

MARINE FISHERIES ADVISORY COMMISSION
Friday, November 17, 2023
DMF South Coast Field Headquarters at SMAST East
836 S Rodney French Blvd
New Bedford, MA 02744

In attendance:

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

Department of Fish and Game: Commissioner Tom O’Shea

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; Viny Manfredi; Mark Szymanski; Derek Perry; Tracy Pugh; Matt Camisa; Melanie Griffin; and Anna Webb.

Massachusetts Environmental Police: Lt. Matt Bass

Members of the Public: Phil Michaud, Domenic Santoro, Henry Lind, Renee Gagne, Suzanne Phillips

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane thanked everyone for their attendance and called the November 17, 2023 Marine Fisheries Advisory Commission (MFAC) business meeting to order. Chairman Kane thanked DMF and the MFAC on behalf of former MFAC member Lou Williams. Lou’s term on the MFAC expired in August 2023 and he was not reappointed.

REVIEW OF NOVEMBER 17, 2023 BUSINESS MEETING AGENDA

Chairman Kane asked if there were any amendments to the November 17, 2023 MFAC business meeting agenda. No amendments were sought.

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

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

The Chairman then requested a motion be made to approve the minutes. **Kalil Boghdan made the motion to approve the August 16, 2023 business meeting minutes. Shelley Edmundson seconded the motion. The motion passed unanimously 4-0-1 with Chairman Kane abstaining.**

CHAIRMAN'S COMMENTS

Chairman Ray Kane welcomed everyone and thanked the MFAC for their continued attendance. He then turned the floor over to Commissioner O'Shea.

COMMISSIONER'S COMMENTS

Commissioner Tom O'Shea discussed his recent experience in the field assisting Dr. Greg Skomal with white shark research and expressed his appreciation for those MFAC members who attended Governor's biodiversity executive order ceremony. He also mentioned Seafood Day at the State House and commended Senator Tarr for his efforts putting together the event; Tom was impressed by DMF's Seafood Marketing Steering Committee's meeting and noted the importance of assisting the industry in seafood marketing.

LAW ENFORCEMENT

Lt. Bass handled the comments for the Massachusetts Environmental Police (MEP). He highlighted the recent MFAC Law Enforcement Focus Group meeting. One of the issues discussed at this meeting was the libel and subsequent sale of non-conforming sized fish because large seizers can be difficult to donate. Lt. Bass, Shelley Edmundson, and Bill Amaru discussed potential ways to handle seizures involving a high volume of fish. Lt. Bass concluded his comments by discussing personnel and stated there are several officers about to start field training and several other officers completing the Police Academy.

Kalil Boghdan asked about gear removal efforts and if gear is identifiable when it is hauled. Lt. Bass stated that most gear is identifiable by trap tags or buoys.

DIRECTOR'S COMMENTS

Director Dan McKiernan stated that at the conclusion of today's MFAC business meeting, DMF would hold a ceremony to posthumously honor Mike Hickey with the 2023 Belding Award. Mike was the longtime DMF Shellfish Program Lead and was integral in the development of state and interstate shellfish management and research programs. DMF would present the award to his widow and son.

DMF met with the state's legislative Coastal Caucus earlier this year and briefed them on the agency's Derelict Gear Task Force. This task force developed a white paper that described how the current legal framework constrained efforts to remove and clean up lost, abandoned, and derelict gear and proposed a legislative solution to modernize state laws to enhance such efforts while continuing to protect private property rights. Dan was optimistic the legislature would move forward DMF's recommendations.

Dan then discussed the whelk fishery and various industry-driven concerns regarding the current schedule to increase the minimum gauge size to 50% size-at-maturity. He

anticipated there may be funding available for a SMAST PhD candidate to conduct a management strategy evaluation and develop potential alternative measures to address resource conservation in the whelk fishery.

Earlier this year, DMF submitted a petition to the Massachusetts Natural Heritage and Endangered Species Program (NHESP) to delist humpback whales. This was done in response to the 2016 federal delisting under the Endangered Species Act. However, DMF temporarily withdrew the petition to address concerns raised by NHESP's outside review team. NHESP also received a petition from the Pine Barren's Alliance of Southeastern Massachusetts to list horseshoe crabs as a species of special concern. NHESP indicated it did not intend to move forward with such a listing. However, substantial pressure remains to increase horseshoe crab conservation in Massachusetts. At the December 2023 MFAC business meeting, DMF will likely set out a regulatory proposal to be taken out to public hearing this winter.

He closed his comments by discussing an upcoming Shellfish Advisory Panel occurring via Zoom on Monday, November 20th at 3PM. Dan then welcomed any questions from the MFAC.

Bill Amaru asked if NOAA Fisheries had a population estimate for humpback whales. Bob Glenn stated the most recent assessment had the population at about 1,350 individuals.

ACTION ITEMS

Recreational Cod and Haddock Limits

Jared Silva reviewed DMF's final recommendation regarding recreational cod and haddock limits, which would make final the recently enacted emergency measures.

1. Gulf of Maine Cod. An open season of September 1 – October 31 with a 1 fish bag limit and 22" minimum size.
2. Georges Bank Cod. An open season of September 1 – May 31 with a 5-fish bag limit and 23" minimum size.
3. Gulf of Maine Haddock. An open season of April 1 – February 28 with a 15-fish bag limit and 18" minimum size for anglers onboard a for-hire vessel and a 10-fish bag limit and 17" minimum size for all other anglers.

There was no discussion.

The Chairman requested a motion be made to approve the proposed recreational cod and haddock limits. **Mike Pierdinock made a motion to approve the menhaden in-season adjustment, Bill Amaru seconded the motion. Chairman Kane moved the motion to a vote. The motion passed unanimously 4-0-1 with Chairman Kane abstaining.**

In-Season Adjustment to Period I Summer Flounder Limits

Jared Silva presented DMF's recommendation to decrease the 2024 Period I summer flounder limit from 10,000 pounds to 5,000 pounds through an in-season adjustment. This action as being recommended in response to a pending 56% reduction in the state's summer flounder quota for 2024 and 2025. Limited public comment was received and that which was received was from recreational fishing interests supporting the action. However, Jared did have verbal communications with a number of participants and dealers who supported the action. Jared noted this action would address the trip limit in 2024 and DMF would go out to public hearing with a complementary regulatory action to set the trip limit at 5,000 pounds for 2025.

Dan McKiernan briefly discussed the multi-state landing program. This program allows vessels permitted to land summer flounder in Massachusetts and other Atlantic coastal states to possess non-conforming quantities of this species when offloading the lawful limit in Massachusetts. Despite the quota reduction, DMF intended to maintain this program in 2024.

Bill Amaru and Kalil Boghdan opined on the potential environmental conditions that could be affecting the summer flounder resource and fishery.

No further comments were made.

The Chairman requested a motion be made to approve the in-season adjustment. **Kalil Boghdan made a motion to approve the menhaden in-season adjustment, Shelley Edmundson seconded the motion. The motion passed unanimously 4-0-1 with Chairman Kane abstaining.**

ITEMS FOR FUTURE PUBLIC HEARING

Proposals to Amend Shellfish Harvest and Handling Rules

DMF's Acting Shellfish Program lead, Chrissy Petitpas, provided the MFAC with an update regarding proposals to amend DMF's shellfish harvest and handling rules. First, *Vibrio* regulations need to be updated to be consistent with changes to the state's *Vibrio parahaemolyticus* (Vp) Control Plan. Updates include revised definitions of adequate icing and 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.

DMF also intends to amend the regulatory language at 322 CMR 16.00 to make clear that sanitary icing standards apply to all shellstock under all handling circumstances. This should eliminate any remaining confusion on the subject of not using non-sanitary sources of ice (e.g., skating rink ice) for product not bound for market (e.g., overwintering).

Chrissy then discussed the need for more precise identification of the shellfish harvest area on harvester tags. The proposed regulation would require any sub-area designation be included on the harvester tag. This will better conform the state's rule with the National Shellfish Sanitation Program Model Ordinance (Chapter VIII. Control

of Shellfish Harvesting).

Chrissy then moved on to discuss a regulatory proposal to adopt a blanket night closure on shellfish fishing. Current regulations only prohibit night harvest in state managed fisheries and DMF relies on municipal rules to similarly prohibit the activity in town managed fisheries. A state-wide rule would allow for MEP to enforce night closures in all shellfish fisheries. Moreover, it may aid DMF arguments in favor of limiting closures around sewage treatment plant outfalls.

Lastly, Chrissy described codifying an existing permit condition affecting the state's moderately contaminated shellfish fishery that requires harvesters follow DMF's Shellfish Depuration Digging schedule.

Kalil Boghdan asked for clarification regarding how the moderately contaminated shellfish fishery is permitted and managed. Chrissy provided an in-depth response explaining how the fishery occurs and the master and subordinate digger framework. Kalil asked if subordinate diggers were subject to trip limits; DMF staff indicated the fishery was not regulated by trip limits.

Jared Silva indicated these proposals would go out to hearing this winter and final recommendations would be brought back to the MFAC at an early-spring meeting.

Commissioner O'Shea discussed outreach regarding these proposals, specifically the more specific tagging requirements. Chrissy and Jared stated DMF frequently works through local shellfish constables to address compliance and enforcement. Moreover, there is an opportunity for education during the annual municipal permit renewal process.

Kalil Boghdan asked for clarification on who enforces shellfish rules. Chrissy clarified that it is a combination of MEP officers and local shellfish constables.

Proposals to Amend Permit Transfer Rules

Story Reed stated that DMF will proceed to public hearing to potentially amend its limited entry regulated fishery permit endorsement transfer regulations in the following ways:

1. Implement an Immediate Family Member Transfer Exception to allow a latent but otherwise transferable limited entry permit endorsement to be transferred to an immediate family member.
2. Expand the definition of Immediate Family Member to reflect a wider diversity of family structures.
3. Relax the transferability rule for Fluke, Sea Bass, and Tautog endorsements so that they only have to be actively fished in two out of the last five years, rather than the current four out of the last five years.

Shelley Edmundson asked if immediate family was inclusive of nieces or nephews. Story indicated it was not. However, under the current rules a permit can first move between siblings and then to their children to accommodate such a transfer.

Bill Amaru discussed a situation where a divorce has occurred and asked how it would impact permit transfers. Jared and Story stated that this is a comment that can be taken up during the public hearing regarding the proposals. They did not foresee any issues with transfers to children, but transfers to a divorced spouse may be complicated. There was further discussion among Chairman Kane, Bill Amaru, Shelley Edmundson, Dan McKiernan, and Jared Silva regarding potential out-of-the-ordinary permit transfer scenarios.

Update on Proposed Lobster Regulations and Addendum XXVII

At the August 2023 MFAC business meeting, Director McKiernan described a future public hearing proposal to adopt new rules consistent with Addendum XXVII to the Interstate Fishery Management Plan for American Lobster. This included measures to be immediately adopted for 2024 affecting the maximum gauge size and v-notch rules for the Outer Cape Cod Lobster Conservation Management Area and trap tag issuance rules affecting Lobster Conservation Management Areas 1 and 3. Dan also described a five-year schedule to amend gauge sizes and escape vent rules should the addendum's recruitment-based management trigger be fired. The Atlantic States Marine Fisheries Commission (ASMFC) Lobster Board met in October 2023 and the Technical Committee reported that the recruitment-based management trigger had been fired requiring the five-year schedule begin in 2024. Maine successfully argued for implementation to be delayed to coordinate trade implications with Canada and provide gauge makers and harvesters sufficient time to prepare. As a result, all aspects of Addendum XXVII now do not go into effect until January 1, 2025.

DISCUSSION ITEMS

Interstate Fisheries Management Update

Dan McKiernan and Mike Armstrong provided the MFAC with updates pertaining to the October 2023 ASMFC meeting. Discussion focused on Addendum II to the Interstate Fishery Management Plan for Striped Bass, which seeks to reduce removals by 14.5% to achieve the fishing mortality target. The ASMFC will host public hearings on this in November and December 2023 for a final action at their January 2024 meeting. Massachusetts will host a public hearing on December 5 at the Massachusetts Maritime Academy and on December 19 at DMF's Annisquam River Field Station in Gloucester. Dan McKiernan also provided updates on the Jonah crab stock assessment; a failed initiative to suspend the commercial tautog tagging program; as well as actions affecting other jurisdictions pertaining to menhaden and horseshoe crabs. Dan concluded his update by stating Joe Cimino from New Jersey was elected Chairman of the ASMFC for and he was elected Vice-Chair. These appointments are for two year periods (i.e., 2024 and 2025).

Bill Amaru questioned some of the data shown regarding Jonah crabs. DMF biologist Derek Perry, who is Chair of the ASMFC's Jonah Crab Technical Committee, explained some of the complexities related to the fishery dependent data and stated the recent drop in landings may not be reflective of abundance but can rather be attributed to lack of fishing effort driven by market conditions.

Mike Pierdinock asked about the option for mode splits in the striped bass fishery that would allow charter operators to have a higher bag limit, and if approved, whether this decision would be made on a coastwide basis or at the state level. Mike Armstrong stated there will be uniform regulations among the ocean states.

Commissioner O'Shea applauded Director McKiernan on his Vice-Chairmanship and was hopeful he would stay on to become Chair in 2026.

Federal Fisheries Management Council Update

Melanie Griffin provided the MFAC with a brief update on happenings at the New England Fishery Management Council. First, she discussed final actions at the September meeting, including the approval of red crab specifications for Fishing Years 2024 – 2027; approval of the Monkfish Research Set-Aside Working Group's final report recommending program improvements; and the adoption of the Sea Scallop Survey Guiding Principles. She then referred the MFAC to an October 12th email providing additional details from the September Council meeting. Looking ahead, Melanie briefed the Commission on the upcoming December Council agenda, which includes finalizing management priorities for 2024 and various specifications for the next two to three years. Melanie stated she will brief the Commission on outcomes at a future meeting. She welcomed questions from the Commission.

Mike Pierdinock stated he was happy to see that a Recreational Committee/Workgroup is included in Council's recommended 2024 priorities via Inflation Reduction Act funding. This would provide the recreational community the ability to participate in and comment on climate resilient recreational fishery management measures and shared governance of species in our waters due to changing stock distribution.

Quota Managed Species Update

Story Reed provided an update on the state's 2023 commercial quota monitored fisheries.

- Black sea bass closed as of September 13. While there was a quota overage, Massachusetts would not have to pay this back unless there was a coastwide overage. Even if this were to occur, the relative impacts would be nominal given the substantial quota increase for 2024.
- Bluefish quota has reached about 94% utilization.
- To date, the summer flounder fishery had landed about 62.5% of the quota.
- Tautog closed as of October 14th. He stated that there was an overage of about a day of fishing which will need to be paid back next year.

- The menhaden fishery underperformed its quota this year largely because the fish were not available this summer in Massachusetts.

Chairman Kane noted the bluefish quota for calendar year 2024 will be halved.

Commercial Surf Clam Industry Update

Dan McKiernan discussed his recent memo regarding the jurisdictional management issues affecting the commercial surf clam industry, particularly as it relates to the Wetlands Protection Act. Dan noted the issue is very complicated and nuanced, however, the memo does a good job at providing the necessary background and distilling the challenges. He encouraged the MFAC to take the time to familiarize themselves with the issue as it would likely be an area of focus in 2024.

MFAC Law Enforcement Focus Group

Jared Silva provided an overview of the MFAC Law Enforcement Focus Group meeting that occurred on November 7. Jared's summary focused on: (1) the efficacy of the Interstate Wildlife Violators Compact; (2) the sale of seized non-conforming sized fish by the Massachusetts Environmental Police; and (3) enforcement and compliance challenges in the state's commercial menhaden and striped bass fisheries.

OTHER BUSINESS

Commission Member Comments

Kalil Boghdan recommended that fellow Commission members and members of the public take a look at the scientific posters within the foyer of SMAST to learn about the projects that are currently taking place.

Bill Amaru discussed exports of fish from the Commonwealth abroad. He explained that exports typically have a better price per pound and emphasized that seafood marketing within the Commonwealth can help.

Mike Pierdinock asked about potential cuts to recreational scup, summer flounder, and black sea bass limits in 2024. Mike Armstrong acknowledged the Mid-Atlantic Fishery Management Council and Atlantic States Marine Fisheries Commission were addressing reductions in recreational harvest limits for these species in 2024. While cuts to harvest limits for scup and summer flounder will occur, there appears to be some flexibility with black sea bass. Moreover, the impacts of these cuts on Massachusetts will be affected by harvest rates this year, as calculated from MRIP data. Director McKiernan stated DMF would provide an update for the MFAC at the December meeting.

Mike P. then raised pending specifications at the Mid-Atlantic Fishery Management Council to set new commercial mackerel limits. Mike P. was concerned this action may negatively impact the commercial jig fishery in Massachusetts. Melanie Griffin stated it was a complicated management proposal, however, DMF was preparing comments for the Council's consideration that would address his concerns.

PUBLIC COMMENTS

Phil Coates urged DMF and the MFAC to consider using the recently established control date to limit entry into the fishery noting his longstanding petition to move forward on this issue.

Phil Michaud discussed the Massachusetts inshore dragger fleet and stated that they are facing strong economic headwinds and need support from the Commonwealth. Phil advocated for a number of potential management changes to provide the mobile gear fleet with more access to fishing opportunities. Jared Silva stated he would follow up with Phil and work to schedule a wintertime meeting with the fleet to discuss these issues.

ADJOURNMENT

Chairman Ray Kane requested a motion to adjourn the November 17 MFAC business meeting. **Shelley Edmundson made a motion to adjourn the meeting. The motion was seconded by Kalil Boghdan. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- November 17, 2023 MFAC Agenda
- September 19, 2023 Draft MFAC Minutes
- Final Recommendation on Recreational Cod and Haddock Rules
- Final Recommendation on Period I Summer Flounder In-season Adjustment
- Public Hearing Proposal on Shellfish Harvest and Handling
- Public Hearing Proposal on Permitting
- Public Hearing Proposal on Lobster Addendum XXVII
- 2023 ASMFC Annual Fall Meeting Summary
- September 2023 NEFMC Summary
- Surf Clam Memo on Updating Management and Interactions with WPA
- Law Enforcement Focus Group Meeting Summary

UPCOMING MEETINGS

December 19, 2023
via Zoom