



**MARINE FISHERIES ADVISORY COMMISSION  
BUSINESS MEETING AGENDA**

**8:30 AM**

**Tuesday, October 18, 2022**

**Via Zoom**

**Login: <https://bit.ly/3UWdiOC>**

**Call In: 1-646-931-3860**

**Webinar ID: 836-5178-0047**

**Passcode: 978467**

1. Introductions, Announcements and Review of Agenda
2. Review and Approval of Meeting Minutes
  - a. August 18, 2022 Draft Business Meeting Minutes
  - b. September 13, 2022 Draft Business Meeting Minutes
3. Comments
  - a. Chairman
  - b. Commissioner
  - c. Law Enforcement
  - d. Director
4. Discussion Items
  - a. 2022 Quota Managed Fishery Performance Update
  - b. Protected Species Management Update
  - c. Interstate Fisheries Management Update
  - d. Federal Fisheries Management Update
5. Other Business
  - a. Upcoming State Fisheries Management Meeting and Hearing Schedule
  - b. Commission Member Comments
  - c. Public Comment
6. Adjourn

**Future Meeting Dates**

November 22, 2022  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA 01581

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.

## **MARINE FISHERIES ADVISORY COMMISSION**

**August 18, 2022**

**Via Zoom**

### **In attendance:**

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

*Division of Marine Fisheries:* Daniel McKiernan, Director; Kevin Creighton, CFO; Story Reed; Bob Glenn; Jared Silva; Nichola Meserve; Melanie Griffin; Julia Kaplan; Jeff Kennedy; Anna Webb; Nick Buchan; and Scott Schaffer

*Department of Fish and Game:* Ron Amidon, Commissioner

*Massachusetts Environmental Police:* Lt. Matt Bass

*Members of the Public:* Phil Coates, Heather Haggerty, John Moran, and Beth Casoni

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the August 18, 2022 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW OF AUGUST 18, 2022 DRAFT BUSINESS AGENDA**

No amendments were made to the August 18, 2022 MFAC agenda.

## **REVIEW AND APPROVAL OF JUNE 16, 2022 DRAFT BUSINESS MEETING MINUTES**

Chairman Kane asked for comments or edits to the June 16, 2022 MFAC draft business meeting minutes. No comments were made. Chairman Kane sought a motion to approve the meeting minutes.

**Tim Brady made the motion to approve the June 16, 2022 business meeting minutes as provided. Shelley Edmundson seconded the motion. The motion passed unanimously 7-0 with Bill Doyle abstaining.**

## **CHAIRMAN'S COMMENTS**

Chairman Kane thanked everyone for their attendance at the 60<sup>th</sup> anniversary celebration of the MFAC in New Bedford.

## **COMMISSIONER'S COMMENTS**

Commissioner Amidon discussed his work to have the MFAC members reappointed. He asked Commission members to complete all required paperwork and background checks in a timely manner to ensure reappointment.

## **LAW ENFORCEMENT COMMENTS**

Lt. Matthew Bass provided comments for the Massachusetts Environmental Police (MEP). On fisheries enforcement, there were minor violations during the commercial striped bass season. MEP were also seasonally focused on boating safety, particularly concerning the aggregation of humpback whales and striped bass fishing activity off Plymouth.

Lt. Bass then moved on to discuss personnel. Three new officers started field training this summer. Chairman Kane asked if these officers were adding to the ranks or backfilling vacant positions. Lt. Bass stated they were backfilling vacancies.

## **DIRECTOR'S COMMENTS**

Director Dan McKiernan followed up on Lt' Bass' comments regarding the aggregation of humpback whales off Plymouth. He noted whales and striped bass had been aggregated off Plymouth feeding on a dense school of menhaden. In turn, this produced a lot of boating activity in the area and presented public safety and whale safety issues.

Mark Amorello was surprised to receive the 2022 Belding Award. He appreciated receiving the award and enjoyed the award ceremony and celebration.

On the state budget, Dan discussed earmarks for shellfish propagation, sediment removal, a winter flounder study, white shark tags and transmitters, marsh restoration and revitalization, and funding for dual lobster permit holders to offset costs associated with the required buoy line marking schemes.

Dan welcomed questions from the commission.

Sooky asked if monies were appropriated to fund the Cape Cod Bay dissolved oxygen study. Kevin Creighton stated there is earmarked funding for this year.

Bill Amaru supported the funding to better understand winter flounder genomics, as this may in turn better inform time-of-year harbor dredging restrictions to safeguard winter flounder spawning.

Dan then discussed some federal funding issues. This included disaster relief for Atlantic sea herring disaster. The monies were allocated and the states needed to coordinate distribution efforts. Congress also appropriated funding to help fishermen

cover costs related to gear modifications to protect right whales and electronic tracking devices.

Dan moved on to discuss the challenges regarding the 2022 horseshoe crab fishery. Among other things, this included increased demand for crabs from the biomedical sector and supply and demand in the bait fishery. DMF had scheduled meetings with the biomedical firms and was working to schedule meetings with bait dealers, harvesters, and conservation interests early this fall. Then DMF would hold broader meetings later this year to discuss potential management changes moving forward.

Dan briefly discussed the 2022 menhaden fishery. He noted the ASMFC was considering an addendum to the FMP for 2023, which may affect the management of the fishery moving forward. DMF intended to host a public hearing for the ASMFC addendum and an industry scoping meeting in September.

### **ITEMS FOR FUTURE PUBLIC HEARING**

Jared Silva provided a brief presentation to the commission regarding upcoming items for public hearings. Prior to the next commission meeting, there will be an 8AM public hearing to finalize the recreational cod and haddock limits to match federal limits for this fishing year. Jared then discussed a potential fall omnibus public hearing that will take place in October.

#### ***Vessel Trackers for Federal Lobster Permit Holders***

Director McKiernan reminded the MFAC that the ASMFC recently passed addendums to the Jonah crab and lobster FMPs requiring the installation of electronic trackers on vessels associated with commercial lobster and Jonah crab trap operations with federal lobster trap allocations. This measure will enhance resolution of spatial data collected from this fishery to better understand the industry's offshore footprint. This was of critical importance when considering emerging challenges related to marine spatial planning (e.g., development and siting of offshore wind energy, aquaculture, and marine protected areas), stock assessment and stock exploitation estimates, and risk management for protected species. Given these pressing spatial data needs, DMF was proposing to adopt this electronic tracking requirement for May 1, 2023 to begin collecting the data this upcoming season. This is earlier than the mandatory January 1, 2024 implementation date established in the FMP.

Congress has appropriated funding to the industry to cover the costs of the installation of the electronic tracking device and potentially two-to-three years of data service. DMF was working with coastal states and the ASMFC to develop a program to distribute this funding to affected fishers.

#### ***Whelk Gauge Schedule Petition***

Dan described a petition from Heather Haggerty of Big G Seafood (a New Bedford based whelk processor) and the Massachusetts Conch Association. The petition

requested DMF amend the schedule to increase the whelk gauge by: delaying the next gauge change from 2023 to 2024; and having future increases occur every three years rather than biennially. The petitioners argued this was necessary to allow for additional recoupment into the fishery following gauge increase to address severe declines in whelk fishing effort and landings in Massachusetts that jeopardize shoreside infrastructure.

Dan invited Heather Haggerty to speak on her petition. Chairman Kane indicated he would afford Heather several minutes to speak to the petition.

Heather described decreases in local fishing effort and increased reliance on product from out-of-state for processing. The petitioners felt an additional year would not only allow for additional recoupment but would provide an opportunity for additional scientific investigations into the state's whelk resource and discussions about how to better manage the fishery.

Chairman Kane asked if any members of the public wanted to speak in opposition to the petition. No comments were made. The Chairman opened the discussion up to the MFAC.

Lou Williams supported the petition. He voted in opposition to the original gauge increase schedule approved in 2019 because he expected it would negatively impact the industry in the manner described by the petition.

Mike P. asked about how warming waters may affect growth and recoupment into the fishery. Bob Glenn explained that marine snail species are slow growing and sedentary. As such, they are prone to localized depletion, in this is a trend seen in marine snail fisheries globally. Massachusetts is the northeast extent of the species range. As such, whelks reach maturity more slowly and at a larger size here, as compared to areas to our south and west. With these factors in mind, Massachusetts' whelk population is very susceptible to overfishing without spawning stock biomass protections, which is what we have observed over the past 10-20 years. The current 3 1/8" gauge size does not protect any female spawners. Based on DMF's size-at-maturity work, the gauge width will not protect any female spawners until it is increased to 3 3/8"; this gauge width will not occur until 2025 under the current schedule or 2027 under the petitioned schedule. With fishery dependent data showing catch is truncated around the gauge size, harvest is almost exclusively on juvenile animals. Bob opined that even if warming local waters influenced size-at-maturity he would expect to see these changes occur over a long time-series and generations of animals. Moreover, if this were to occur, he would not expect to see female spawners at the current minimum gauge width.

Shelley Edmundson was concerned about the potential impacts the current size-at-harvest management strategy may have on male-to-female population ratios. With females growing larger than males, as the gauge size increases the expectation is the harvest will become increasingly dominated by female animals. Shelley advocated for

more research into how skewing sex ratios may affect the resource and fishery moving forward. Ray Kane and Shelley then discussed her ongoing whelk research.

Kalil Boghdan noted DMF's stock assessment demonstrated the stock was overfished with overfishing occurring and questioned whether the decline in fishery performance was also related to the status of poor status of the resource.

Mike Pierdinock asked about natural predation on whelks. Bob Glenn stated black sea bass and tautog are whelks primary natural predators in Massachusetts. Bob added that larger the whelk are generally less susceptible to predation.

Heather Haggerty stated that fishermen are claiming their pots are coming up full of sub-legal sized whelk. Bob Glenn explained it is typical of a heavily exploited stock, because catch becomes truncated around the minimum size. This is because larger animals are caught and removed from the population once they reach size-at-harvest, leaving only those at or below the legal size in the catch. Bob was concerned about this observation in the whelk fishery because exploitation is occurring before the animal has had the ability to reproduce and few animals are reaching sexual maturity before harvest is occurring.

Heather then asked about specific sex-ratio data. Bob Glenn stated he did not have this data on hand. However, his staff could query it and he could reach out to Heather on the subject.

#### *Protected Species Regulatory Amendments and Clarifications*

Dan reminded the MFAC that when it recently enacted its buoy line modification regulations, DMF sought to enact rules in advance of the federal Atlantic Large Whale Take Reduction Plan to advance the state's Incidental Take Permit Application. As such, DMF retained the requirement that commercial trap fishers rig their buoy lines with a 600-pound weak link at the buoy. The weak link requirement was subsequently removed from the federal rule with the federal implementation of the weak buoy line requirements. However, the weak link rule remains in state regulation. Accordingly, DMF sought to similarly eliminate this requirement for the state's commercial trap fishery. However, it would be retained for the recreational trap fishery, as this gear is not subject to the same weak buoy line requirements as the commercial fishery.

Jared and Bob then highlighted additional proposed amendments and clarifications.

Jared discussed a proposal that would amend the regulations to have the recreational lobster closure subject to the same extension and recission criteria as the other regulated fixed gear closures. This will ensure that future actions to adjust the start of the open season apply uniformly to all affected fixed gear fisheries.

Bob then highlighted an additional aspect of this proposal meant to simplify weak contrivance definitions, adopt a standard definition for buoy line that would accommodate it, and eliminate the redundant language in the weak contrivance rule.

Sooky Sawyer expressed concern this may result in fishermen having to add new modifications to their gear. Bob Glenn stated the intent was not to change how the rule applied (i.e., the same number of contrivances would be required) but to make the application of the rule more simple.

Jared also highlighted some housekeeping proposals that reorganize where the gear marking rules lie in the CMR.

#### *Area 1A (Gloucester/Rockport) Mobile Gear Open Season*

Jared Silva stated DMF was proposing to extend the wintertime exemption allowing mobile gear fishing in Area 1A (Gloucester/Rockport). The current exemption is February 1 – March 31; the proposed exemption is February 1 – May 15. This exemption will provide additional access to potentially exploitable inshore sea scallop resource for CAP permit holders. It is unlikely to result in additional targeted groundfish fishing effort, landings, and bycatch because of overlapping groundfish mortality closures, seasonal availability, and gear modification requirements. Jared explained the area was seasonally closed since the 1930s to avoid conflicts with fixed gear fisheries. Now with the February 1 – May 15 trap gear closure in effect, the interest in preventing mobile gear fishing in this area in April and early May was diminished.

Lou Williams suggested the proposal be amended to seasonally open the entire North Shore area to mobile gear fishing. Lou reasoned that as the historic purpose of this mobile gear closure was to prevent gear conflicts with trap fishers, and trap gear is currently prohibited in the area during the late winter and early spring months, there was no reason to maintain the closure. Bill Amaru supported Lou's request to amend the proposal.

Director McKiernan did not support amending his proposal. Dan felt it was better to move forward with a proposal to expand the temporal extent of an existing open mobile gear fishing area than to do this while also proposing to open an area that has been closed to mobile gear fishing for about 100-years. He reminded the MFAC that DMF previously accepted public comment on a pilot program to open up an area off Nahant to wintertime sea scallop dredging and there was a tremendous amount of opposition to the proposal from a variety of constituents.

Sooky Sawyer stated the end date should be pushed up to May 1 due to the possibility of opening the lobster fishery sooner than May 15. Lou supported Sooky's interest in ending mobile gear fishing prior to the start of the trap fishing season.

Mike Pierdinock asked about potential bycatch and discards in this fishery. Jared Silva stated DMF did not have observer data for this specific state waters fishery, but could potentially query federal observer data for NGOM fishery occurring in adjacent federal

waters. That said, given twine top requirements, Jared expected the gadiform bycatch would be limited and the primary bycatch would be flounders. Given the time-of-year, the winter flounder resource may be settled into inshore spawning habitats where dredging is prohibited from occurring. Lou Williams stated he could not recall catching a codfish in his scallop dredge and stated flounders are the principal finfish bycatch.

Jared added the overall ACL for Gulf of Maine winter flounder has been underutilized in recent years. Accordingly, even if the state-waters were to exceed its state-waters set-aside, which it has not recently done, there would be a substantial buffer preventing the triggering of accountability measures. Moreover, given overlapping seasonal groundfish, winter flounder bycatch at this time of year would likely have to be discarded.

#### *Recreational Tautog Trophy Fish*

Dan reviewed the proposal to adopt a 21" maximum size for recreational tautog and allow anglers to retain one trophy fish (i.e., 21" or greater) per calendar day. This would make Massachusetts recreational fishing regulations match Rhode Island's consistent with the theme of the FMP. Having complementary rules across these jurisdictions may enhance on the water enforcement and restrict any eastward movement of recreational effort targeting larger fish in Massachusetts. However, Dan acknowledged the frequency of catch of trophy fish in MA is likely low and the expected impact of this proposal may be nominal. A DMF rod and reel study showed only 3% of the tautog caught were greater than 21"; MRIP data showed similar results (but was a less reliable metric given potential sample size issues).

Mike Pierdinock stated that the tautog fishery is not overfished and overfishing is not occurring. Accordingly, he was curious about the impetus for the proposal. Jared stated he spoke to his colleagues in Rhode Island. Their decision to implement this rule for 2022 was not driven by science but by stakeholder interest in preventing an eastward shift in effort to target large fish in Rhode Island waters.

### **DISCUSSION ITEMS**

#### *Updates Concerning the Atlantic States Marine Fisheries Commission*

Nichola Meserve provided an update on recent happenings at the ASMFC.

The 2022 Atlantic herring stock assessment maintained the stock status (previously assessed in 2020) as overfished but overfishing is not occurring. Recent fishing quotas, catch and effort are low. There was some discussion about the 2023 – 2025 specifications, quotas, and projection modeling. Lastly, Maine's portside sampling program will no longer receive ACCSP funds and thus alternative sources, including direct multi-state funding, is being discussed.

Director McKiernan provided an update on the happenings at the American Lobster Board. Draft Addendum XXVII was initiated to increase the biological resiliency of the GOM/GBK stock. However, given uncertainty regarding how NOAA Fisheries may address the right whale conservation issue, and the potential for new effort controls in



the lobster industry, the addendum was shelved. On the subject of right whale conservation, Dan also raised NOAA's proposed vessel speed limit rules and the draft Roadmap to Ropeless Fishing.

Mike Pierdinock and Tim Brady expressed strong objections to NOAA's proposed vessel speed limit rules and the impact this would have on all maritime industries coastwide. Kalil Boghdan was curious as to why NOAA did not propose more surgical controls. Bob Glenn provided some background on NOAA's proposals and explained the limitations of monitoring right whales in real time.

Nichola Meserve provided an update on happenings at the Striped Bass Board. Amendment 7 provided flexibility to the Board to immediately address striped bass conservation without initiating an addendum or amendment process should the 2022 stock assessment determine it is necessary. The Board was evaluating several tools to achieve potential fishing mortality reductions. Additionally, there was interest in a draft addendum to allow for state-to-state quota transfers, which would require additional Board review prior to being approved for public comment.

Kalil Boghdan discussed the potential need for additional conservation following the release of the 2022 stock assessment. He was concerned states would be unable to implement additional conservation measures for 2023. His perception is that many striped bass fishers are frustrated by perceived foot dragging at the Striped Bass Board and lack of political will to address striped bass conservation during the Amendment 7 process. Many believe the Board punted its management responsibility when determining to stay more substantial conservation measures until the 2022 assessment was completed. Even with the Amendment's pathway for expedited rule making, Kalil was worried states administrative procedures would prevent them from expediently implementing measures for 2022. If conservation is needed, this would significantly frustrate a large segment of the striped bass community and may become a tipping point with the ASFMC management process.

Ray Kane agreed with Kalil's assessment that it was critical for states to timely respond to the stock assessment and implement measures for the upcoming year, if necessary.

Mike Pierdinock asked when the Maryland juvenile index will be available. Nichola stated it starts in mid-July. Based on preliminary results from the first two weeks, she expected it would again show a weak year class. Mike P. asked that the index be forwarded to him once available. Mike P. then questioned to what extent environmental factors may be leading other spawning areas (e.g., Hudson River) to becoming more productive and potential replacing the Chesapeake Bay.

Nichola moved on to discuss menhaden management. She reviewed the 2022 stock assessment update, which showed the stock was not overfished with overfishing not occurring. She then discussed Draft Addendum 1 to the FMP, which was approved for public comment. DMF would host a public hearing on this addendum in September. The addendum addresses state-by-state quota allocations; the episodic event set-aside

(EESA); and the incidental catch and small-scale fishery provision. Changes to the EESA and incidental catch and small-scale fishery rules may change how DMF manages its state quota, as it may limit the ability for the fishery to continue to operate at an industrial scale once the initial state quota allocation is taken.

Lastly, Nichola discussed the dual MAFMC-ASMFC managed species—bluefish, summer flounder, scup, and black sea bass. The 2023 specifications were recently updated resulting in changes from initial commercial quotas and recreational harvest limits in response to accountability measures and the Commercial-Recreational Allocation Amendment. Nichola then went on to remind the MFAC that the recently enacted Harvest Control Rule will go into effect for 2023 and will impact how recreational harvest limits are set. Additionally, the MAFMC was conducting a management strategy evaluation (MSE) for summer flounder which evaluated stakeholder preferences to potential management actions to improve stakeholder satisfaction in the management of recreational summer flounder.

#### *Updates Concerning Federal Fisheries Management*

Melanie Griffin updated the MFAC on federal fishery management issues, particularly at the NEFMC.

Melanie then provided a high-level summary of the recent June NEFMC meeting in Portland, ME and an overview of issues coming before the Council at its September meeting in Gloucester. For Atlantic herring, the 2023 – 2025 specifications were discussed, as well as concerns regarding continued development of the Georges Bank spawning protection measures in Framework 7. For multi-species groundfish, the Council is focused on Framework 65, which addresses the 2023 – 2025 specifications, rebuilding cod and Southern New England winter flounder, and ABC control rule provisions. On sea scallops, the NEFMC will be deciding whether to pursue development of a limited access leasing program, as well as developing Framework 36 to set specifications for 2023 and 2024. For skates and monkfish, the update was on pending annual monitoring reports and Framework 13 to set the 2023 – 2025 specifications. The NEFMC continues to work on the development of Eco-system Based Management and issues relative to habitat management areas, dedicated research areas, as well as offshore wind and aquaculture developments. At the upcoming September NEFMC meeting, Eric Hansen will replace Dr. Michael Sissenwine as a Massachusetts delegate. Dr. Sissenwine has reached his term limit for the NEFMC.

Bill Amaru stated fishermen are concerned about the limited access scallop leasing proposal affecting the general category vessels. Melanie stated these concerns were heard during the initial public scoping process. The NEFMC now had to decide whether or not it would pursue a management action.

#### *Protected Species Updates*

Bob Glenn stated DMF had completed initial draft of its Habitat Conservation Plan, which is the foundation of the state's Incidental Take Permit application. DMF would be

submitting this draft plan to NOAA Fisheries in the coming weeks. Bob expected NOAA's review process to be length and iterative.

Bob then discussed the recent federal court decision in the Center for Biological Diversity v. NOAA Fisheries. The judge found NOAA Fisheries violated the Endangered Species Act and failed to satisfy the Marine Mammal Protection Act's negligible impact requirement for setting the authorized level of take in its Incidental Take Statement. Consequentially, the 2021 Biological Opinion for the North Atlantic Right Whale and the recent federal Atlantic Large Whale Take Reduction Plan regulations were invalidated. The court ordered parties to submit a joint schedule on remedies and the plaintiffs requested NOAA Fisheries submit a new final rule that meets potential biological removal within six months. As a result of this, there is great uncertainty regarding the future management of the lobster trap fishery and how this may impact Massachusetts.

Lastly, Bob highlighted an upcoming grant program to provide economic assistance to the commercial trap fishers to help comply with the gear modification requirements to protect right whales. This included funding for weak rope, weak contrivances, and gear marking mechanisms. Priority will be given to dual state-federal permit holders who likely need to configure two sets of buoy lines to satisfy different buoy line marking requirements for state and federal waters.

Sooky Sawyer asked if the recent federal court decision would impact NOAA's listing of the Massachusetts' mixed species trap fishery as a Category 2 fishery on its 2022 List of Fisheries designation. Bob felt the listing was well justified. However, at this point, he was uncertain as to how NOAA Fisheries would achieve additional risk mitigation, how that may impact state-waters fisheries, and to what extent the Category 2 designation would insulate Massachusetts.

#### *Shellfish Program Updates*

Jeff Kennedy provided the MFAC with an update on issues affecting DMF's Shellfish Program. The focus of the update was the ongoing annual FDA PEER evaluation. This year's PEER focused on growing areas impacted by wastewater treatment plants in Buzzards Bay and growing areas containing mooring fields in Chatham.

On *Vp.*, Jeff stated that we were midway through the 2022 *Vp.* Control Season. At present there have only been single source illnesses and no outbreaks.

SMAST completed their first draft of the Scituate wastewater treatment plant outflow model. DMF was reviewing the draft and will be requesting some clarification on certain items related to the model. I. DMF was hopeful to apply this model to those wastewater treatment plants around Buzzards Bay.

It has been an active year for biotoxin closures. The Nauset system was closed for about two months for PSP, and then closed again for DSP. There have also been PSP closures along the North and South Shores. However, the bloom waned over the summer with toxicity becoming diminished enough to reopen areas.

Bill Amaru asked if there was an explanation for the prolonged presence of DSP in the Nauset System. Jeff was uncertain at this time. Bill then opined that lawn chemicals may be contributing to extended presence of biotoxin producing algal blooms. to what extent these blooms may be .

#### *Quota Managed Species Update*

Story Reed and Anna Webb presented on the performance of 2022 quota managed fisheries.

- Striped Bass. The fishery was closed on August 5 after landing 100% of the annual quota. There was a slight overage this year which will come off of next years' quota. Compared to the previous two-years, the quota was landed much sooner, as the fishery closed on October 1 last year and did not close in 2020. There was a slight overage this year which will come off of next years' quota.
- Bluefish. The state had landed about 50% of its annual quota. DMF did not anticipate needing to acquire quota transfers for other states to keep the commercial fishery open for the remainder of the season.
- Black Sea Bass. About one-third of the quota was a landed so far this calendar year. Quota utilization tracks similarly to how it has in prior years despite liberalizations to the fishing limits and season. DMF anticipated the quota would be underutilized this year.
- Summer Flounder. Similar to black sea bass, about one-third of the quota was landed so far this calendar year. Despite liberalizations to fishing seasons and limits, DMF anticipated the quota would again be underutilized in 2022.
- Horseshoe Crabs. About 50% of the horseshoe crab quota was landed this year. Landings have slowed in recent weeks and are tracking below recent years. This may be related to changes in effort in the fluke trawl fishery and fishermen shifting effort from bait fishery for horseshoe crabs to the biomedical fishery for horseshoe crabs.
- Menhaden. The state's initial quota was taken during the period of June 1 – June 20. Massachusetts then opted into the EESA fishery, which lasted until July 7. Following the EESA fishery, DMF obtained quota transfers from other states allowing he fishery to remain open from July 11 through July 27. The directed fishery closed on July 28 and commercial fishing effort has continued under the incidental catch and small-scale fishery allowance.

Mike Pierdinock asked about the ex-vessel value for black sea bass. Anna Webb stated there has not been a significant change in price in recent years and this year's ex-vessel value tracked with recent years.

Mike P. then asked about gear type specific contributions to this year's landings for black sea bass and summer flounder. Anna stated this data was not yet available. DMF depends on harvester reports to obtain data on things like gear type, as it is more accurately reported by the harvester. Harvester reports are submitted monthly and these data are typically not quality controlled and usable until the following spring.

Kalil Boghdan asked about the relationship between stock health and fishery performance. Bob Glenn then provided an in-depth answer. He explained that quotas are developed using stock assessment information and catch data is factored into stock assessments. However, fishery performance, while certainly affected by stock health, is also influenced by local availability, fishing effort, environmental factors, and regulatory controls. Kalil expressed concern that the performance of this year's striped bass fishery may undermine stock assessment findings if the upcoming assessment demonstrates additional conservation is needed.

Mike P. was concerned about how environmental factors may be influencing opinions and science related to striped bass abundance. He opined that in recent years the biomass of striped bass seemingly shifted offshore to colder and deeper waters. As a result, lack of inshore availability could be misconstrued as decreasing overall abundance. He was also concerned about how a shift in spatial availability coupled with the EEZ prohibition on striped bass may influence the upcoming stock assessment.

#### *Recent Adjudicatory Proceedings*

Jared Silva provided the commission with an administrative law program update. He focused on both changes to personnel and roles in the agency's Administrative Law Program, as well as results from adjudicatory proceedings initiated since 2020.

Sooky Sawyer expressed frustrations regarding the timeline for resolving administrative hearings and fishermen being able to continue to fish while facing an administrative proceeding. Jared Silva recognized these frustrations but underscored the critical need to provide parties with due process before sanctioning their permits and affecting their livelihood.

### **OTHER BUSINESS**

#### *Commission Member Comments*

Tim Brady discussed a massive school of menhaden off Plymouth. He then discussed the status of the ocean pout resource in Cape Cod Bay and potential for research opportunities that may allow for some recreational retention.

Sooky Sawyer stated he was being targeted by a litigious conservationist who was suing him as both a MFAC member and the President of the MLA. As a MFAC member, he was frustrated by the lack legal assistance from the state. Dan McKiernan stated he would speak to DFG's legal staff on the subject and reach out to Sooky directly.

Kalil Boghdan stated he has offered to help Ben Gahagan count the alewife coming through Alewife Brook. He commended Ben for his work on monitoring the alewife.

Shelley Edmundson thanked Lt. Bass and his fellow MEP officers for attending the waterfront festival and the meet the fleet event.

Bill Amaru stated fishing has been good this summer.

Mike Pierdinock stated the hook and line mackerel fleet has been providing samples which are being forwarded to the NE Science Center for DNA testing. He concluded his comments by highlighting some areas where he has seen mackerel.

Ray Kane thanked everyone for their participation and asked Jared about an in-person meeting on the Vineyard. Jared stated the September meeting will be virtual due to the public hearing being held beforehand. The location of the October meeting remains to be determined.

### **PUBLIC COMMENTS**

Beth Casoni expressed concerns regarding the lobster market. She had received calls from fishermen stating their dealers may not be accepting their catch this fall. Beth also asked for a copy of DMF's Habitat Conservation Plan once it is submitted to NOAA Fisheries. Lastly, she stated that MLA received a \$1M grant to develop fully formed weak rope with a trace ribbon in it. She was hopeful this may make it easier for Massachusetts' trap fishermen to comply with gear modification and marking requirements moving forward.

Phil Coates discussed the abundance of menhaden off of Plymouth as well as striped bass fishing and some mishandling of fish he witnessed.

Heather Haggerty expressed concern over raising the bait limit for horseshoe crabs given limited demand. Dan McKiernan noted he was trying to create equity between the bait and the biomedical limits to prevent user group conflicts while still meeting end user demands. He noted that if the bait market were to dry up then dealers could inform fishermen that they would not be accepting full limits.

Heather then asked about potential industry meetings for horseshoe crabs. Dan stated staff were meeting with a variety of horseshoe crab stakeholders and he expected to have an industry meeting during the early fall. fa

### **ADJOURNMENT**

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

## **MEETING DOCUMENTS**

- August 2022 MFAC Agenda
- June 2022 Draft Business Meeting Minutes
- Presentation on Upcoming Public Hearings
- Memo on Requirements for Electronic Tracking Devices in Lobster Fishery
- Memo on Petition to Adjust Schedule to Increase Whelk Gauge Width
- Memo on Proposal to Update and Refine Protected Species Regulations
- Memo on Proposal to Extend Mobile Gear Exemption Area 1A
- Memo on Recreational Tautog Trophy Fish Proposal
- Presentation on Updates from the ASMFC
- ASMFC Summer Meeting Summary
- Presentation on Updates from the NEFMC
- Presentation on Protected Species Updates
- Presentation on Performance of Quota Monitored Fisheries
- Presentation Administrative Law Program
- DMF Comment Letter on Hudson Canyon MPA

## **UPCOMING MEETINGS**

**September 13, 2022**  
**Via Zoom**

**October 18, 2022**  
**TBD**

## **MARINE FISHERIES ADVISORY COMMISSION**

**September 13, 2022**

**Via Zoom**

### **In attendance:**

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

*Division of Marine Fisheries:* Daniel McKiernan, Director; Mike Armstrong, Assistant Director; Kevin Creighton, CFO; Story Reed; Bob Glenn; Jared Silva; Nichola Meserve; Melanie Griffin; Kelly Whitmore; Brad Chase; Anna Webb; Julia Kaplan; Stephanie Cunningham; Kerry Allard; Nick Buchan; Gary Nelson; Scott Schaffer; and Jeff Kennedy

*Department of Fish and Game:* Ron Amidon, Commissioner

*Massachusetts Environmental Police:* Lt. Matt Bass

*Members of the Public:* Beth Casoni; and Lizzie Roche

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the September 13, 2022 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW OF SEPTEMBER 16, 2022 DRAFT BUSINESS AGENDA**

No changes to the agenda were requested.

## **REVIEW AND APPROVAL OF AUGUST 18, 2022 DRAFT BUSINESS MEETING MINUTES**

Chairman Kane asked for comments or edits regarding the August 18, 2022 MFAC draft business meeting minutes.

Kalil Boghdan requested changes to a paragraph on page eight of the minutes. He stated he emailed Jared with the requested changes.

Chairman Kane questioned the wording regarding the status of the herring fishery listed on the second paragraph of the second page. Jared stated that he will talk with Melanie Griffin and revise the minutes accordingly.

There was then some discussion regarding the approval of amended meeting minutes. Mike P. stated there should be no vote on the amended meeting minutes until the specific changes proposed by Kalil and Ray are seen by the MFAC. Jared suggested no action be taken. Instead, Jared would incorporate these potential edits into the draft



August business meeting minutes and recirculate them to the MFAC for their review and approval at the October business meeting. There were no objections to this approach.

### **CHAIRMAN'S COMMENTS**

Chairman Kane thanked Ron Amidon for expediting the re-appointment of commission members. He reminded commission members of a required ethics webinar and asked that they complete the training if they have not done so already.

### **COMMISSIONER'S COMMENTS**

Commissioner Amidon stated he is pleased to see the re-appointment process coming to completion. He stated he went to Hingham Harbor Day for the re-opening of the Hingham Harbor Boat Ramp and commended Ross Kessler and Doug Cameron for their work on the project. Commissioner Amidon welcomed any questions.

### **LAW ENFORCEMENT COMMENTS**

Lt. Matthew Bass provided comments for the Massachusetts Environmental Police (MEP). He highlighted a few minor fisheries enforcement issues along the North Shore, south of the Cape, and in Chatham.

### **DIRECTOR'S COMMENTS**

Director Dan McKiernan started his comments noting that former Director Pierce sends his regards.

Dan then discussed fisheries aid programs. DMF continued to work with the other states and the ASMFC to address the federal disaster relief funds for the sea herring fishery. Massachusetts was allocated \$500,000 to help trap fishers comply with new right whale conservation regulations, including offsetting the cost of materials to mark buoy lines for dual state and federal permit holders. Dan added that DMF will be working with the MA Lobster Foundation to help distribute the funds.

Director McKiernan moved on to highlight several updates concerning ongoing federal litigation surrounding the right whale and interactions with fixed fishing gear. Additionally, DMF submitted its draft Incidental Take Permit application to NOAA Fisheries for their review; the review process is iterative and may take more than a year to complete.

The Monterey Bay Aquarium released its Seafood Watch Assessment, which red-listed American lobster due to potential interactions with right whales. The red-listing means they are recommend consumers choose other seafood options. Dan was frustrated and concerned by this action. He noted that prior the release of the assessment, DMF actively advocated for the organization to not take this action based on the state's aggressive conservation program. DMF was now considering appropriate responses.

DMF established a task force to develop a program to improve and modernize how the state handles and disposes of abandoned fishing gear and fishing gear debris. The Task Force consists of DMF staff (Bob Glenn, Jared Silva, David Chosid, and Julia Kaplan); DFG's Office of General Counsel; two MFAC members (Ray Kane and Sooky Sawyer); the Executive Director of the Massachusetts Lobster Association (Beth Casoni); and personnel from the Center From Coastal Studies who do derelict gear work (Laura Ludwig). Dan then mentioned that Julia Kaplan, as part of her master's program, had drafted a white paper on the subject, which provided a foundation for the task force to work from.

The menhaden fishery will likely be facing some changes to its management system next year. The ASMFC will be voting on an addendum at the November meeting affecting how state quotas are allocated. There will be a public hearing tomorrow night in Gloucester regarding the addendum and an industry meeting will be held directly after the public hearing. Dan welcomed any questions from the commission.

Bill Amaru thanked Dan for his thorough comments and expressed frustration over the Seafood Watch Assessment.

### **ACTION ITEMS**

#### Recreational Fishing Limits for Cod and Haddock

DMF held a public hearing on this recommendation immediately prior to this MFAC business meeting. Jared Silva briefed the MFAC on the final recommendations. In summary, the final recommendation was to finalize the recreational fishing limits for Gulf of Maine cod and haddock and Georges Bank cod that were implemented on an emergency basis earlier this summer and are set to expire this fall. These recommended limits are also identical to those enacted by NOAA Fisheries. The recommendations were as follows:

- Georges Bank Cod. Open season of August 1 – April 30 with a 22" minimum size and 28" maximum size and 5-fish per angler bag limit.
- Gulf of Maine Cod. Open season of September 1 – October 7 and April 1 – April 14 with a 22" minimum size and a 1-fish per angler bag limit.
- Gulf of Maine Haddock. Open season of April 1 – February 28 with a 17" minimum size and 20-fish per angler bag limit.

Mike Pierdinock thanked DMF for the work to improve the data used in the stock assessments for these species. However, he noted some recreational anglers remain frustrated by restrictive federal limits for recreational cod. Mike P., Bill Amaru, and Tim Brady all argued there is a disconnect between NOAA Fisheries' stock assessments and what is being observed on the water by the fishing community. Dan McKiernan added these observations generally correspond with the strong 2018-year class aging into the fishery, but noted recruitment is down from historic levels.

There was then some discussion from Tim Brady and Ray Kane about how surveys are being conducted and whether they are accurately capturing biomass. Melanie explained the trawl survey is a random stratified design and is not built to dynamically target fish where they are known to be abundant. Melanie added this has been a longstanding concern from industry regarding survey design and the NEFMC is well aware of it.

Director McKiernan appreciated the comments but reminded the MFAC the recommendation was more narrowly focused on whether DMF should finalize the emergency regulations as implemented and complement federal limits.

Ray Kane asked for a motion to approve the recommendation. **Tim Brady made a motion to approve the recommendation. Shelley Edmundson seconded the motion. The motion was passed 4-0-1, with Bill Amaru abstaining.**

In-Season Adjustment to October - December Commercial Summer Flounder Trip Limit  
Director McKiernan briefed the MFAC on the recommended in-season adjustment to the October-December commercial summer flounder trip limit. Despite the regulatory liberalizations to the summer flounder limits for 2022, the fishery is performing similarly to how it has in recent years and will likely underperform its quota again by a large margin. Accordingly, Dan recommended increasing the 2022 commercial summer flounder possession limit for the period of October 1–December 31 from 3,000 pounds per trip to 10,000 pounds per trip. The trip limit increase would encourage vessels to land fish caught offshore in adjacent federal waters in Massachusetts' ports, rather than steaming further distances to other states with more substantial seasonal trip limits (e.g., Virginia and North Carolina) to offload. Additionally, with the recreational fishery closing on September 29, Dan did not expect this would lead to user group conflicts.

Mike P. stated that the recreational community appreciated DMF's attention to time frames and implementing this increase after the recreational fishery closes. He asked if this increase in trip limit would apply to both state and federally permitted vessels. Jared and Dan explained the trip limit would apply to any vessel with a fluke fishery endorsement, regardless of where the fishing activity is occurring. However, given seasonal spatial shifts in distribution, DMF anticipated the benefits would principally be to those vessels fishing in federal waters.

Mike P. then asked about quota utilization in other states. DMF staff reached out to other states and it seemed commercial quota was being underutilized coastwide. Jared Silva stated he spoke to a number of industry members regarding the performance of this fishery to date and there were a number of economic factors limiting participation and effort this year. It was thought that increasing the trip limit to 10,000 pounds would create the economic incentive to target the fish. Nichola Meserve heard similar refrains from her counterparts in other Atlantic coastal states.

Mike P. then asked if a vessel hailing from Mid-Atlantic state would be able to land summer flounder in Massachusetts and if this fish would count against Massachusetts quota. Jared stated that regardless of where a vessel is homeported fish caught in

federal waters can be landed in Massachusetts provided the commercial fishing permitted in Massachusetts to land the fish. For summer flounder, there is no federal quota so all poundage landed in a state is counted against that states quota regardless of where the fish was caught or the homeport of the vessel.

Chairman Kane asked for a motion to approve the recommendation. **Kalil Boghdan made a motion to approve the recommendation. Shelley Edmundson seconded the motion. The motion was passed unanimously 5-0.**

## **DISCUSSION ITEMS**

### *2022 Quota Managed Fishery Performance Update*

Story Reed and Anna Webb provided the MFAC with an update on the performance of 2022 quota managed fisheries. Story noted the update will only cover those fisheries that remain open.

- The bluefish quota is currently projected to be reached in late-October. However, performance usually declines dramatically around early October. DMF would consider obtaining a quota transfer should the quota be taken and the fish remain available.
- On a pound-for-pound basis, the black sea bass fishery performing similarly in 2022 to prior years. However, the 2022 quota is much higher than these prior years. As such, the fishery would likely remain open throughout the fall and eventually underperform the quota by a small margin.
- On a pound-for-pound basis, the summer flounder fishery is performing better in 2022 than it was in 2021. However, the quota is substantially higher this year than in past years. At present, about 60% of the quota remains available. DMF was interested in how performance may change in the fall with the approval of the October 1 – December 31 trip limit increase.
- The horseshoe crab bait fishery is tracking below previous years. Story stated that this could be attributed to the performance of the inshore fishery and some harvesters switching over from the bait fishery to the biomedical fishery.

Anna Webb then moved on to discuss ex-vessel value and landings across all species. Anna Webb stated the total ex-vessel value and landings are down compared to previous years. Sea Scallops and lobster landings and ex-vessel value are down. These two species are driving the downward trend of ex-vessel value and landings. Oyster trends have not changed at all in 2022 and has been very consistent with previous years.

Ray Kane asked if the prices were higher in 2021 due to domestic consumption rather than eating at restaurants. Anna stated that to the best of her knowledge this question had not been looked into by a fisheries economist.

Ray Kane asked about the export value of oysters. Anna noted DMF only collects ex-vessel value data. Data on exports may be tracked by NOAA Fisheries. Dan added that oyster exports are currently fairly limited due to the complexities of international trade with raw shellfish product and varying public health programs across jurisdictions.

There was further discussion between Ray Kane and Nichola regarding dogfish and a possible reduction in quota for 2023.

#### *Fall 2022 Industry and Stakeholder Meetings*

Jared Silva reiterated DMF was an ASMFC public hearing on menhaden and a menhaden industry meeting tomorrow night in Gloucester. Additionally, DMF would convene a horseshoe crab and summer flounder industry meeting later this fall to scope regulatory changes for 2023.

Director McKiernan discussed various challenges regarding the management of the limited entry menhaden fishery. He was hopeful the fleet will provide good guidance on how to improve management moving forward and respond to the pending ASFMC addendum. Dan then discussed challenges with the horseshoe crab fishery and shifting demands for these crabs for bait and biomedical purposes. DMF was meeting individually with the biomedical companies and conservation advocates before meeting with the industry more broadly.

Bill Amaru stated he was now working with a biomedical company to rebroadcast bled crabs and spoke to the care taken to handle the animal throughout the biomedical process.

#### *Amendment 23 and Allowance for Maximum Retention of Groundfish*

Story Reed discussed a federal experimental permit where the combination of electronic monitoring and dockside monitoring allowed for the maximum retention of certain groundfish species caught in federal waters. This so-called “maximum retention program” was formalized in Amendment 23 to the Multi-Species Groundfish FMP. As such, it was expected that by the end of this year this would become a regulatorily formalized program rather than experimental fishery. At the state level, DMF accommodated the experimental federal fishery with a Letter of Authorization (LOA) and would continue to temporarily do so once a final federal rule is implemented. However, DMF over the long term, DMF would likely need to produce a regulatory amendment. Story and Jared were working with partners at NOAA Fisheries, Gulf of Maine Research Institute, and other New England state fishery agencies to manage implementation. One of the biggest challenges is managing the exemption for non-conforming product throughout the seafood supply chain.

#### *Convening MFAC Sub-Committees*

DMF was seeking to convene the MFAC’s Permitting Sub-Committee and Law Enforcement Sub-Committee during the fall.

## **PRESENTATION ON RIVER HERRING MANAGEMENT PLANS AND HERRING RIVERS**

Brad Chase provided a presentation regarding the ASMFC's River Herring Sustainable Fishery Management Plans. In the mid-2000s, the ASMFC implemented a moratorium on the harvest of river herring from state waters. More recently, in 2017, the ASMFC allowed states to open river herring runs subject to a sustainable fishery management plan. To date, Massachusetts has not opened any of its runs.

In Massachusetts, DMF sets the overarching regulatory program for river herring, then river herring runs are managed subject to "home rule". Under home rule, municipalities may set run specific limits and permitting requirements. Therefore, in most instances, the burden of developing, implementing, and managing a potential sustainable fishery management plan falls primarily on the municipality. Municipalities have been hesitant to reopen runs but there remains persistent interest in opening two of the state's stronger runs—the Nemasket River (Middleborough/Lakeville) and the Herring River (Harwich). Brad reviewed the biological metrics for both runs.

Dan asked Brad to speak to the run counts. Brad stated numbers have generally improved but recent years have seen some drop offs, which may be due to environmental conditions. Brad noted the impacts of droughts on future recruitment.

Ray Kane asked about permitting and enforcement should these runs open. Brad stated the primary authority would be the local warden. However, the towns would share their permitting rosters with MEP and DMF to assist in the enforcement of possessing river herring.

Mike P. and Brad Chase discussed some of the management choices towns would have to make, such as allowing harvest for bait and permitting non-residents. Brad noted this would likely be an iterative process requiring alignment with DMF regulations and ultimately approval from ASMFC.

Mike P. closed his comments by commending DMF for getting the fishery to this point.

Lt. Bass sought clarification on the possession of river herring as bait, as it may be fished at a location other than the run from which it was taken. Brad stated the intention is to only allow the permittee to possess herring. DMF regulations require anyone in possession of river herring to hold a permit and harvest receipt for the fish.

Kalil Boghdan thanked Brad for his presentation and asked how long the YOY can survive in a freshwater system. Brad stated they typically can overwinter, but there is a significant decline in food sources resulting in mortality.

Mike P. asked about toxic algae blooms affecting herring. Brad Chase stated systems with blooms may be a cause for concern. However, he would be more concerned about the impacts of nutrient loading in spawning habitats and impacts on water quality and

juvenile herring recruitment. Dan asked Brad about the water quality of the Nemasket and Herring Rivers. Brad stated the water quality is generally good, but it remains a key area of concern.

## **OTHER BUSINESS**

### *Commission Member Comments*

Bill Amaru discussed the importance of water quality in managing fish populations. He highlighted various concerns he has about nutrient loading in Cape Cod waterways and the runoff of these nutrients into the Sounds.

Tim Brady thanked Brad for the presentation and stated he appreciated the work to rebuild herring habitat and populations.

Mike P. was curious about potential impacts people moving to coastal communities, like the Cape, during the pandemic and as a result of telecommuting may have on local water quality given the likely increase in year-round pressure on septic and sewer systems.

Ray Kane stated he would like to be updated on the permitting sub-committee meetings as they move forward. He thanked everyone for their attendance and opened the meeting up to public comment.

## **PUBLIC COMMENTS**

Beth Casoni thanked the Commission and stated a public relations strategy is needed to counter Seafood Watch Assessment's red-listing of lobster and to promote the various steps the lobster industry has taken to protect right whales.

## **ADJOURNMENT**

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

## **MEETING DOCUMENTS**

- September 13, 2022 MFAC Business Meeting Agenda
- August 18, 2022 MFAC Draft Meeting Minutes
- Recreational Cod and Haddock Limit Recommendation Memo and Presentation
- Summer Flounder In-Season Adjustment Recommendation Memo and Presentation
- Quota Managed Species Update Presentation
- River Herring Sustainable Fishery Management Plans Presentation

## **UPCOMING MEETINGS**

October 18, 2022  
Virtual Meeting  
Via Zoom

November 22, 2022  
DFW Field Headquarters  
Westborough, MA





# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

BETHANY A. CARD  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

To: Marisa Trego, Ph.D. ALWTRT Coordinator

From: Dan McKiernan, Director  
Bob Glenn, Deputy Director

Date: October 11, 2022

Re: Comments on NOAA Fisheries Notice of Intent To Prepare an Environmental Impact Statement on Modifications to the Atlantic Large Whale Take Reduction Plan To Reduce Mortality and Serious Injury of Large Whales in Commercial Trap/Pot and Gillnet Fisheries (NOAA-NMFS-2022-0091)

Cc: Colleen Coogan, Mike Pentony, Erin Burke

The Division of Marine Fisheries (DMF) and the fixed gear fishermen of Massachusetts have long been leaders in conservation for the North Atlantic Right Whale (NARW). We have taken this responsibility seriously, offered meaningful management proposals, and adopted measures to reduce entanglement risk to NARW's, often proactively and ahead of jurisdictions in surrounding areas. This conservation has been squarely shouldered by Massachusetts fishermen, who despite weathering the uncertainty of a constantly changing regulatory landscape and the financial stress compounded by changing market conditions and increased operating costs, continue to persevere, and come back to the table in good faith to offer more options to protect NARW's. Their commitment is commendable and should be recognized by NOAA Fisheries and by the whale conservation community.

Last week DMF hosted four in-person scoping meetings for Massachusetts fishermen. More than 75 fishing industry leaders from the lobster, other trap pot, and gillnet fisheries attended these meetings. The focus of these meetings was developing new management measures to further reduce risk of serious injury or mortality caused by entanglement, to an unprecedented level of 90% from historical levels. This is a daunting task, especially when you consider the extensive management already in place in Massachusetts, in both state waters and adjacent federal waters. Despite the challenges Massachusetts fishermen face, highly productive discussions occurred, and once again Massachusetts fishermen have come to the table to offer conservation options for NOAA Fisheries to evaluate and consider. DMF is not endorsing these measures at this time. We first want to see the amount of risk reduction credit they provide and need more time to fully vet them internally and with the fishing industry. These measures are provided as an appendix at the end of this memo. In addition to the management measures, we offer the following comments and requests to NOAA Fisheries.

### **Full accounting of all measures for all fixed gear fisheries in MA**

We request a full and accurate accounting of all management measures in place in Massachusetts state waters to protect NARW's. We specifically ask that the risk reduction be presented as a percentage of the total risk in MA state waters and as percentage of total risk coast wide for all fixed gear fisheries in MA: lobster trap, other trap pot (OTP), and sink gillnet.

These current measures include:

- closure of all MA state waters from Monomoy north to the NH border from February 1 to May 15<sup>th</sup> with dynamic extension
- closure of all MA state waters gillnet fishing from January 1 to May 15<sup>th</sup> with dynamic extension
- closure of all OTP fishing from December 15<sup>th</sup> through April 15<sup>th</sup>
- mandatory use of 75% weak rope in all lobster and OTP fisheries
- 50% lobster trap allocation reduction in Lobster Management Area 2 (south and west of Cape Cod) implemented between 2016 and 2021

Understanding the risk reduction contributed by each of these measures individually and in concert is critical to understanding the relative effectiveness of each measure and to ensure that credit has been appropriately assigned.

### **Calculate and provide risk reduction credit for the original Mass Bay Restricted Area**

We request that NOAA Fisheries calculate and credit the risk reduction benefit of the original Mass Bay Restricted Area closure that was implemented in 2015. This measure is likely the single most important and effective management measure in place in all of U.S. waters. In 2019, DMF advocated to NOAA Fisheries and the Atlantic Large Whale Take Reduction Team (ALWTRT), that this measure be credited to the MA risk reduction responsibility even though it was implemented prior to the 2017 reference year. There was broad support by the ALWTRT and NOAA Fisheries to credit Massachusetts for this measure. It was DMF's and the MA fishing industries' understanding that credit was going to be given. However, in subsequent rule making NOAA Fisheries decided not to credit Massachusetts for the closure. At the heart of the issue is that NOAA Fisheries selected 2017 as the reference year because this was the year that an Unusual Mortality Event was first declared by NOAA Fisheries. DMF understands the significance of this and recognizes that there was a very substantial mortality event that started in that year. However, NOAA Fisheries published data demonstrate that NARW population started to decline seven years earlier – beginning in 2010. In fact, due to concern over stock decline, NOAA Fisheries developed and implemented the MBRA in 2015, recognizing that the aggregation of NARW's in Cape Cod Bay is the largest and most important in the world. At the time of implementation NOAA Fisheries did not possess an evaluation tool to calculate risk reduction.

The large mortality event in 2017 largely consisted of entanglements and ship strikes that occurred in the Gulf of St. Lawrence. Notably, there have been no serious injuries or mortalities attributable to fishing gear in MA state waters despite hosting the largest aggregation of NARW in the world. This speaks to the effectiveness of the MBRA. Furthermore, as is common in any model estimates, the model fitted annual abundance and mortality estimates from the NOAA Fisheries state-space population model for NARW's are sensitive to model input values several years prior and after any reference period. Consequently, estimates for the 2017 reference years are influenced by trends in abundance, birth rates, and mortality in 2015 (before and after).

Finally, the currently used mortality estimate which is gauged against Potential Biological Removal (PBR) is the average mortality from 2015 to 2019. This reference period for mortality includes 2015, the year the MBRA was implemented. Clearly, based on the use of a 2015 to 2019 reference period for mortality, NOAA Fisheries recognizes the importance of population trends and management measures in place in 2015. It is our opinion, based on all the previous mentioned reasons, it is critical and completely justified to credit the risk reduction attributable to the original MBRA closure. Not doing so puts MA-based fishermen at a real disadvantage and completely ignores the extremely valuable contribution to conservation they have made.

#### **Update the mortality estimates to include 2020 and 2021 data**

We request that NOAA Fisheries update annual mortality estimates to include more recent data. The current reference period for mortality is the 2015-2019 average. This value likely over-estimates the current average mortality rate that the population is experiencing. This average is largely influenced by extremely high mortality rates observed between 2015 and 2019. Since, 2019 the annual observed mortality rates have substantially decreased. Updating the five-year average to include 2020 and 2021 would likely reduce the 5-year average mortality rate and reduce the amount of risk reduction necessary to reduce mortality to below PBR. Even a few less percentage points of necessary risk reduction might provide some fisheries with substantial relief from additional management measures. We understand that updating the mortality estimates is labor intensive and requires a full analysis of all ID photos for the years in question. But given the importance of using the best available science, along with the huge burden that risk reduction poses to the fishing industry, it is NOAA Fisheries' duty to allocate the necessary staff resources to expedite updating these values. We believe that if mortality observations in 2020 and 2021 were very high, there would be a strong effort by the government to update these mortality rates for immediate inclusion in management.

#### **Test DST model's sensitivity to the stanza of years of whale sightings used in the Duke Whale Model**

We request that NOAA Fisheries test the DST model's sensitivity to the stanza of years of whale sightings data used in Duke Whale Density Model. The Duke Whale Density Model currently uses NARW sightings from 2010 through 2021. This time periods spans a period when NARW have dramatically changed their seasonal distribution. Using such a long time period to estimate average whale density when there are observed changes in NARW distribution has the potential to bias density estimates in specific areas. It has the potential to overestimate the importance of areas where whales may no longer be present, and to underestimate the importance of areas that NARW's currently use. We suggest that whale density estimates be broken down into 5-year stanzas to more accurately account for changing whale distributions over the last decade. We understand that a longer time series provides more stability in model estimates. However, sacrificing model precision may be warranted to more accurately reflect current whale distribution. It is our opinion that average whale density from a 12-year time series of observations, when there are significant changes in whale distribution, does not accurately reflect current whale distribution and has the potential to misrepresent actual entanglement risk.

#### **Request that NOAA Fisheries negotiate with court/plaintiffs to delay action until empirical data are collected on effectiveness of weak rope (1,700 lbs. breaking strength) and buoy line marking by jurisdiction to effectively and responsibly reduce risk**

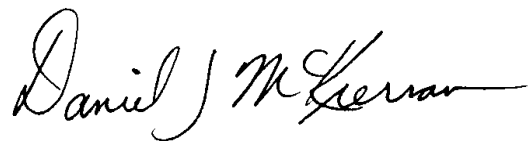
Massachusetts fixed gear fishermen have been deploying fully weak buoy lines since May 2021 that are also uniquely marked. Additionally, other states' fishermen deployed some form of weak ropes and gear marking for the first time in 2022. The risk reduction provided by the deployment of weak rope is modeled in the Decision Support Tool. We are hopeful that empirical data on reported and documented

entanglements will soon demonstrate the benefits of weak rope are higher than anticipated. Moreover, the buoy line marking scheme is already revealing locations of entanglement events, providing useful information on the potential risk posed by certain jurisdictions. Beginning next year all federally permitted lobstermen will be required to install vessel trackers which will provide unprecedented precision of fixed gear fishing locations. Within one to two years, we will have a more informed understanding of the benefits of weak rope and entanglement locations revealed through gear marking strategies, as well as a complete accounting of lobster trap fishing locations in the EEZ. This will enhance the precision and effectiveness of the DST and promote more effective management of risk.

**Conservation measures developed at caucus meetings to be run through the DST model for risk reduction value**

DMF conducted four industry caucus meetings across the state the week of October 9, 2022 to elicit feedback from trap and gillnet fishermen about potential risk reduction measures. We worked with Burton Shank from the Northeast Fisheries Science Center and other NOAA staff to develop a list of risk reduction measures to run through the DST for analysis and potential inclusion in a strategy to further reduce risk in state and federal waters portions of our region. They are listed below.

Sincerely,

A handwritten signature in black ink, reading "Daniel J. McKiernan". The signature is fluid and cursive, with the first name "Daniel" and last name "McKiernan" clearly legible.

Daniel J. McKiernan, Director

A handwritten signature in black ink, reading "Robert P. Glenn". The signature is fluid and cursive, with the first name "Robert" and last name "Glenn" clearly legible.

Robert Glenn, Deputy Director & ALWTRT Member

## **Risk Reduction Measures for Consideration**

### MA and NH state and federal waters, Area 1, Lobster

- Implementation of 100% weak in federal waters of southern LMA 1
- Implementation of 75% weak in federal waters of southern LMA 1
- Implementation of 75% weak in federal waters of southern LMA 1
  - + trawling up 3-6nm min trap/rawl= 15
- Implementation of 75% weak in federal waters of southern LMA 1
  - + trawling up 3-6nm min trap/rawl= 15
  - + trawling up 6-12nm min trap/rawl=20
- Implementation of 75% weak in federal waters of southern LMA 1
  - + trawling up 3-6nm min trap/rawl= 15
  - + trawling up 6-12nm min trap/rawl=20
  - +permanent closure of the “wedge”/”gap” area for Feb-Apr (also see effect of extending to May 15
- Implement closure all of stat 514 and Fed waters north to the border of Maine Zone G in January and February (lines out)
- Implement closure all of stat 514 and Fed waters north to the border of Maine Zone G in March and April (lines out)
- Implement closure all of stat 514 and Fed waters north to the border of Maine Zone G in Feb to May 15 (lines out)

### MA state and federal waters, Area 1 and OCCLMA, Lobster and OTP

- Implementation of weak in federal waters off southern LMA1 and LMAOCC
- Implementation of 75% weak, federal waters off southern LMA1 and LMAOCC
- permanent closure of the “wedge”/”gap” area for Feb-Apr (also see effect of extending to May 15
- Implement closure all of stat 514 and Fed waters north to the border of Maine Zone G in January and February (lines out)
- Implement closure all of stat 514 and Fed waters north to the border of Maine Zone G in March and April (lines out)
- Implement closure all of stat 514 and Fed waters north to the border of Maine Zone G in Feb to May 15 (lines out)
- Extended Mass state waters trap closure from January 15<sup>th</sup> through May 15<sup>th</sup>
- Close southeastern portion (east of a line from Race Point to Barnstable Harbor) of CCB from December 1<sup>st</sup> to May 15<sup>th</sup>
- Ban on fishing single traps December and January in all MA state waters
- LMAOCC closure in December and January (lines out – evaluated separately and in combo)
- 10 pot trawl minimum in all MA state waters December and January

### MA and RI state and federal waters, Area 3, Lobster and OTP

- 10% buoy line reduction
  - All year
  - Hot spot months
- 20% buoy line reduction
  - All year
  - Hot spot months

- 30% buoy line reduction
  - All year
  - Hot spot months
- 40% buoy line reduction
  - All year
  - Hot spot months
- 50% buoy line reduction
  - All year
  - Hot spot months
- Total closure of all LMA 2 (MA & RI) in Feb - Apr (lines out)
- Total closure of LMA 2 all year round
- Closure of OTP in MA state waters from Dec 15 – Apr 15
- Closure of OTP in MA state waters from Dec 15 – May 15
- 75% weak rope, all Area 2
- Closure of all LMA2 and extensions into hotspot areas Feb 1 to April 30th
- Endline cap with 50% buoy line reduction in LMA3

#### MA and RI state and federal waters, Gillnet

- Implement a 10 endline cap for all SNE monkfish/skate sink gillnet fishers
- Incorporate changes in set length since 2017
- Evaluate change in latent permits since 2017
- Panel up to minimum of 20 panels per two buoy lines
- Panel up to minimum of 25 panels per two buoy lines
- Spatial closure (lines out) to gillnets same boundaries as SIRA (plus small wedge of fed waters north of 41° 20") Feb 1 to April 30th
- Spatial closure (lines out this is equivalent to the discussion on closing "north of 43600") to gillnets from Feb 1 – April 30. Boundary as follows:
  - Northern boundary – 41° 20" plus small wedge of federal waters north of 41° 20" to state waters line
  - Southern boundary – 41° 40"
  - Western boundary – 71° 30"
  - Eastern boundary - 70°
- Spatial closure (lines out) to gillnets same boundaries as SIRA (plus small wedge of fed waters north of 41 20) Feb 1 to April 30th
  - + 75% weak rope rule
  - + 20 or 25 panel minimum per two buoys



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October 3, 2022

Zachary Jylkka  
Bureau of Ocean Energy Management  
Office of Renewable Energy Programs  
45600 Woodland Road Mailstop: VAM-OREP  
Sterling, VA 20166

Dear Mr. Jylkka:

The Massachusetts Executive Office of Energy and Environmental Affairs (EEA) respectfully submits these comments to the Bureau of Ocean Energy Management (BOEM) in response to the Request for Information (RFI) and Request for Competitive Interest (RFCI) to inform the ongoing planning and leasing for offshore wind in the Gulf of Maine. These comments support the overall goal of balancing the management of vital economic and natural resources in coastal and ocean waters of the shared Gulf of Maine with the introduction of a new ocean use: offshore wind. Ensuring the continuity of maritime commerce, recreation, and commercial fishing are priorities for the Commonwealth along with avoiding and minimizing impacts to existing maritime habitats and species as BOEM commences the planning process for potential commercial leasing of offshore wind in the Gulf of Maine.

In 2008 EEA formed two working groups, a Fisheries Working Group,<sup>1</sup> which includes fishing industry representatives, agencies, and interested non-governmental organizations and a Habitat Working Group,<sup>2</sup> which involves representatives from state and federal agencies, the offshore wind industry, and interested non-governmental organizations. Discussions within the work groups helped to inform the planning for the Massachusetts/Rhode Island (MA/RI) Wind Energy Areas (WEAs) and will also inform the planning for offshore wind in the Gulf of Maine. We solicited input from these working groups in preparation of this comment letter.

Reducing carbon emissions through the development of renewable energy, including offshore wind energy, is critical to combatting the global climate crisis. The Commonwealth strongly supports

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<sup>1</sup> <https://www.mass.gov/service-details/fisheries-working-group-on-offshore-wind-energy>

<sup>2</sup> <https://www.mass.gov/service-details/habitat-working-group-on-offshore-wind-energy>

the Biden-Harris Administration's ambitious goals to achieve 30 gigawatts (GW) of offshore wind by 2030, 15 GW of floating offshore wind by 2035, and commercial leasing in the Gulf of Maine in 2024. We applaud the federal government's legislative actions in support of this goal, including the Bipartisan Infrastructure Law and the Inflation Reduction Act. The goals of the Commonwealth align closely with those of the Biden-Harris Administration. Since 2016, with the signing of the Act Relative to Energy Diversity, Massachusetts has been a national leader in offshore wind policy and market development and will host the first-in-the-nation commercial-scale offshore wind project in federal waters, the 800 MW Vineyard Wind 1 project. We have committed to renewable energy targets including a statutory authorization of 5.6 GW, 3.2 GW of offshore wind projects under contract to date and currently under development,<sup>3</sup> a schedule of future offshore wind procurements to ensure timely delivery of offshore wind to Massachusetts ratepayers, and a goal to achieve net zero emissions by 2050. Offshore wind leasing in the Gulf of Maine is critical for Massachusetts to meet its legislatively mandated offshore wind energy goals.

Modeling conducted for the Massachusetts 2050 Decarbonization Roadmap<sup>4</sup> indicates that offshore wind will be a significant component of the Commonwealth's and the region's electricity generation, requiring over 15 GW for Massachusetts alone by 2050, and approximately 30 GW for New England to achieve the region's renewable or clean energy targets. With nearly 7 GW currently under contract to Massachusetts, Rhode Island, Connecticut, and New York for projects in the existing lease areas off Southern New England, existing offshore wind procurement authorities and goals in the Northeast are expected to utilize the capacity of the existing lease areas over the next few years. To meet the states' long-term energy and decarbonization goals, new offshore wind areas will be needed. The commencement of the comprehensive planning and analysis process for commercial leasing in the Gulf of Maine is an important step, and the Commonwealth is committed to supporting BOEM through our role on the Intergovernmental Renewable Energy Task Force and in other capacities.

#### *Request for Information*

As we look to the Gulf of Maine as the next region to support offshore wind, it is important to consider how the siting of new lease areas can drive advancements in technology, competitive energy pricing, and efficient use of existing transmission infrastructure. As with the southern New England areas, the identification of multiple wind energy areas in the Gulf of Maine would support the offshore wind goals of the northeastern states, increase competition between offshore wind developers, support the industry's growth, and put downward pressure on costs for ratepayers. In the MA/RI WEAs, seven lease areas held by five different developers/leaseholders has led to a relatively competitive offshore wind market in the Northeast and resulted in cost-effective pricing for ratepayers in state procurements and robust commitments to economic and workforce development.

With that experience, to maximize the economic benefits, WEAs in the Gulf of Maine should also be geographically distributed, with sufficient WEAs to maximize competition among offshore wind developers, which in turn encourages competition and diversity in developers' strategies for siting and use of innovative floating wind technologies. In addition, ensuring a wide geographic distribution of WEAs would allow for multiple offshore transmission routes to access onshore

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<sup>3</sup> Current Massachusetts offshore wind procurements totaling 3,204 megawatts (MW) are comprised of Vineyard Wind 1 (800 MW), Mayflower Wind (804 + 400 MW), and Commonwealth Wind (1,200 MW).

<sup>4</sup> <https://www.mass.gov/info-details/ma-decarbonization-roadmap>



interconnection points that would allow for cost-effective integration of renewable energy into the onshore power grid.

Finally, WEAs in the Gulf of Maine should be sized to allow developers to take advantage of economies of scale, which can help reduce costs for ratepayers and minimize siting impacts to existing maritime uses such as fishing as well as marine habitats and species. Recent offshore wind projects contracted by states have been sized at around 1,200 MW, which can allow for efficient use of high-voltage direct current (HVDC) cable technology that can reduce siting impacts from offshore cabling and maximize use of onshore grid interconnection points.

The Commonwealth supports the delineation of the RFI planning area for the Gulf of Maine which excludes areas from further consideration for the siting of offshore wind. Specifically, we agree with BOEM's determination that the following areas are incompatible with offshore wind development: areas within 3 nautical miles (nm) from shore and those beyond 200 nm from shore; National Parks, National Wildlife Refuges, National Marine Sanctuaries, or any National Monuments; Existing Traffic Separation Schemes (TSS), fairways, or other internationally recognized navigation measures; existing BOEM lease areas; and unsolicited lease request areas that are the subject of a separate request for competitive interest (e.g., State of Maine's requested research lease). In addition, with these comments, we recommend: 1) additional areas that should be excluded from further consideration for leasing by BOEM; and 2) areas that require further data gathering, analysis, and discussion with stakeholders to determine whether they are suitable for the siting of offshore wind in the Gulf of Maine. Below are more details related to these two topics.

While Massachusetts legislation sets out ambitious offshore wind goals, it also requires offshore wind developers exporting electricity to Massachusetts to site wind turbine generators (WTG) at least 10 miles from any inhabited shore.<sup>5</sup> Areas within 10 miles from the Massachusetts coastline should be excluded from further consideration for the siting of offshore wind. Additionally, we recommend an extended shoreline buffer of an additional 10 nm along the entire Gulf of Maine shoreline to account for the increase in WTG size since 2016 and the potential for even greater increases in WTG size due to technological advancements and increasing efficiency in energy generation. This additional buffer will reduce potential visual impacts along the Gulf of Maine coastline. Further, we acknowledge that nearshore waters tend to exhibit higher concentrations of maritime uses such as recreational boating and day boat commercial fishing. Other maritime activities located closer to shore include offshore disposal sites, pilot boarding areas, port-related vessel traffic, and identified danger zones. Thus, we support BOEM investigating the implementation of an additional 10 nm shoreline buffer to a total of 20 nm to avoid and significantly minimize the potential for conflicts with these existing maritime uses and reduce visual impacts (see attached map).

In addition to a shoreline buffer, we recommend that BOEM exclude offshore wind development from areas designated by the National Oceanic and Atmospheric Administration (NOAA) as Habitat Management Areas (HMA). Fishing by bottom tending mobile gear is prohibited in HMAs due to the areas' importance in supporting various fish populations. These areas include the Western Gulf of Maine HMA, the Fippennies Ledge HMA, the Cashes Ledge HMA, the Ammen Rock HMA, the Jeffreys Bank HMA, and the Eastern Maine HMA (see attached map). Further, we recommend regions of significant seafloor ledges which are known to support diverse populations of

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<sup>5</sup> <https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter188>

marine species, including marine mammals, be assessed for exclusion from siting of offshore wind. These areas may include areas encompassing and adjacent to Georges Bank, Jeffreys Ledge, Fippennies Ledge, Cashes Bank, and Platts Bank.

To reduce potential conflict between future wind development areas and offshore commercial fishing, we recommend that BOEM, with input from fishing industry representatives, advance efforts to accurately represent where fishing activity occurs and identify areas of high priority, value, and density to commercial fishing. Areas known to be highly productive fishing grounds for mobile fishing should be excluded from further consideration for offshore wind.

Highly productive areas should also be identified for the offshore lobster industry where geospatial data are limited but represent the single most commercially valuable wild-harvested species in the northeastern United States. Although geospatial data for the lobster fishery are incomplete, conclusions regarding the general distribution of lobster fishing activity across the Gulf of Maine relative to distance from shore and the federal Lobster Management Areas (LMAs) (see attached map) should inform the selection of areas for further consideration for the siting of offshore wind. Lobster trap densities are expected to be highest in inshore (0-3 miles) and nearshore (3-12 miles) waters where vessels of all sizes, including small open boats make day trips and return to port every day. The largest vessels in the lobster fleet make multi-day trips and frequent waters beyond 12 miles out to the limits of the Exclusive Economic Zone (EEZ). A separate Lobster Management Area (LMA 3) was created for these larger multi-day trip lobster vessels because this fleet is unique in its scale of operation (i.e., vessel size, crew size, trip length, and distance fished from shore). Since 1999, participation in the LMA 3 fishery has been limited and reduced by NOAA National Marine Fisheries Service (NMFS) through a limited entry system and individual, vessel-specific trap limits that are based on the vessel's fishing history. In subsequent years, trap allocations have also been reduced in LMA 3 for conservation purposes by 25% on a per-permit basis. As a result of these management actions, the amount of fishing in LMA 3 is comparatively low and has been substantially reduced with no potential for increases. In total, 123 permit holders and approximately 108,000 traps are allocated for LMA 3 that extends from the Canadian Border south to waters off Virginia. Further, LMA 1 has more dense lobster fishery activity—the trap density in LMA 1 is approximately 122 traps/mile<sup>2</sup> while the trap density in LMA 3 is 8 traps/mile<sup>2</sup>. Lobster fishing decreases with distance from shore and specifically within LMA 3. Potential conflict with the lobster industry would be reduced if WEAs were sited in the easternmost portions of LMA 1, east of the Western Gulf of Maine HMA, and within LMA 3 (refer to attached map). BOEM should consider this pattern of lobster fishing activity as the planning and leasing process continues.

Although marine spatial data for the Gulf of Maine are robust, there are maritime uses and species for which a reliable and data-driven understanding of their spatial footprints requires further development and analysis. Some work is already underway to fill known data gaps. Vessel tracking on lobster vessels will be required for all federal permit holders by the end of 2023 (MA will require the same beginning in May 2023); additional aerial surveys targeted at North Atlantic right whales have begun in the Gulf of Maine RFI area; seafloor mapping to 24 nm is nearing completion; and tracking of avian species across the Gulf of Maine is ongoing. We recommend that BOEM continue to coordinate with states, federal agencies, and other stakeholders to gather and analyze data to incorporate into the planning and leasing for offshore wind. Further, with these and other data and supplemented by expert input, we suggest that BOEM identify and avoid the following areas in the siting of offshore wind in the Gulf of Maine.

- Areas of high-density fishing activity and value across fishing sectors and inclusive of all state fishing fleets
- Areas of dense concentrations of large whales, especially the North Atlantic right whale and other endangered whales<sup>6</sup>
- Priority migration corridors and nesting, staging and foraging areas for federal and state endangered and threatened avian species

As a new technology, there is some uncertainty surrounding the implementation of floating offshore wind technology and compatibility with existing maritime uses including fixed and mobile fishing gear as well as marine habitats and species including large mammals. We recommend that BOEM solicit information from developers and industry leaders on the emerging technology and lessons learned from Europe and Asia where demonstration and early commercial stage floating wind projects have been deployed. Specifically, information relating to the potential interactions between floating wind platforms and cables with fishing activity; offshore floating array orientation, spacing and configuration to minimize impacts on maritime navigation and fishing activity; and the implementation of floating platform substructure designs, tethering, and cabling to minimize impacts to seafloor habitats while advancing opportunities to enhance habitats.

The offshore wind developers and their equipment suppliers are likely to have the best available information about the evolution of technologies and implementation techniques associated with floating wind energy projects. Thus, we suggest that BOEM seek information from offshore wind developers relating to the placement of WEAs relative to distance from shore and proximity to ports and interconnection points.

Given that information regarding the location of some existing resources and uses is still under development (e.g., aerial whale sightings, avian migration corridors and foraging areas, lobster fishery activity) and given the vital importance of the Gulf of Maine to the coastal economies of surrounding states, we recommend that BOEM commit to a data-driven Ecosystem Based Management (EBM) approach to identify areas within the Gulf of Maine with the least conflict with proposed floating offshore wind activities. Such an EBM approach would clearly define the data used to winnow the RFI area, how these layers are considered in relative importance in the geospatial analyses, how priorities are determined, how the interactions between maritime uses is incorporated and would include robust stakeholder involvement from maritime uses and state and federal agencies. Specifically, my agencies have a wealth of knowledge and experience in marine spatial planning in Massachusetts waters and within the Gulf of Maine and should be directly engaged in the development of any such EBM approach.

#### *Request for Competitive Interest*

The Commonwealth supports the state of Maine's application to develop a floating wind research array in the Gulf of Maine. The research grant represents an important opportunity to test designs and methods, understand impacts and opportunities, and develop technologies for the emerging floating offshore wind industry. The research grant can be used to support a broad range of research interests from regional and national stakeholders and institutions, which in turn will help advance the floating offshore wind in the United States. We support ensuring that the timeline for the research array would closely align with that for commercial leasing in the Gulf of Maine. However, we

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<sup>6</sup> Blue, Fin, Humpback, North Atlantic right, Sei, and Sperm whales are all listed as endangered in Massachusetts.

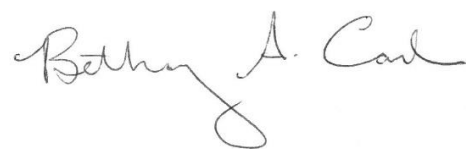
suggest that BOEM ensures that commercial leasing would not be delayed due to any anticipated or unanticipated timeline or pending research schedules associated with the Maine research array. As with commercial projects, the research array should minimize potential impacts to marine resources, habitats, and users.

The planning for commercial leasing of offshore wind in the Gulf of Maine will require input and participation from those representing the many existing maritime uses, habitats, and species in this incredibly diverse and unique ecosystem. Massachusetts is committed to continuing to work with our stakeholders, ranging from offshore wind technology developers, environmental non-governmental organizations, commercial and recreational fishing industry representatives, scientists, and others to gather the best available data and information to inform BOEM's planning for the Gulf of Maine. We also commit to working across the Gulf of Maine to consider and incorporate interstate perspectives and interests.

Further, Massachusetts sincerely appreciates the ongoing collaborative efforts among the states of Maine, New Hampshire, and Massachusetts regarding shared interests in planning for offshore wind in the Gulf of Maine and we look forward to continuing our joint efforts in supporting BOEM as the process moves forward. We also appreciate the joint efforts of the six New England states and federal agencies in developing a joint transmission development framework that will support the long-term goals to advance the integration of necessary clean energy, including offshore wind. That effort will be a necessary component in the successful deployment of offshore wind.

Thank you for the opportunity to provide comments to BOEM on the RFI/RFCI for offshore wind development in the Gulf of Maine. The Commonwealth appreciates BOEM for its expertise in siting energy on the continental shelf and working with the various agencies and entities with an interest in Gulf of Maine resources and uses. My agencies and offices look forward to continuing to work with BOEM, key stakeholders like our commercial fishing operations, other federal agencies and the states of Maine and New Hampshire as the planning process for siting offshore wind in the Gulf of Maine continues.

Sincerely,

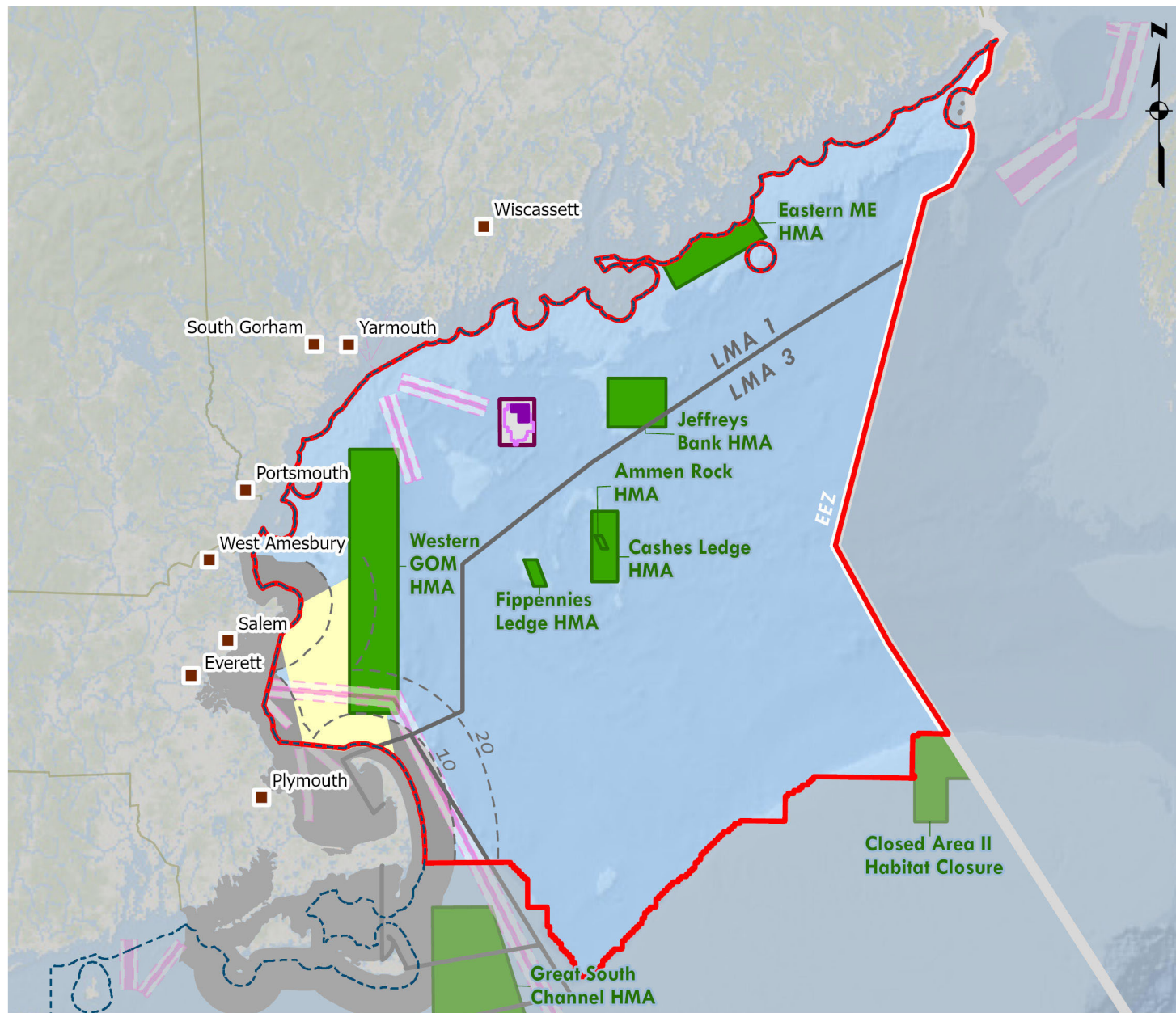
A handwritten signature in black ink, reading "Bethany A. Card". The signature is fluid and cursive, with the first name "Bethany" and last name "Card" clearly legible.

Bethany A. Card  
Secretary

Attachment: BOEM Gulf of Maine RFI/RFCI map

cc:

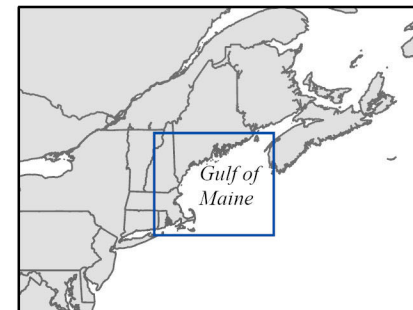
James Bennett, David MacDuffee, Luke Feinberg, Bureau of Ocean Energy Management  
Marc Sanborn, NH Department of Environmental Services  
Dan Burgess, Maine Governor's Energy Office



### Legend

- RFI Planning Area
- Gulf of Maine RFCI
- Maine Research Array Narrowed AOI
- Maine Research Array Requested Lease Area
- NOAA/NMFS Habitat Management Areas
- Stellwagen Bank National Marine Sanctuary
- Lobster Management Areas
- Traffic Separation Schemes
- Traffic Lanes
- Select New England Electrical Transmission Substations
- Submerged Lands Act Boundary
- \*MA Shoreline Buffer (nm)
- \*Area within 10 nm from MA shoreline

\*Based on unofficial lateral seaward boundaries



0 15 30 60 Miles  
0 15 30 60 Nautical Miles

Map coordinate system: WGS 1987 Web Mercator (auxiliary sphere)  
Basemap source: Esri, GEBCO, DeLorme, NaturalVue



Massachusetts Office of Coastal Zone Management  
Executive Office of Energy & Environmental Affairs

10/3/2022

**BOEM Gulf of Maine RFI/RFCI**