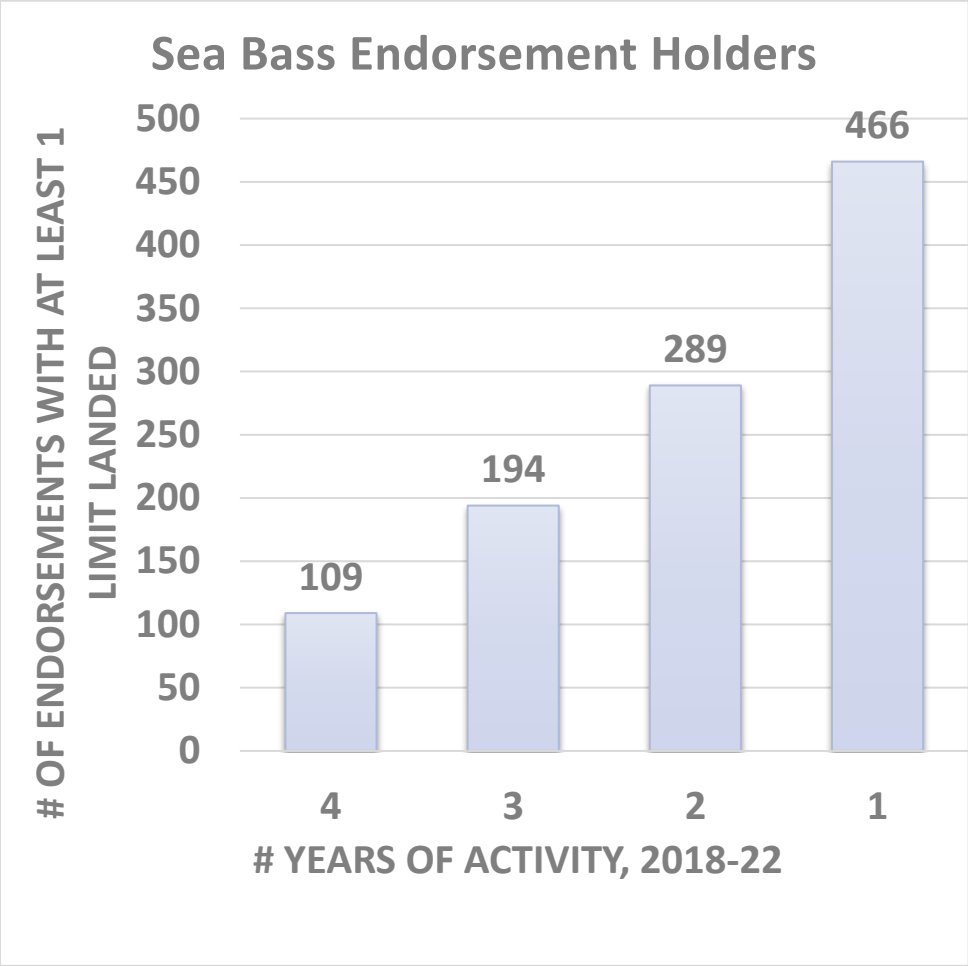
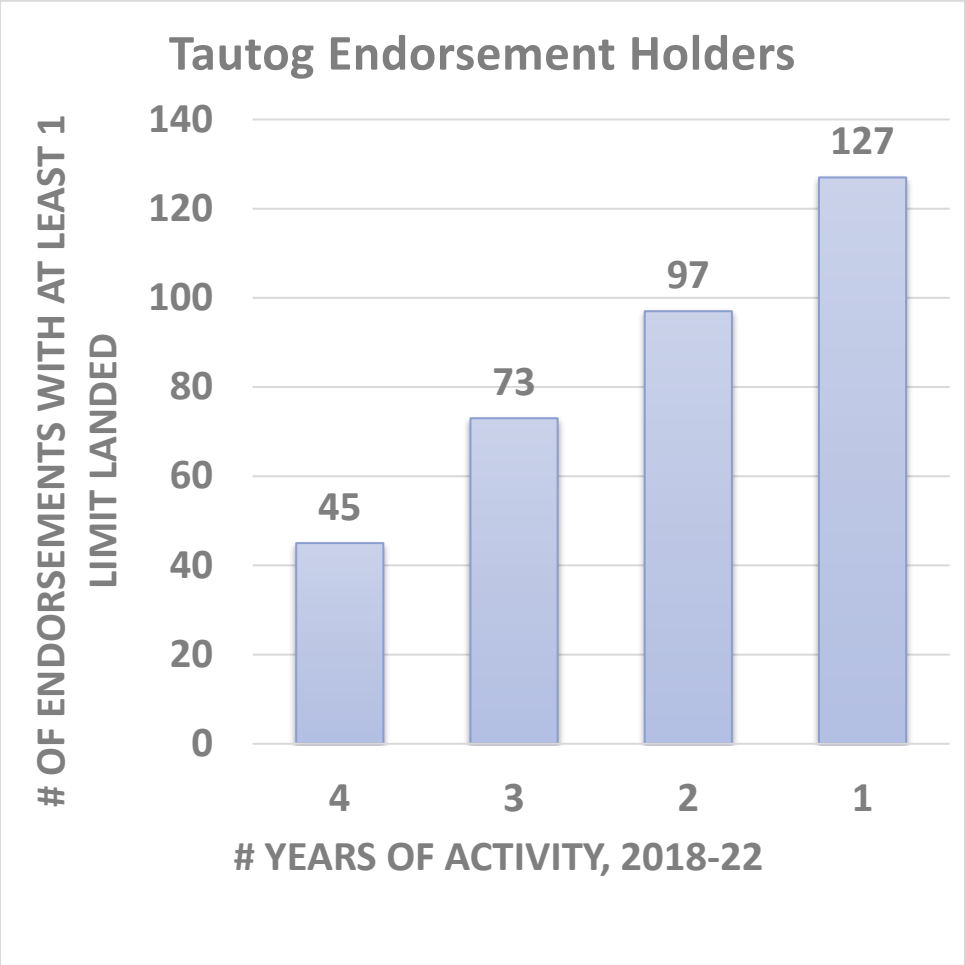


Figure 3. Tautog Activity



The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS K. O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Emergency Rulemaking on Recreational Summer Flounder, Scup, and Black Sea Bass Measures**

Overview

I intend to use my emergency rulemaking authority to revise the state's recreational summer flounder and scup measures to achieve mandatory harvest reductions and shift the state's recreational black sea bass season for 2024. I seek your support for a set of measures to ensure continuity from emergency rulemaking to the subsequent final rulemaking that will be necessary over the summer. My preferred approaches, as compared to the 2023 measures, are summarized below (Table 1).

Table 1. DMF recommended options for recreational summer flounder and scup measures for 2024–2025 and recreational black sea bass measures for 2024.

	Mode	Open Season	Bag Limit	Minimum Size
Summer Flounder	Private Vessel & For-hire Vessel	~~May 21 – September 29~~ **May 24 – Sept 23**	5 fish	~~16.5"~~ **17.5"**
	Shore			16.5"
Scup	Shore	May 1 – Dec 31	30 fish	9.5"
	Private Vessel			~~10.5"~~ **11"**
	For-hire Vessel	May 1 – June 30	40 fish	~~10.5"~~ **11"**
		July 1 – Dec 31	30 fish	
Black Sea Bass	All Modes	~~May 20 – September 7~~ **May 18 – September 3**	4 fish	16.5"

Background and Rationale

As previewed during the February 2024 MFAC business meeting, there is a 28% coastwide recreational harvest reduction required for summer flounder, a 10% coastwide recreational harvest reduction required for scup, and a status quo coastwide harvest requirement for black sea bass in 2024 per the interstate

management plan.[1] Each summer flounder and scup recreational management region is taking an equivalent cut; for summer flounder, Massachusetts is its own region and can design its own regulations achieving the reduction, while for scup we work with Rhode Island, Connecticut, and New York to achieve a regional reduction through consistent rule changes. Regarding black sea bass, states are permitted to make small seasonal shifts not expected to increase harvest. Measures are being set for two years for summer flounder and scup, and one year for black sea bass.

DMF developed a range of options for public scoping (Tables 2–4). Scoping was conducted at a February 28 virtual meeting and a February 7–March 8 written comment period. The range of options was pre-approved by the Atlantic States Marine Fisheries Commission and we are now bound to select measures from within this range. Comment at the February 28 meeting was almost entirely from for-hire operators (roughly 20 in attendance) who were united in their support for certain options, whereas the limited written comment was more varied in terms of demographics and preferred options.

Summer Flounder
Regarding summer flounder, for-hire operators unanimously supported Option 1, which achieves the required reduction by increasing the vessel-based size limit by 1" and removing nine days from the season (see Table 2). Their support for this option was predicated on maintaining the 5-fish bag limit. They view reductions in the bag limit as the most detrimental to their businesses with regards to booking clients (interestingly, despite data that few anglers in any mode are taking the 5-fish limit). A frequent patron of for-hire vessels agreed. Several written comments from private anglers supported Option 2; while amendable to the same size increase, they preferred to also take a 1-fish reduction in the bag limit to maintain a longer season (only two days shorter than the status quo). Another comment lamented the disparity in minimum size between the commercial and recreational sectors.[2]

I support summer flounder Option 1 as best meeting the needs of fishery participants at this time. There was near unanimous support for a 1" vessel-based size limit increase, and Option 1 maintains the bag limit with very little impact on season length, which nearly aligns with the temporal availability of summer flounder in Massachusetts waters. Massachusetts will still have one of the lower minimum sizes (and higher bags) across the coast, and at 17.5", it is well within the range of past Massachusetts regulations (varying between 16" and 18.5" over the past 20 years). While shore harvest of summer flounder is minimal, retaining the 16.5" minimum size limit for this mode better aligns with the size availability of fish, contributes to environmental justice objectives, and mirrors other states' shore-based programs.

There are two associated issues worthy of additional consideration. First, in general, the higher the minimum size limit is, the greater the expected discards. This bears out in the model projected results of the range of options. This was also acknowledged in public comment, but without much concern from a stock health perspective given our minimal contribution to coastwide recreational removals, the perception that release mortality is lower in Massachusetts than elsewhere, and that the relative difference in projected dead discards among the options is only in the hundreds of fish. However, angler satisfaction may decline as the ratio of kept-to-caught fish declines. It's also important to keep in mind that when coastwide discards increase due to management measures, this may result in less of future years' recreational catch allocation being directed towards the harvestable portion (i.e., the recreational harvest limit is lower than it would otherwise be due to higher projected discards). Second, the comment about the disparity between commercial and recreational minimum sizes is one we've heard before. We should

[1] My memo to the MFAC in February 2024 provides more detail on the basis of these determinations. Past meeting materials are available at: https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

[2] This disparity results from the discrete management approaches at the federal/interstate level for the commercial and recreational fisheries. The commercial fishery is managed primarily by a minimum size limit (14") and a quota system with real-time monitoring of landings, with the quotas being the lever that is pulled when a harvest reduction is needed. The recreational fishery, conversely, does not have a hard quota that closes the fishery when reached but a harvest target, with the minimum size, bag limit, and open season being the management measures that are modified prior to the upcoming season when a reduction is needed to align with the harvest target. Past management decisions as to how to reduce recreational harvest when needed have resulted in an increase in the recreational minimum size over time and the disparity with the commercial minimum size.

all be mindful that it is exactly this type of management decision—to achieve required reductions through the size limit as opposed to bag or season—that produces this discrepancy.

Scup
Regarding scup, for-hire operators again supported the option that achieves the required reduction by way of size limit increase (Option 1's vessel-based ½" minimum size increase), whereas the few private angler comments we received were mostly in support of taking the reduction by way of the bag limit (Option 2's 9 fish limit with 20 fish during the for-hire bonus season; see Table 3). While data indicate that few anglers take the scup limit, and private anglers appear satisfied with a lower limit as "enough for the dinner table", the for-hire fleet is adamant that the bag limits associated with Option 2 will reduce interest in paying for a for-hire trip. In their interest, I support Option 1 as the least harmful way to achieve this reduction, as I have heard my counterparts throughout our scup region do as well. Here again, retaining a smaller minimum size limit for the shore mode better aligns with the size availability of fish and contributes to environmental justice objectives, especially for this much more frequently encountered and retained species from the shore. The prevalence of scup shore harvest contributes to Option 1 (which does not change the shore regulations) having a lower associated harvest reduction than Options 2 and 3.

Black Sea Bass
Regarding black sea bass, Option 2 (see Table 4) to shift the season to start on a Saturday was requested by members of the for-hire fleet, is consistent with past years' approaches, was unopposed in public comment, still retains a season ending date after Labor Day in 2024, and has my full support.

Enclosed
Written scoping comment

Table 2. Range of Massachusetts options for summer flounder recreational measures (for 2024–2025)

	Mode	Open Season	Bag Limit	Minimum Size
2023 Rules	All Modes	May 21 – Sept 29	5 fish	16.5"
Option 1	Private & For-hire Vessels	May 24 – Sept 23	5 fish	17.5"
	Shore			16.5"
Option 2	Private & For-hire Vessels	May 24 – Sept 30	4 fish	17.5"
	Shore			16.5"
Option 3 (with season sub-options)	Private & For-hire Vessels	a) May 24 – Aug 27 *or* b) June 5 – Sept 2 *or* c) June 11 – Sept 15 *or* d) June 18 – Sept 29	3 fish	17"
	Shore			16.5"
Option 4 (with season sub-options)	For-hire	a) May 24 – Aug 26 *or* b) June 5 – Sept 2 *or* c) June 12 – Sept 15 *or* d) June 18 – Sept 29	5 fish	17.5"
	Private Vessels & Shore		2 fish	16.5"

Table 3. Range of Massachusetts options for scup recreational measures (for 2024–2025)

	Mode	Open Season	Bag Limit	Minimum Size
2023 Rules	Shore	May 1 – Dec 31	30 fish	9.5”
	Private Vessel	May 1 – Dec 31	30 fish	10.5”
	For-hire Vessel	May 1 – June 30	40 fish	10.5”
		July 1 – Dec 31	30 fish	
Option 1	Shore	May 1 – Dec 31	30 fish	9.5”
	Private Vessel	May 1 – Dec 31	30 fish	11”
	For-hire Vessel	May 1 – June 30	40 fish	11”
		July 1 – Dec 31	30 fish	
Option 2	Shore	May 1 – Dec 31	9 fish	9.5”
	Private Vessel	May 1 – Dec 31	9 fish	10.5”
	For-hire Vessel	May 1 – June 30	20 fish	10.5”
		July 1 – Dec 31	9 fish	
Option 3	Shore	April 1 – Dec 31	20 fish	10”
	Private Vessel	April 1 – Dec 31	20 fish	11”
	For-hire Vessel	April 1 – April 30	20 fish	11”
		May 1 – June 30	40 fish	
		July 1 – Dec 31	20 fish	

Table 4. Range of Massachusetts options for black sea bass recreational measures (for 2024 only)

	Mode	Open Season	Bag Limit	Minimum Size
2023 Rules/ Option 1	All Modes	May 20 – Sept 7	4 fish	16.5”
Option 2	All Modes	May 18 – Sept 3	4 fish	16.5”

The Commonwealth of Massachusetts
Division of Marine Fisheries

(617) 626-1520 | www.mass.gov/marinefisheries

MAURA T. HEALEY, Governor | KIMBERLEY DRISCOLL, Lt. Governor | REBECCA L. TEPPER, Secretary | THOMAS K. O'SHEA, Commissioner | DANIEL J. MCKIERNAN, Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: March 13, 2024

SUBJECT: **Emergency Rulemaking on Striped Bass Recreational Possession and Filleting Rules**

Overview

I intend to use my emergency rulemaking authority to revise the state's striped bass recreational possession and filleting rules at 322 CMR 6.07(5) to comply with Addendum II to Amendment 7 of the Interstate Fishery Management Plan for Atlantic Striped Bass, as follows:

1. Clarify that striped bass retained in the shore or private vessel recreational modes are to be kept whole—except for evisceration, bleeding, or descaling—while on the waters of this state or any adjacent parcel of land, structure, roadway or parking lot, except if being prepared for immediate consumption;
2. Extend the allowance for for-hire captains and crew to fillet striped bass for their customers while at sea to also include while at dock prior to the customers departing the vessel;
3. Require the racks of striped bass filleted in the for-hire recreational mode to be retained in a manner that does not interfere with species identification or total length measurement until such time as the vessel has docked and all customers from that trip have departed the vessel; and
4. Replace the requirement for the striped bass fillets resulting from the for-hire filleting allowance to have skin intact with a requirement that they have at least two square inches of skin intact.

Background and Rationale

As previewed during the February 2024 MFAC business meeting[1], Addendum II—approved in January 2024 with a May 1 implementation deadline—imposes new standards for states that allow filleting in their recreational striped bass fishery: "For states that authorize at-sea/shore-side filleting of striped bass, minimum requirements will be established, including requirements for racks to be retained and possession limited to no more than two fillets per legal fish. States should consider including language about when and where racks may be disposed of, specific to each mode allowed to fillet at-sea/shore." The intended purpose of these requirements is to enhance compliance and enforcement with recreational size and possession limits.

Accordingly, in order to maintain the state's long-standing striped bass for-hire filleting allowance, DMF must adopt a rack retention requirement (the fillet possession limit is already in place). DMF held a virtual scoping meeting on February 28 and welcomed written input on how best to adopt this requirement. Using other states' existing rules as a starting point, DMF received valuable feedback from

[1] Past meeting materials are available at: https://www.mass.gov/info-details/marine-fisheries-advisory-commission-meeting-resources

for-hire operators that plays heavily into the emergency regulatory action described herein. Overall, while expressing great dismay with this new requirement, for-hire operators advocated for explicit yet not overly prescriptive regulations as to when, where, and how striped bass may be filleted, and the racks retained and subsequently disposed of, so as to impose the least amount of burden. My intended rules do the following regarding the for-hire filleting allowance:

1. extend the allowance to fillet striped bass in the for-hire mode from *while at sea* to any time *prior to the customer(s) departing the vessel* for more flexibility;
2. do not specify how retained racks are stored (such as *in a separate container, unmixed with any other material* as included in some other states' rules) based on public comment that this was unnecessary and would interfere with some expected holding practices; the racks must just be retained in manner that would not interfere with enforcement personnel being able to identify the species or take a total length measurement;
3. use unambiguous language about how long racks must be retained, as recommended in public comment; the specific duration of *until the vessel has docked and all passengers have left the vessel* is the minimum amount of time needed to provide for potential shoreside enforcement inspection;
4. do not specify a time by which racks must be disposed of (such as *prior to any person beginning to fish on a subsequent trip* as included in some other states' rules) based on public comment that this would interfere with some expected disposal practices, such as retaining multiple trips' worth of racks before repurposing them for bait;
5. do not place any limit on the number of racks that may be in possession (just the number of fillets) to facilitate all possible modes of legal disposal, as identified in public comment, such as use as bait or letting the customers take them; and
6. replace the requirement for the full skin to remain intact on fillets to just 2 square inches or more, as requested in public comment; while I wouldn't support repealing the skin requirement in full, this change still provides for species identification, is consistent with groundfish filleting requirements, and provides additional benefit to for-hire operators and their customers.

Additionally, my planned changes address lingering questions about the state's rules for anglers fishing from shore or a private vessel as to how, when, and where striped bass may be processed. While intended to prohibit filleting, the current language about not mutilating a striped bass in any manner that interferes with its measurement does not address at what point retained striped bass may legally be processed, and furthermore, can be misinterpreted as immediately allowing filleting provided the rack is retained. The specified duration for how long a striped bass must be kept whole, whether caught at sea or shoreside, is intended to provide adequate time for potential shoreside enforcement of size and possession limits, consistent with the intent of the Addendum II requirement. An exemption is included for immediate consumption, such as by an angler overnighting on a vessel or staying at a shoreside campground. Were DMF to expand its carcass collection freezer program in the future, an additional exemption could be added at that time to allow for bass to be processed at filleting stations accompanying these freezers. This program is currently very limited in the number of available freezers and is focused on collecting carcasses from for-hire operators.

Emergency action is necessary to achieve a May 1 implementation date for these modifications. While MFAC approval is not required for emergency rulemaking, I seek your support for these changes to ensure continuity with the subsequent final rulemaking that will be necessary over the summer.

Enclosed
Written public comment.

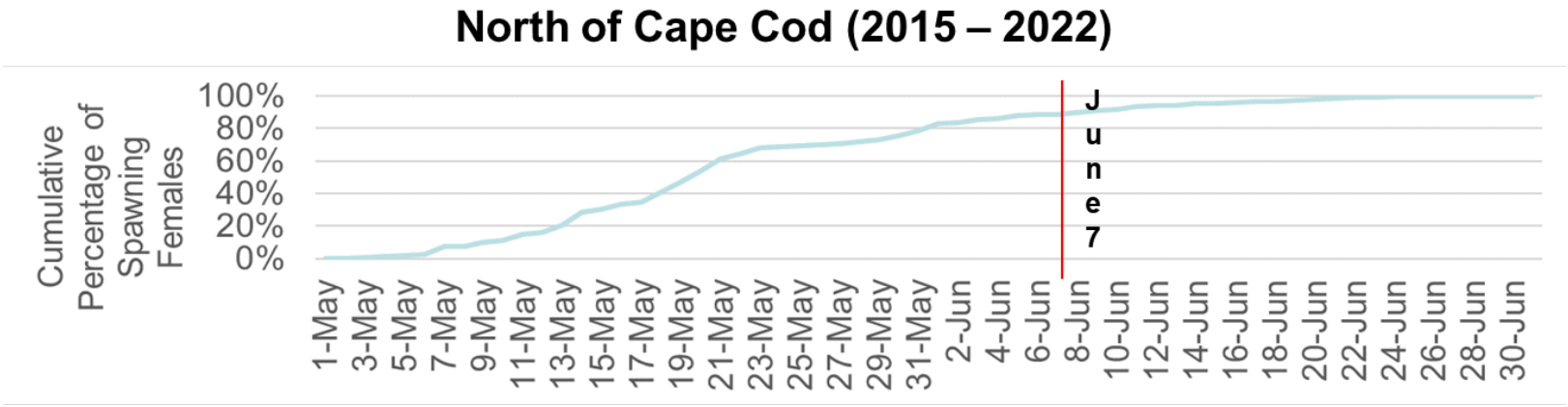
Marine Fisheries Advisory Commission
March 19, 2024

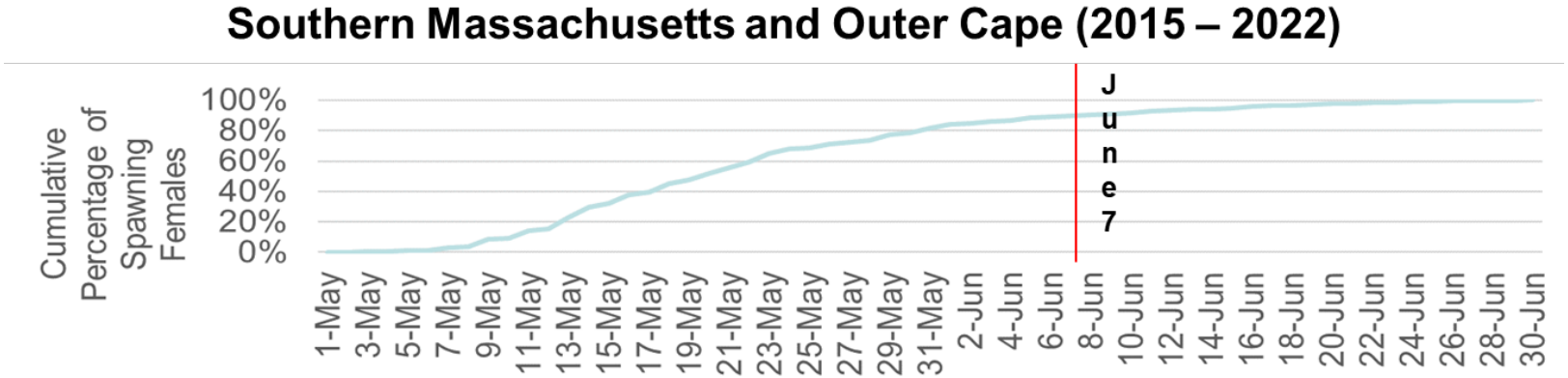
Action Items

a. Horseshoe Crab Management
b. Commercial Striped Bass Fishing Days and Primary Purchase Requirements
c. Commercial Menhaden Season and Automatic Trip Limit Adjustments
d. Commercial Summer Flounder Limits
e. Adjustment to May Commercial Groundfish Closure
f. Commercial Mackerel Trip Limit for State Waters
g. Staying Commercial Whelk Gauge Increase
h. Commercial Smooth Dogfish Trip Limit
i. Amendment to Sanitary Shellfish Harvest and Handling Rules

Horseshoe Crab Spawning Closure

Recommendation: Enact an April 15 – June 7 closure to all harvest to protect spawning horseshoe crabs.





Horseshoe Crab Spawning Closure

Rationale:

- Improves reproductive potential by postponing harvest of crabs until after spawning and protecting 90% of observed spawning activity.
- Historic precedent for DMF and MFAC to closure fisheries at times and places when animals are spawning and vulnerable to harvest.
- Existing lunar closures do not thoroughly protect spawning activity in Massachusetts, as crabs are commonly observed in shallows and on beaches outside of lunar periods.
- Strong public support for more horseshoe crab conservation given cultural and ecological significance.
- Spawning habitat vulnerable to climate change causing erosion, beach armament, and sea level rise.
- No available survey method to forecast future recruitment and serve as “early warning”.
- Will bring MA in line with protections afforded to spawning crabs in many other states.

Anticipated Impacts and Public Comment:

- About 30 hand harvesters will lose access to peak spawning season.
- Concerns persist about springtime bait availability for whelk potters.
- Will delay biomedical access to horseshoe crabs and concerns persist about how it may impact LAL production.

Horseshoe Crab Bait Fishery Trip Limit

Recommendation:

1. Reduce trip limit from 400 to 300 crab trip limit for all hand-harvesters resulting in a uniform limit of 300 crabs per day for all limited entry permit holders
2. Enact automatic in-season adjustments to:
   a) Increase trip limit to 400-crabs if less than 50% of quota is taken by August 1.
   b) Decrease trip limit to 200-crabs if more than 80% of quota is taken before Sept.15.

Other Action:

- Will include horseshoe crabs as part of Consecutive Daily Trip Limit program.

Rationale:

- Reduces potential for front-loading bait quota time-of-year when whelk potting effort is diminished to prevent potential die-off events.
- Reduces potential for early season closure resulting in regulatory discarding in mobile gear fisheries.
- Spreads out quota through season and allows for potentially higher limit later in season when local demand peaks.
- Single trip limit enhances enforcement and compliance.
- Inclusion in pilot program will benefit rent-a-crab program by allowing firms and bait dealers to arrange predictable delivery of large amounts of crabs for bleeding.
- Will consider in-season adjustments as necessary to address supply-demand issues.

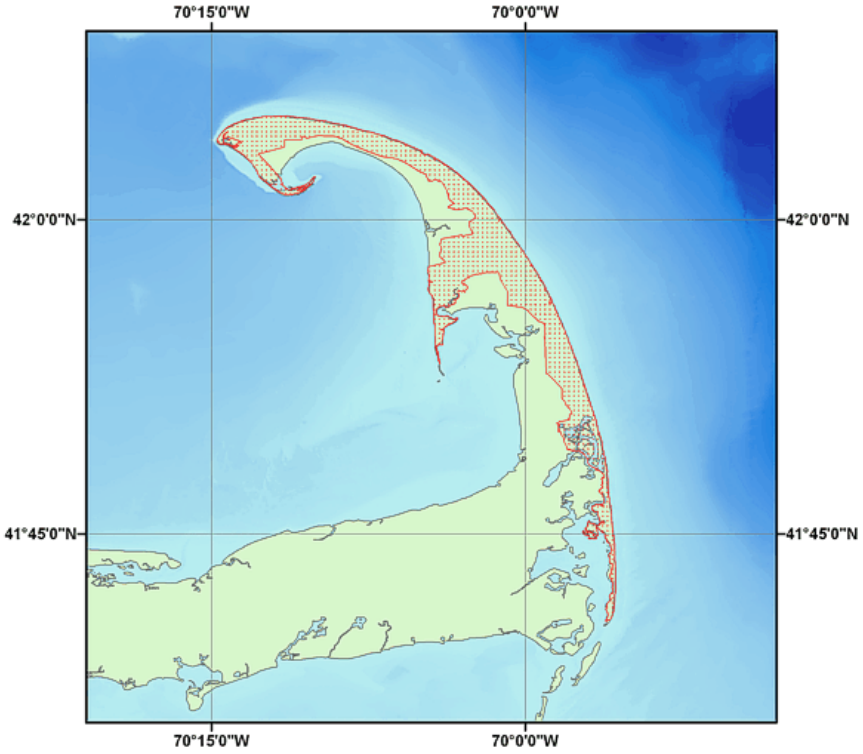
Horseshoe Crab Area Closures

Recommendation: Match federal harvest prohibition within boundaries of Monomoy National Wildlife Refuge and Cape Cod National Seashore.

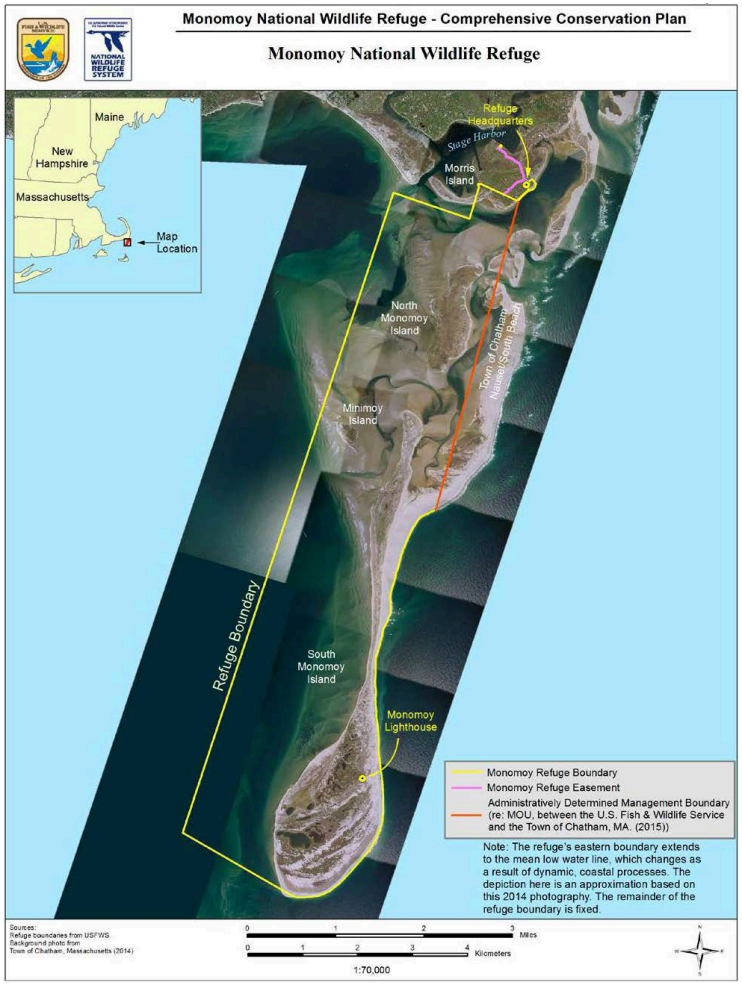
Rationale:

- Enhances enforcement and compliance.
- Allows MEP to issue citations.

Map of Cape Cod National Seashore



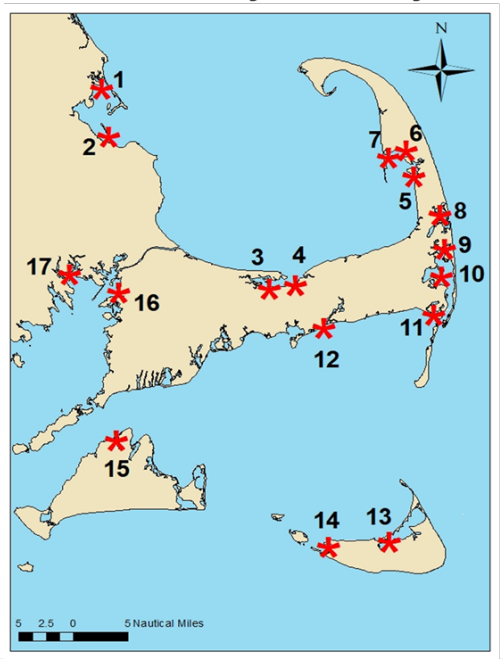
Map of Monomoy National Wildlife Refuge



Horseshoe Crab Stock Status

- Most recent benchmark assessment conducted in 2019, 2024 assessment is underway.
- Northeast region stock status improved from “Poor” to “Neutral” in 2019 assessment.
- Improvement in Northeast region stock status driven by strong survey indices in MA.
  - Trawl surveys showed increasing abundance in terms of both stratified mean and percent present in tows.
  - Beach surveys were showing positive trends for most sites
- More recent trawl survey data are showing some signs of reverting to time series media and some beach surveys are showing sings of decline.

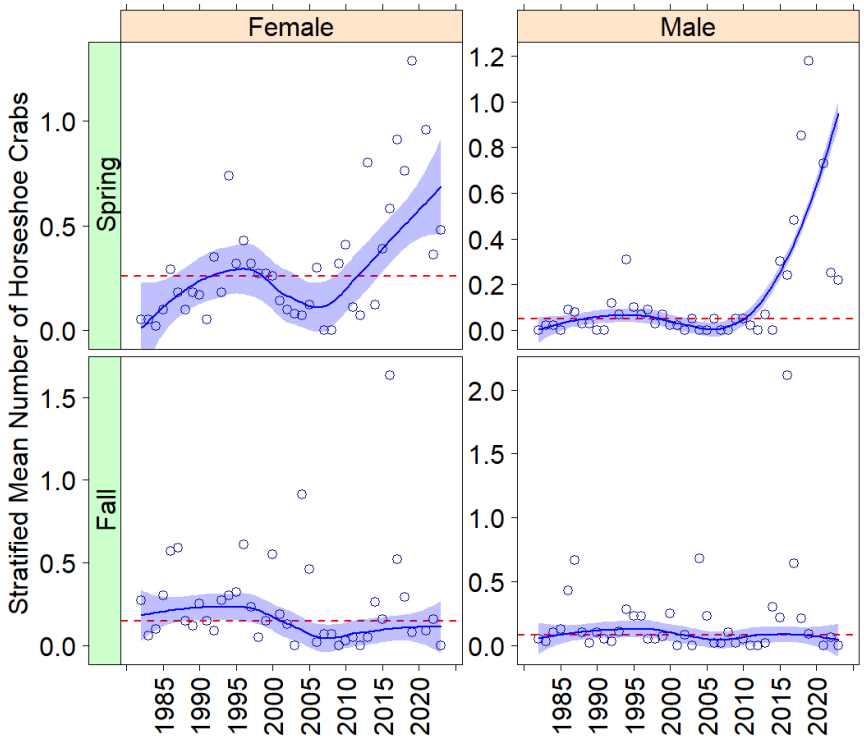
2023 MA Spawning Beach Survey Summary



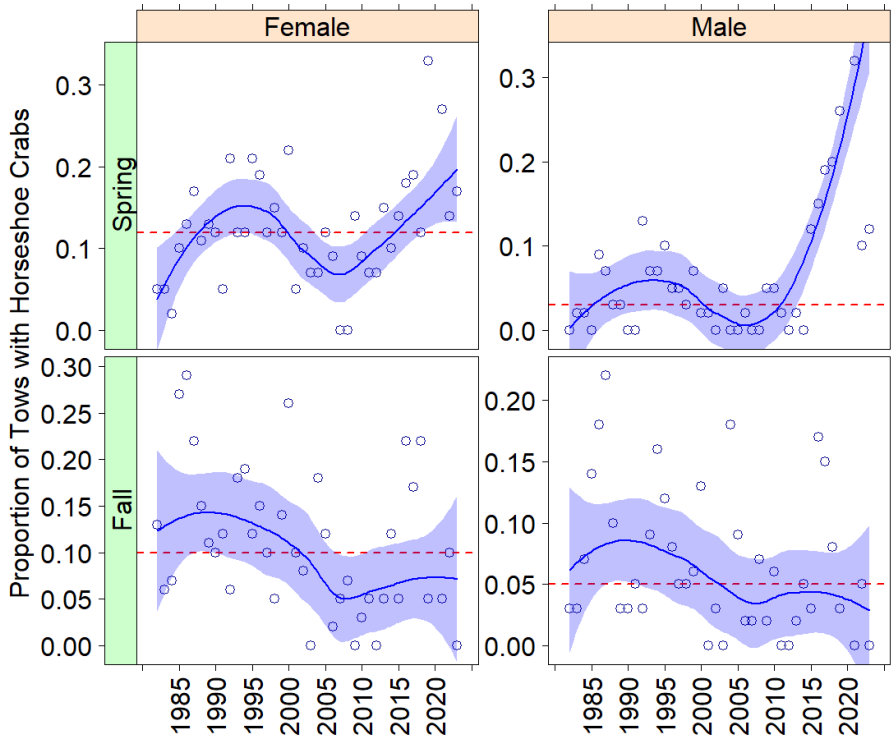
Beach	Region	Time of Day	2023 vs Median	10-year trend	5-year trend
Duxbury	Cape Cod Bay	Day	below	decreasing	increasing
Duxbury	Cape Cod Bay	Night	above	decreasing	increasing
Long Beach	Cape Cod Bay	Day	below	NA	decreasing
Long Beach	Cape Cod Bay	Night	below	NA	increasing
Millway	Cape Cod Bay	Day	below	increasing	increasing
Millway	Cape Cod Bay	Night	above	increasing	increasing
Long Pasture	Cape Cod Bay	Day	above	increasing	increasing
Sanctuary Beach	Cape Cod Bay	Day	below	increasing	increasing
Indian Neck	Cape Cod Bay	Day	below	decreasing	decreasing
Indian Neck	Cape Cod Bay	Night	below	increasing	decreasing
Great Island	Cape Cod Bay	Day	below	increasing	increasing
Priscillas Landing	Outer Cape Cod	Day	above	increasing	decreasing
Marsh 2-3	Outer Cape Cod	Day	above	increasing	increasing
Erica's Beach	Outer Cape Cod	Day	below	increasing	decreasing
Stage Harbor	Nantucket Sound	Day	NA	NA	NA
Stage Harbor	Nantucket Sound	Night	NA	NA	NA
Bass River	Nantucket Sound	Day	below	NA	increasing
Bass River	Nantucket Sound	Night	above	NA	increasing
Monomoy	Nantucket Sound	Day	equal	increasing	NA
Monomoy	Nantucket Sound	Night	below	increasing	NA
Warrens Landing	Nantucket Sound	Day	above	increasing	increasing
Warrens Landing	Nantucket Sound	Night	above	increasing	increasing
Tashmoo	Nantucket Sound	Day	NA	increasing	NA
Tashmoo	Nantucket Sound	Night	NA	increasing	NA
Tahanto	Buzzards Bay	Day	NA	increasing	increasing
Tahanto	Buzzards Bay	Night	NA	increasing	NA
Swifts Beach	Buzzards Bay	Day	below	decreasing	decreasing
Swifts Beach	Buzzards Bay	Night	below	decreasing	increasing

Horseshoe Crab Abundance
DMF Trawl Survey **South** of Cape Cod

Stratified Mean Number of Horseshoe Crabs Per Tow

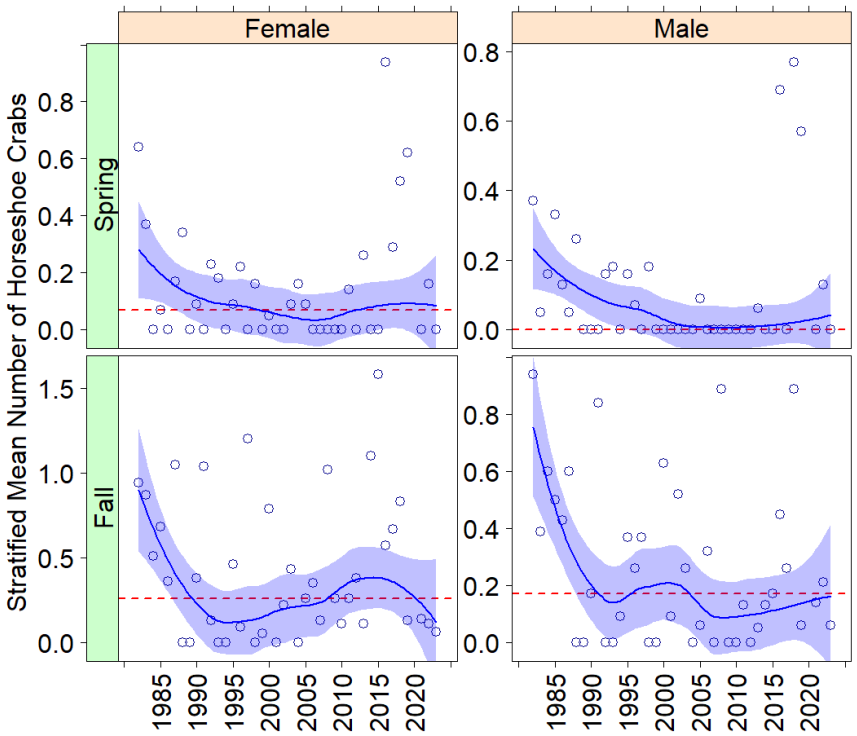


Proportion of Tows with Horseshoe Crabs Present

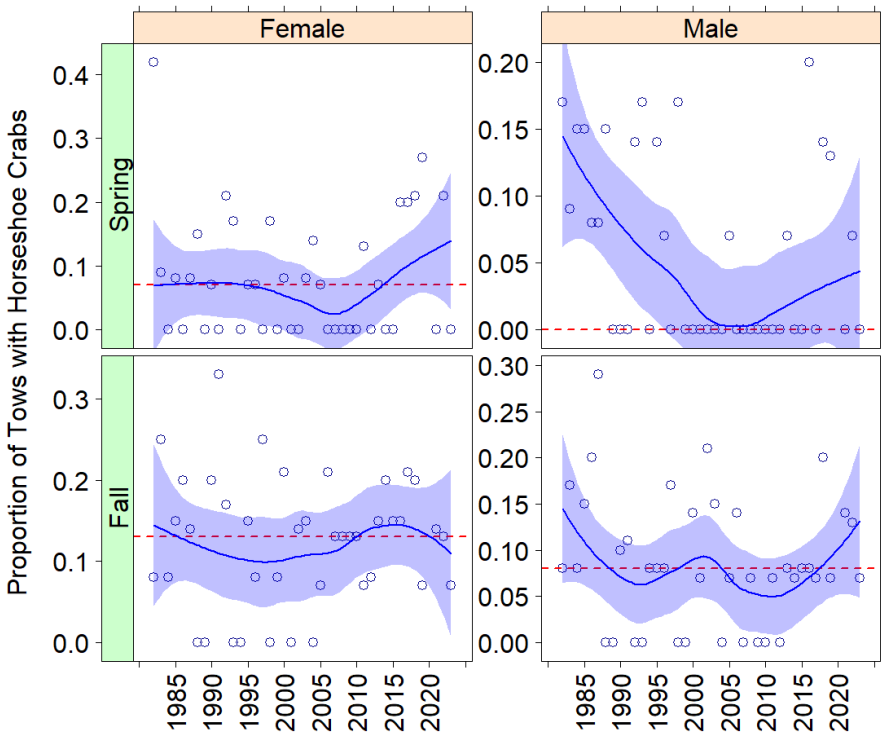


Horseshoe Crab Abundance
DMF Trawl Survey **North** of Cape Cod

Stratified Mean Number of Horseshoe Crabs Per Tow



Proportion of Tows with Horseshoe Crabs Present



Striped Bass Open Fishing Days

Recommendation:

1. Reduce number of fishing days from three days per week to two days per week to start season by eliminating Monday as open fishing day and retaining Tuesday (0001 – 2359 hours) and Wednesday (0001 – 2359 hours).
2. Automatically add Thursday as an open fishing day on August 1 if 30% or more of quota remains available.

Rationale:

- Base quota reduced by 7% from 735,240 lb to 683,773 lb for 2024 (only 2% lower than 2023 overage-adjusted quota).
- Early August quota closures in 2022 and 2023; expect fishery to perform similarly with 2015 year-class aging into fishery.
- Fewer days per week should extend season through August.
- Monday is generally largest landing day and suggests front-loading.
- Automatic trigger to add a day responds to public interest in taking quota.

Primary Purchase of Striped Bass

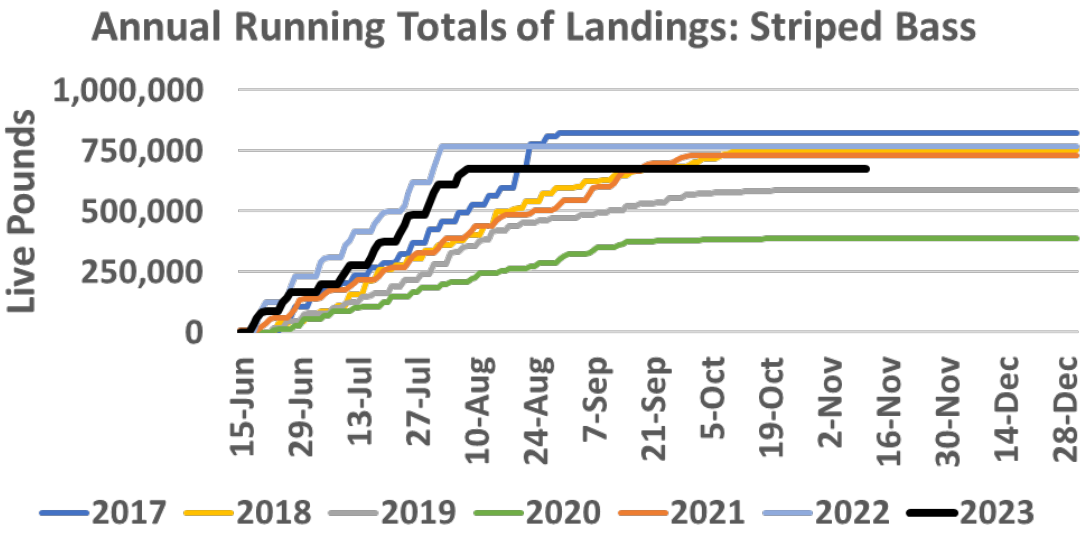
Recommendation:

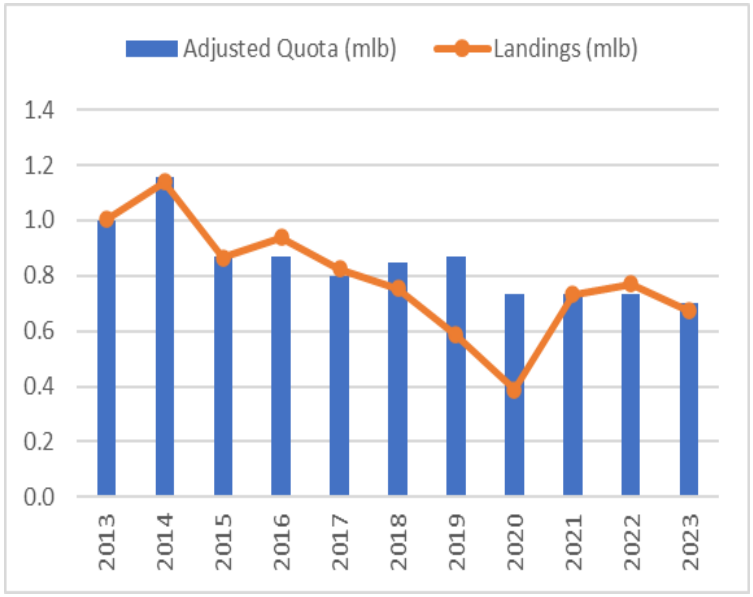
1. Clarify that the primary buyer and harvester must both be present at primary sale (i.e., no drop offs).
2. Require primary buyers tag striped bass upon receipt of the fish at primary purchase.

Rationale:

- MEP has identified concerns regarding chain of custody and enforcement of rules when fish are dropped off at dealer facility and not immediately tagged.
  - Current tagging rules were developed with consideration towards lengthy queues of harvesters at boat ramps selling to trucks (the situation when Cape Cod was epicenter of fishery).
  - Fishery has become more diffuse, with more north shore fishing activity that occurs predominantly at night with fish being sold to brick-and-mortar dealers.
- Want to accommodate night fishing but ensure product is being lawfully caught and sold.
- Dealers have indicated they will staff facilities at night to accept fish and that it is now common practice to tag fish upon receipt.
- Not proceeding with any change to fishing day definition; concept was not roundly supported, and is likely to be misunderstood creating more enforcement/compliance problems than solved.

Striped Bass Landings & Quota Utilization



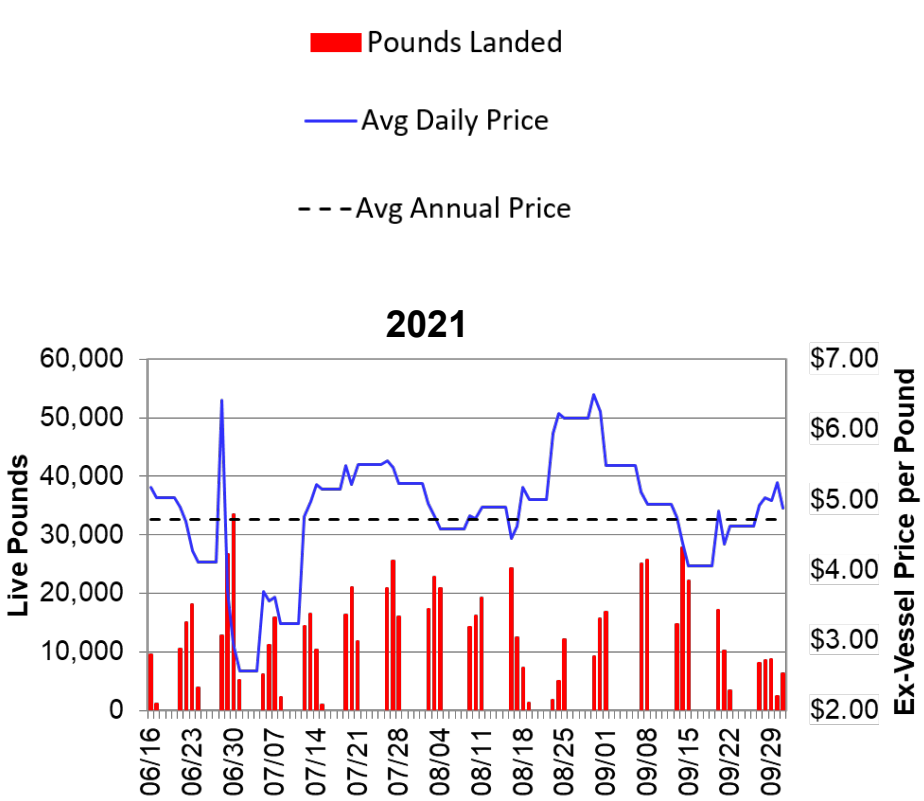


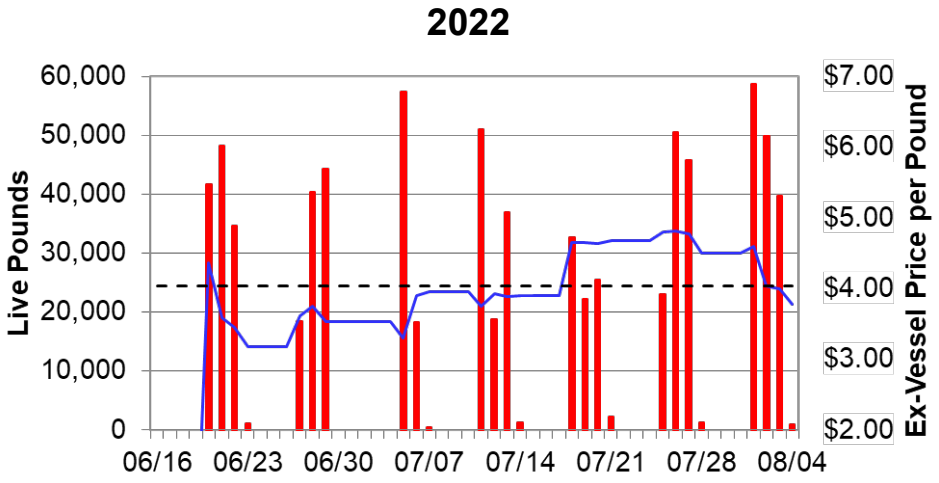
2021-2023 Consistent Measures

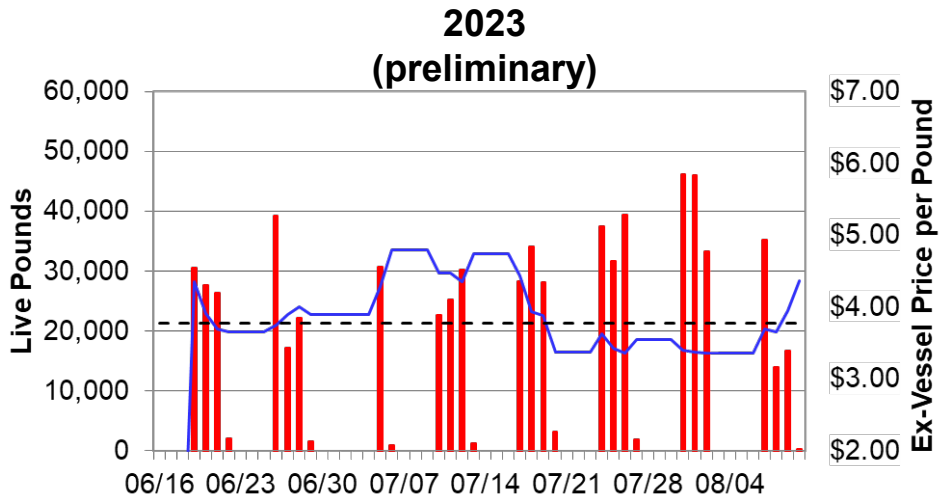
- June 16 – Sep 30: Mon/Tues/Wed
- Oct 1 – Nov 15: Mon-Fri
- 15 fish for vessel-based permits
- 2 fish for other permits
- 35” minimum size

Year	Annual Quota	Closure
2021	735,240 lb (99% used)	Oct. 2
2022	735,240 lb (105% used)	Aug. 4
2023	700,379 lb (96% used)	Aug. 11

Daily Landings & Average Price

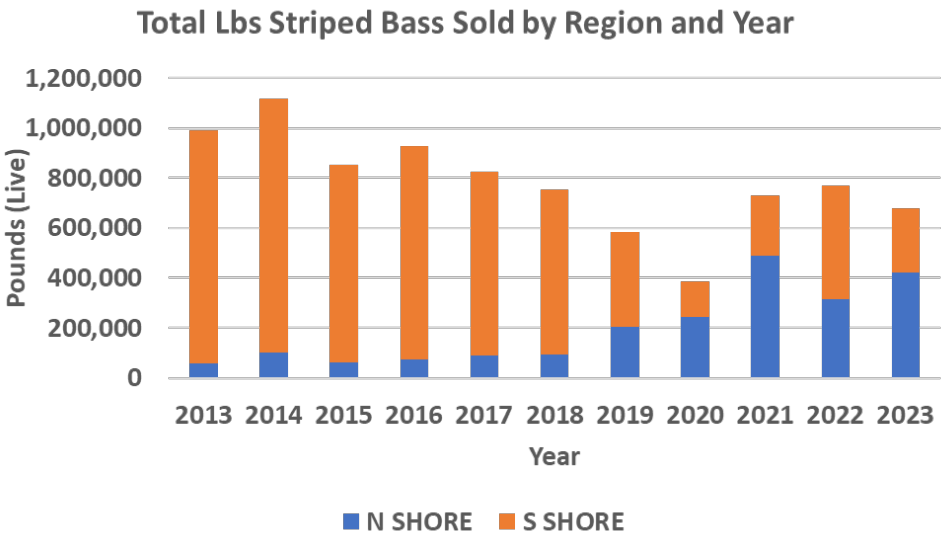


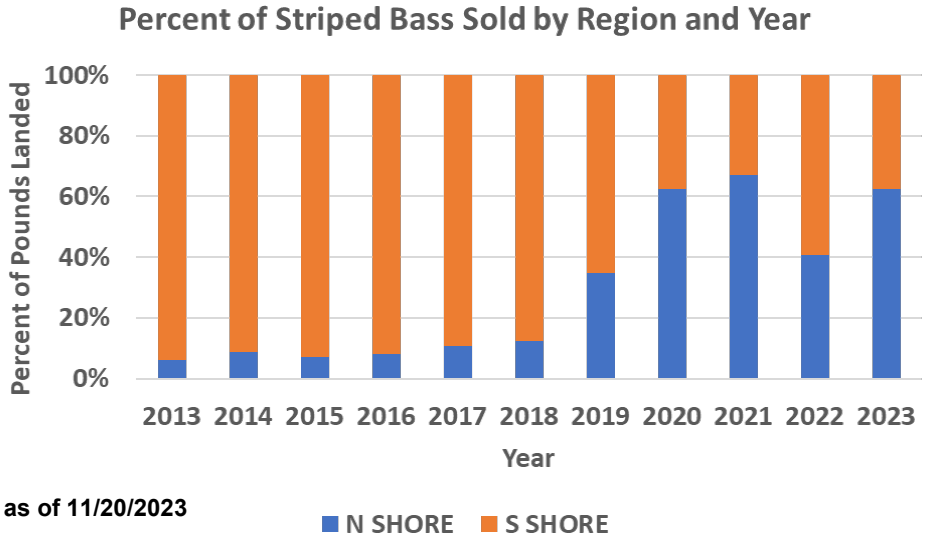




SOURCE: SAFIS Dealer Reports, as of 11/20/23

Regional Landings Trend





"North Shore" Counties:
- Essex
- Suffolk
- Norfolk

"South Shore" Counties:
- Plymouth
- Bristol
- Barnstable
- Dukes
- Nantucket

SOURCE: SAFIS Dealer Reports, as of 11/20/2023
*** 2023 Preliminary**

Menhaden Season and Trip Limits

Recommendation:

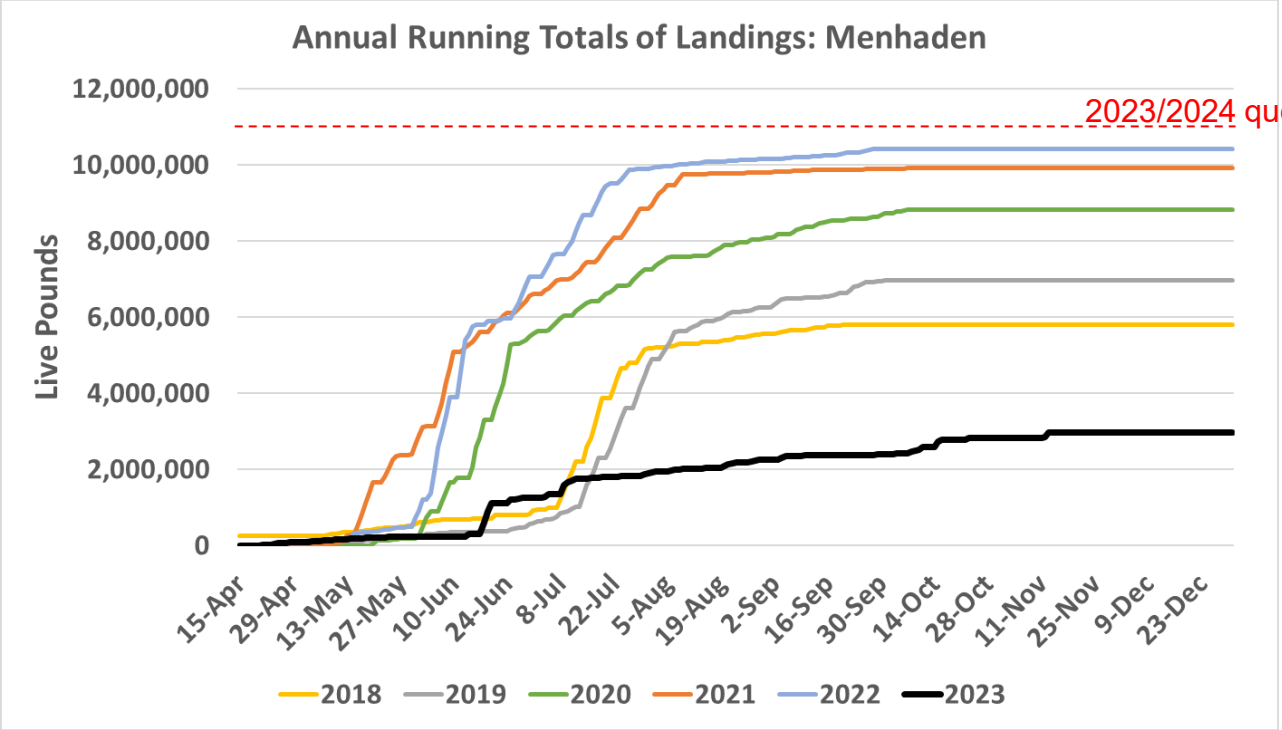
1. Replace the June 15 start date for the purse seine fishery with a May 15 start date.
2. Waive the 50% quota use trigger (that drops the LE trip limit from 120,000 lb to 25,000 lb) if occurring after August 31; and clarify that purse seining remains closed on Fridays as long as the trip limit is 120,000 lb.
3. Add a conditional date of October 15 to increase the trip limit to 360,000 lb should at least 10% of quota remain with a requirement that vessels notify DMF at least 48-hours prior to landing for quota monitoring purposes.

Rationale:

- After the experience of the 2023 fishery, adds more flexibility to fishery to achieve quota under wider range of resource availability, as requested by industry.
- Does not include public hearing proposal to pause fishery if 50% quota taken prior to July 1, due to lack of support.
- Gives large-scale operations ability to land fish at economically viable limit late in season after they have migrated out of our inshore waters should quota remain.
- Boston Harbor user-group conflict being addressed separately (upcoming meeting on 3/27).

Review of 2023 Fishery

- 2023 landings substantially less than recent years (e.g., 2021 and 2022)
  - Nearshore availability changed, not overall stock abundance
  - Large influx of fresh water this season from rain events
  - Later season start date (moved from June 1 to June 15 in 2023)
- In-season adjustment made (in mid-Sept.) to maintain 120,000 trip limit until 90% quota use and maintain Friday as purse seine closed fishing day after 50% of quota was taken.



Current Menhaden Fishery Management

January 1 – June 14 & After Quota Taken

- Small scale/incidental limit at 6,000 pounds.
- No purse seines.
- Weir exception for 120,000-lb limit during January 1 – June 14.
- State waters harvest only

June 15 – Quota

Limited Entry Fishery (menhaden permit endorsement required):

- 120,000 pounds until 50% of quota; 25,000 pounds until 90% of quota; 6,000 pounds until 100% of quota. Limit stays at 25,000 pounds if 90% not reached by 9/1.
- Holds must be surveyed and marked at 120,000-pound and 25,000-pound storage levels.
- Carrier vessels allowed until trip limit is reduced to 6,000 pounds, except in Boston Harbor where prohibited.

Open Entry Fishery (general commercial fishing permit):

- 6,000-lb limit
- No carrier vessels allowed.

Seine Restrictions

- No seining until June 15 or after quota closure.
- Inshore Net Permit required to seine in inshore waters.
- No seining year-round in Buzzards Bay or certain areas of Boston Harbor.
- No seining on Saturday and Sunday; and Fridays in Beverly Harbor.
- No seining on Friday when LE trip limit is at 120,000 pounds.
- No seining on 4th of July or Labor Day.
- 600’ length for inshore net areas; 450’ x 48’ for 6,000-lb limit fisheries. Seine size to be annually inspected by DMF.
- No night fishing.

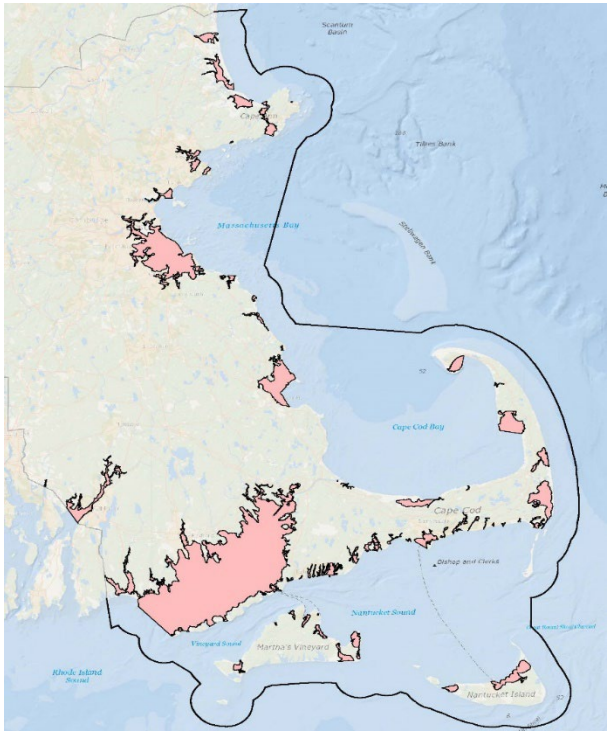


Figure shows Inshore Net Areas. Inshore net permit required for all nets other than cast nets and small bait nets (≤250 sq ft). Cast nets and small bait nets require no specific permit to take bait for personal use. Net fishing in Buzzards Bay is prohibited.

Review of 2023 Fishery

- 2023 regulations (e.g., season/trip limits/days) changed to account for:
  - Interstate plan revisions: quota reallocation, removal of purse seines from small-scale/incidental allowance
  - Recent fishery performance: projections based on recent years' rapid pace of landings, reliance on quota transfers, user conflict

	Season Start	Limited-Entry Trip Limits and Quota Use Triggers	Purse Seine Open Days *
2022	June 1 for landings > 6,000 lb.	• 125,000-lb trip limit until 85% quota use. • 25,000-lb trip limit from 85% to 100% quota use. • 6,000-lb IC/SSF trip limit for all gears after 100% quota use.	• Mon–Fri
2023	**June 15** for all purse seine landings	• 120,000-lb trip limit until **50%** quota use. • 25,000-lb trip limit from **50% to 90%** quota use. • 6,000-lb trip limit from **90% quota use**, provided before 9/1, to 100% quota use; otherwise, 25,000-lb trip limit. • 6,000-lb IC/SSF trip limit for **non-purse seine** gears after 100% quota use.	• **Mon–Thu until 50% quota use** • Mon–Fri for 50–100% quota use

* Area and date specific seining rules omitted (e.g., holidays).

Summer Flounder Trip Limits

Recommendations:

- For Period I Fishery (Jan 1–Apr 22), decrease trip limit from 10,000 pounds to 5,000 pounds.
- For Period II Summertime Fishery (Apr 23–Sept 30), adopt a quota use trigger to reduce trip limit from 600 pounds to 400 pounds for net fishers and 400 pounds to 250 pounds for hook fishers if 75% of quota is taken before August 1.
- For Period II Fall Fishery (Oct 1 – December 31), increase the quota-use threshold from 5% to 10% remaining on Oct 1 to trigger elevated trip limit and set this elevated trip limit at 5,000 pounds rather than 10,000 pounds.

Other Action:

- Will renew Consecutive Daily Trip Limit program.

Rationale:

- Period I action consistent with in-season adjustment for 2024 that resulted in six weeks of fishing and near full utilization of allocation.
- Allows fall and winter fisheries to profitably exploit quota availability.
- Based on quota use projections, maintains summertime trip limits but builds in automatic trip limit decrease to hedge against an early season closure.
- Ample quota available to accommodate anticipated increase in effort in summertime fishery.
- Works to ensure quota is predominately taken during summertime period when value is highest.
- Builds in additional buffer to protect against quota overage should we reach the fall fishery.

Background on Summer Flounder Fishery

- 2023 Assessment: Not overfished but experiencing overfishing.
  - Past assessment overestimated biomass.
  - 2018-year class smaller than initially assessed.
  - Below average recruitment since 2011.
- Coastwide quota reduced by 42% from 15.27 mlbs (2023) to 8.79 mlbs (2024).
- With coastwide quota below 9.55 mlb, MA quota share goes back to baseline 6.82%; has been ~9%.
- MA quota is reduced by 56% due to coastwide quota cut and reduced quota share.
- MA quota for 2024 is 599,507-lb quota.
- Similar quota expected for 2025.

Source: Cape Cod Commercial Fishermen's Alliance

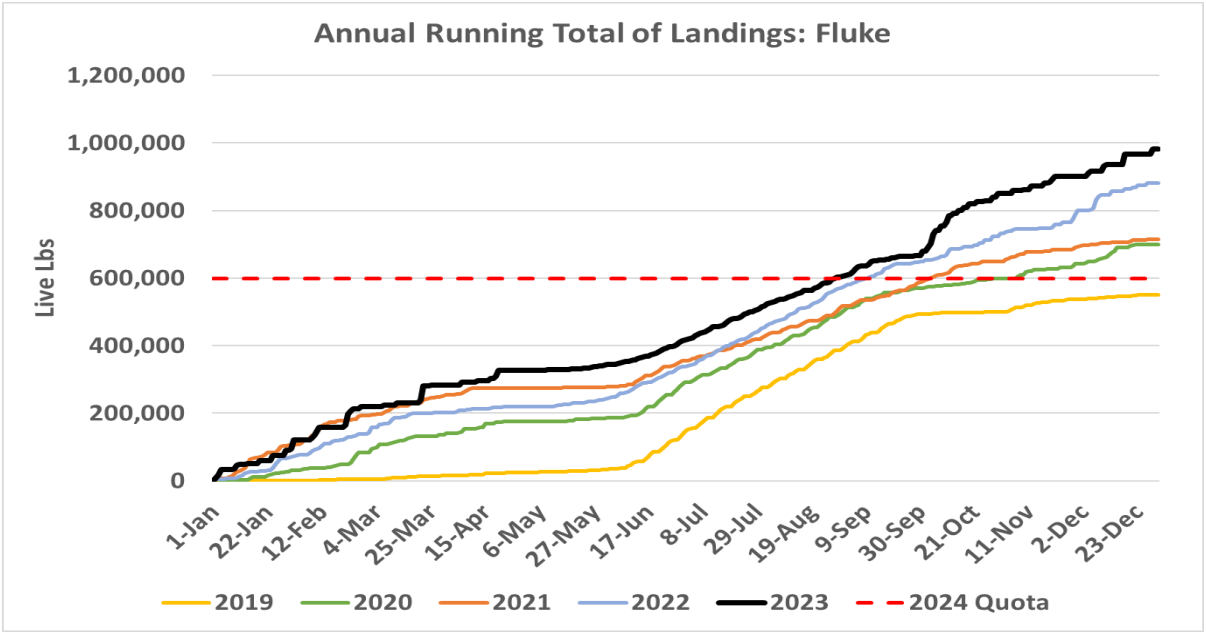
Photo by Max Bossman

Recent Performance

Summer Flounder Landings by Season for 2019 – 2024 (live lbs)

Year	Period I Jan 1 - Apr 22	Period II Apr 23 - Sep 30	Period II Oct 1 - Dec 31	Annual Total Landings	Annual Quota	Period I % Quota Use	% Annual Use
2019	24,145	469,955	58,470	552,569	741,532	3%	75%
2020	175,983	396,562	129,799	702,344	795,584	22%	88%
2021	274,611	310,485	129,325	714,422	1,025,159	27%	70%
2022	218,366	428,888	228,902	876,156	1,393,790	16%	63%
2023	326,369	339,223	315,523	981,115	1,359,363	24%	72%
2024*	155,831				**599,507**	27%	27%

Data Source: SAFIS eDR, 2/26/24
*To date, 3/8/24



2024 Quota and Current Regulations

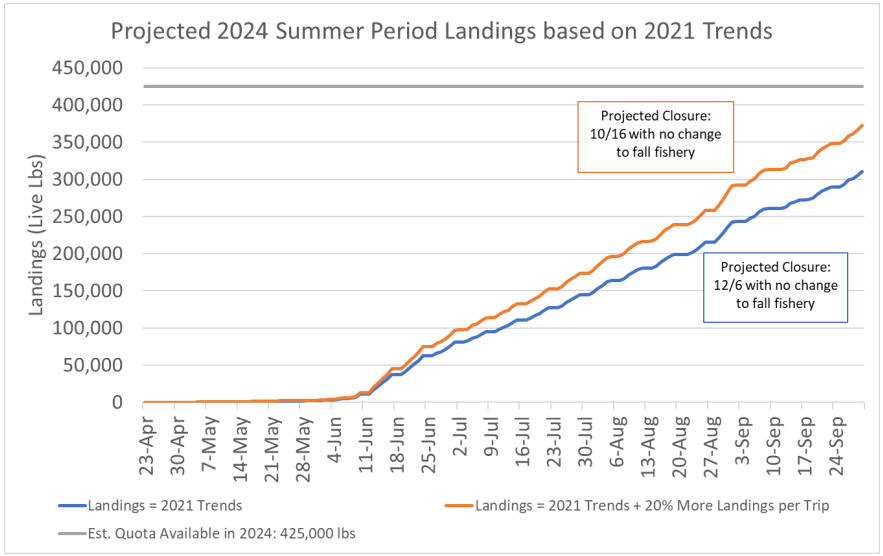
- 2024 quota is 599,507 pounds.
  - P1 Allocation: 179,852 pounds
  - P2 Allocation: 419,654 pounds
- P1 trip limit dropped from 5,000 pounds to 100 pounds on February 6.
- About 435,000 pounds of quota expected to remain available to P2 fishery with some landings coming in.

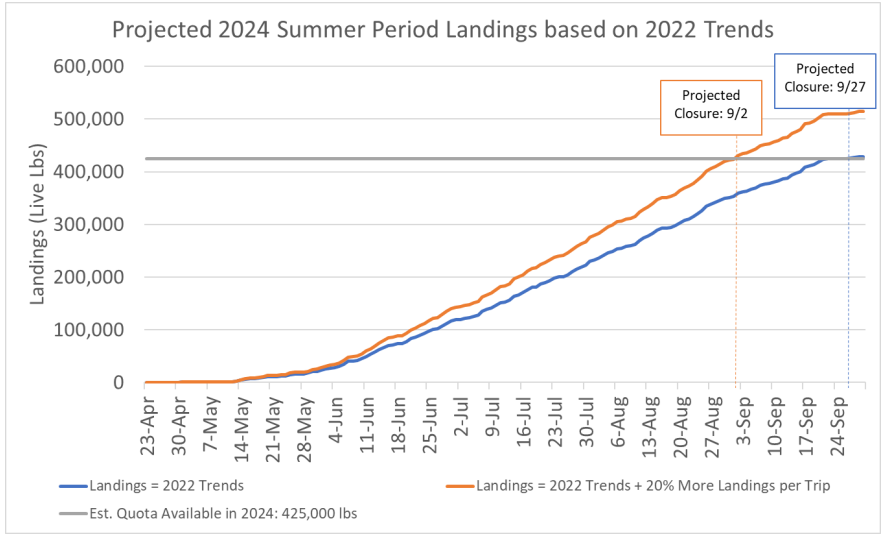
Current Summer Flounder Fishery Rules

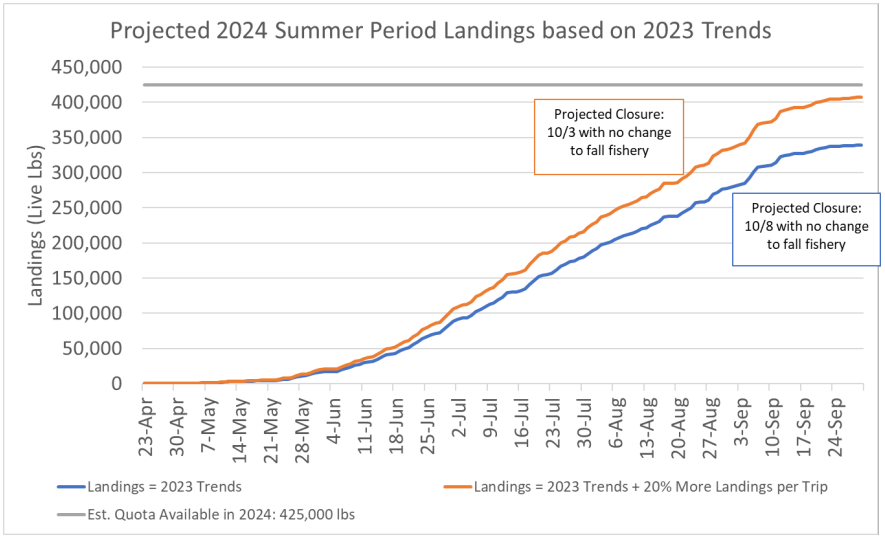
Season	Gear	Trip Limit	Fishing Days	Min Size
Jan 1 – Apr 22	Nets	5,000 pounds* decreased to 100 pounds at 30% quota projection	Sun – Sat	14”
Apr 23 – Aug 31	Nets	600 pounds	Sun – Sat	14”
	Hooks	400 pounds		
Sept 1 – Sept 30	Nets	800 pounds if >20% of quota 600 pounds if =<20% of quota	Sun – Sat	14”
	Hooks	800 pounds if >20% of quota 400 pounds if =<20% of quota		
Oct 1 – Dec 31	All	10,000 pounds if > 5% of quota 800 pounds if =<5% of quota	Sun – Sat	14”

* Trip limit reduced from 10,000 pounds to 5,000 pounds for 2024 via in-season adjustment.

Summertime Fishery Performance & Projections

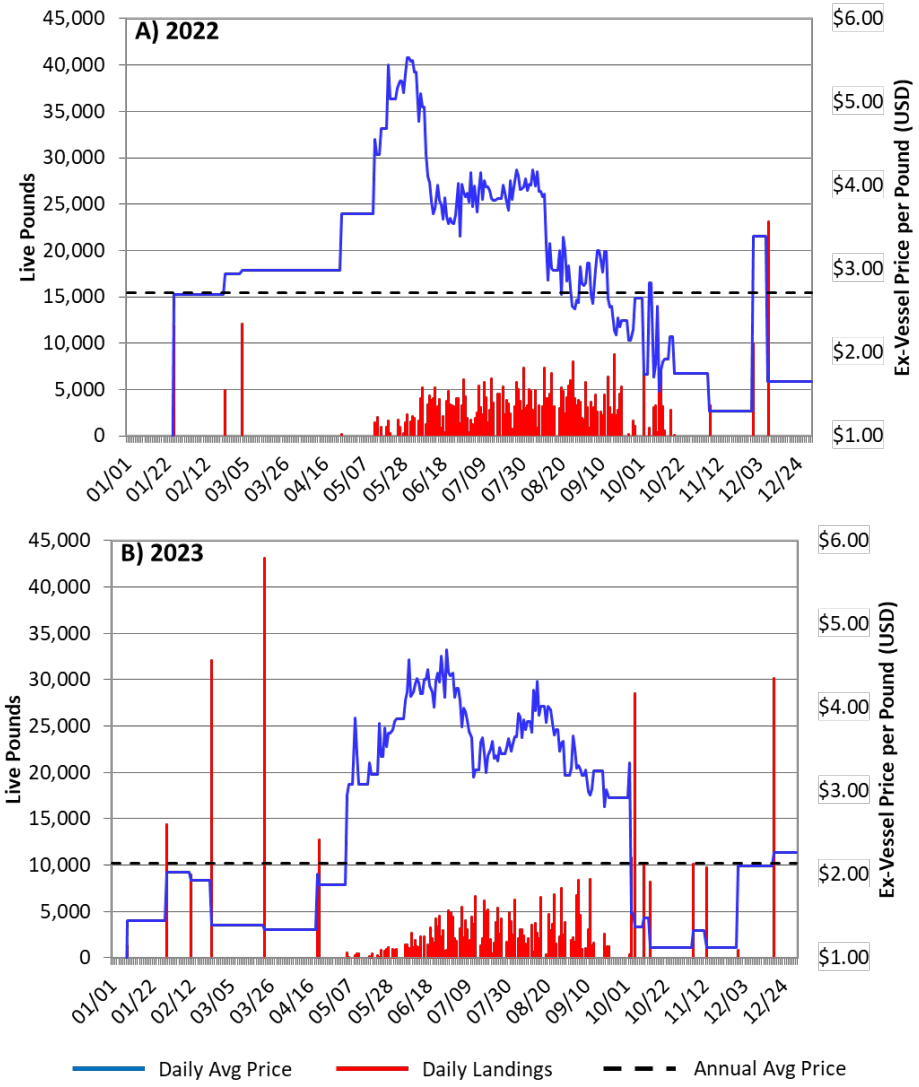






- P2 allocation is ~420,000 pounds at current quota.
- About 435,000 pounds of 2024 quota remains.
- DMF anticipates at least 425,000 pounds of quota will be available to P2 in 2024.
- Most scenarios do not project summertime fishery to take 425,000 pounds.
- Trawlers land >85% of catch on weekly basis.
- ~ 20 - 25 active trawlers in any given week landing about 20,000 pounds per week.
- ~ 15 – 20 hook fishers combine to take a few thousand pounds per week total.
- Effort and landings from both gears die off by mid-September.

Daily Landings and Average Price



Adjusting May Groundfish Closure

Recommendation: Reduce spatial footprint of May groundfish closure in MA Bay by moving southern boundary north by 5 min latitude from Boston (42°20'N) to Nahant (42°25'N)

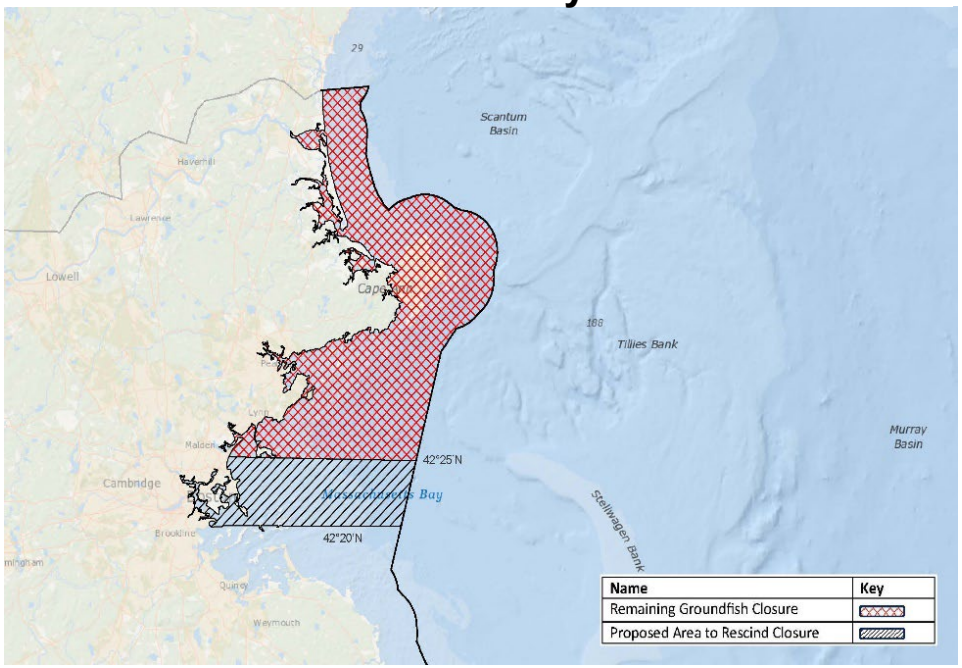
Other Action:

- Consider a Consecutive Daily Trip Limit program for GE permit holders (will require ASMFC approval for winter flounder).

Rationale:

- Responds to request from industry to provide soft bottom to target available flatfish.
- Reduces steaming time and overhead for North Shore vessels.
- Avoids existing spring spawning cod aggregations (e.g., Eagle Ridge).
- Adequate sub-component available to accommodate additional harvest.
- Catch and effort limited by other closures, fish availability, fish-able bottom, trip limits, and waning activity.
- Pilot program may allow fishers more efficient access to available sub-components without increasing trip limits.

Recommended May Closure



Atlantic Mackerel Trip Limit

Recommendation:

- Adopt a 5,000-pound state waters trip limit for mackerel.
- Reduce trip limit to 2,500 pounds once 80% of annual quota is taken.
- Exempt weir fishers from state waters trip limit.
- Allow federal permit holders fishing lawfully in federal waters to transit state waters in excess of the state's trip limit to land fish.

Rationale:

- Complements recent open access trip limits set by MAFMC.
- Ensures state management does not undermine federal conservation objectives.
- Control fishing activity in state waters by state-only and federal permit holders.
- Prevents state waters from become an area for vessels to avoid federal open access limits.
- Limits potential user group conflict stemming from increased fishing activity in state waters.
- Limit exceeds current state-waters only landings (maxes out at ~1,000 pounds per trip).
- Allows weirs to land large quantities of fish that they have historically encountered should this occur again.

Marine Fisheries Advisory Commission
March 19, 2024

On Break Until 10:15AM

Whelk Gauge

Recommendation: Stay current schedule to increase whelk gauge sizes until 2027.

Rationale:

- Allows for potential MSE to inform conservation program moving forward.
- Addresses concerns regarding female-only fishery.
- Considers various economic factors negatively impacting whelk fishery and loss of industry infrastructure.

Approximate shell width and percent size-at-maturity at each scheduled gauge size							
Gauge Size	2 7/8"	3"	3 1/8"	3 1/4"	3 3/8"	3 1/2"	3 5/8"
Approximate Shell Width	3 1/10"	3 3/16"	3 5/16"	3 7/16"	3 5/8"	3 3/4"	3 7/8"
Percent size at maturity	0%	0%	0%	0%	5%	20%	50%

Proposed adjustments to schedule for increases to whelk gauge size					
Gauge Size	3 1/8"	3 1/4"	3 3/8"	3 1/2"	3 5/8"
Current Schedule	2021 - 2023	2024 – 2026	2027 – 2029	2030 – 2032	2033
Proposed Schedule	2021 – 2026	2027 – 2029	2030 – 2032	2033 – 2035	2036

Smooth Dogfish Trip Limit

Recommendation: Increase trip limit from 100 pounds to 300 pounds.

Other Action:

- May include smooth dogfish as part of Consecutive Daily Trip Limit program, if approved by ASMFC.

Rationale:

- Industry requested DMF increase limit to provide additional access to available quota while reducing discarding.
  - Quota has been 17,195 pounds since 2017
  - During 2017-2022, less than 25% of quota was taken each year.
- MFAC approved this for 2023 via an in-season adjustment.
  - Several vessels took advantage of trip limit increase
  - Improved utilization of state quota (data confidential).
- Primary benefits trawlers in summertime Nantucket Sound fishery, who occasionally catch > 100 pounds in mixed species fishery.
- Inclusion in pilot program likely requires Coastal Shark Board approval.

Final Shellfish Regulations

Recommendations:

1. *Vp* Icing:
   a. Revise to icing requirements during *Vp* Season to match anticipated 2024 *Vp* Control Plan.
   b. Eliminate prescriptive requirements in favor of “completely and continuously covered” by ice.
   c. Exempt harvesters from icing requirements if taken on by dealer at landing site and within time-to-icing window.
2. Shellfish Tagging: Make clear that the most specific alpha-numeric sequence for DSGA is to be recorded on shellfish harvester tag.
3. Shellstock Icing: Clarify only ice made from potable water *or saltwater ice from a Shellfish Growing Area classified as Approved or Conditionally Approved and in the Open Status* may be applied to shellfish.
4. Night Closure:
   a. Adopt a state-wide night closure for the commercial harvest of shellfish from ½ hour after sunset to ½ hour before sunrise.
   b. Maintain allowance for state managed mobile gear fisheries(e.g., sea scallops & surf clams) to seasonally fish 6AM to 6PM.
5. Primary Sale Location: Allow primary sale of shellfish at municipally managed lot nearby landing site subject to approval of DMF Director.

Final Permitting Actions

a. Updates to Permit Transferability Rules

b. Housekeeping Adjustments

Permit Transferability Rules

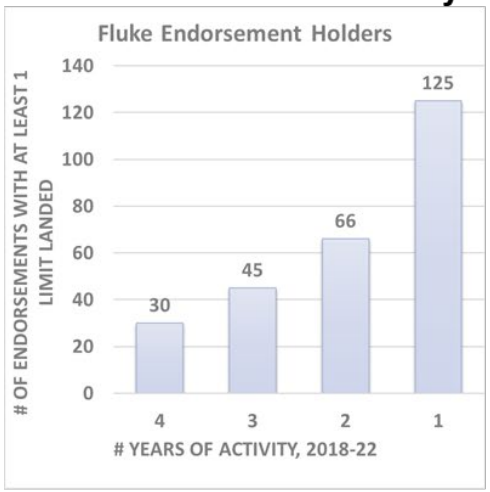
Action:

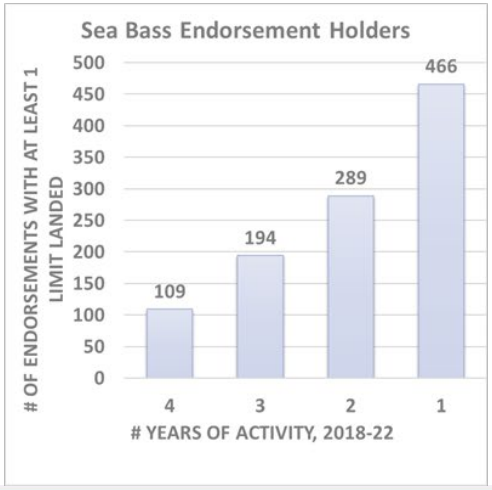
- Allow transfer of latent, but otherwise transferable endorsements, in a transfer to an immediate family member.
- Relax transferability standards for black sea bass, tautog, and fluke endorsements from actively fished for four out of past five years to two out of past five years.

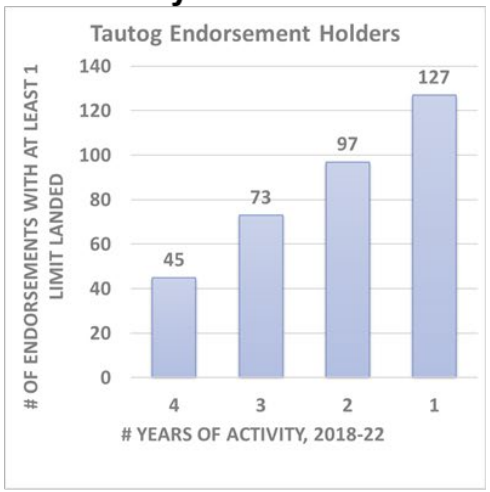
Rationale:

- Immediate family transfers allow family businesses to remain in-tact.
- Increase in supply of available permits may reduce barriers to entry to better accommodate new entrants and deepen existing permit portfolio diversity.
- Rod and reel effort is variable making existing thresholds difficult to reach.
- Attrition occurring as permits are retired and not transferred

Number of Potentially Transferable Endorsements at Various Years of Activity Thresholds







Permit Housekeeping

Action: Allow electronic display of commercial fishing permit.

Rationale:
- New permitting system allows for online renewals.
- Would allow fishers to maintain e-copy of permit on phone rather than printed copy.

Action: Enhance definition of immediate family to extend to step and adoptive family.

Rationale:
- Current definition is outdated and does not account for more modern types of family units.
- Would become consistent with definition elsewhere in Massachusetts law and regulation.

Action: Eliminate outdated reference to waiting list for Coastal Lobster Permit.

Rationale:
- DMF has not and does not intend to use waiting list.

Emergency Actions to Set Recreational Fishing Limits

a. Black Sea Bass, Scup, and Summer Flounder

b. Filleting of Stiped Bass

Recreational Fluke, Scup & Black Sea Bass

	Mode	Open Season	Bag Limit	Minimum Size	Why?
Summer Flounder (2024/25)	Private Vessel & For-hire Vessel	~~**May 21–Sept 29**~~ **May 24 – Sept 23**	5 fish	~~16.5”~~ **17.5”**	Mandatory 28% state-specific harvest reduction
	Shore			16.5”	
Scup (2024/25)	Shore	May 1 – Dec 31	30 fish	9.5”	Mandatory 10% harvest reduction, taken as MA-NY region
	Private Vessel			~~10.5”~~ **11”**	
	For-hire Vessel	May 1 – June 30	40 fish	~~10.5”~~ **11”**	
		July 1 – Dec 31	30 fish		
Black Sea Bass (2024)	All Modes	~~May 20–Sept 7~~ **May 18 – Sept 3**	4 fish	16.5”	Mandatory status quo or small seasonal adjustments via CE

Rationale:

- These options were supported by majority of public comment, especially for-hire mode. Limited private angler comment for other options. Best meet the needs of fishery participants at this time.

Striped Bass Filleting

1. Clarify that striped bass retained in the shore or private vessel recreational modes are to be kept whole—except for evisceration, bleeding, or descaling—while on the waters of this state or any adjacent parcel of land, structure, roadway or parking lot, except if being prepared for immediate consumption;
2. Extend the allowance for for-hire captains and crew to fillet striped bass for their customers while at sea to also include while at dock prior to the customers departing the vessel;
3. Require the racks of striped bass filleted in the for-hire recreational mode to be retained in a manner that does not interfere with species identification or total length measurement until such time as the vessel has docked and all customers from that trip have departed the vessel; and
4. Replace the requirement for the striped bass fillets resulting from the for-hire filleting allowance to have skin intact with a requirement that they have at least two square inches of skin intact.

Rationale:

- Consistent with for-hire requests for adopting ASMFC mandate in least burdensome manner. Provides flexibility for disposing of racks in any legal manner.
- Addresses long-standing confusion about when processing may occur in private angler & shore modes.