



**MARINE FISHERIES ADVISORY COMMISSION  
BUSINESS MEETING AGENDA**

**9:00AM**

**October 29, 2024  
DFW Field HQ  
1 Rabbit Hill Road  
Westborough**

1. Call to Order and Routine Business (9:00 – 9:15)
  - a. Introductions and Announcements
  - b. Review of October 2024 Business Meeting Agenda
  - c. Review and Approval of September 2024 Draft Business Meeting Minutes
2. Comments (9:15 – 9:45)
  - a. Chairman
  - b. Law Enforcement
  - c. Commissioner
  - d. Director
3. Action Items (9:45 – 10:00)
  - a. Implementation Deadline for Addendum XXVII Biological Measures
4. Future Public Hearing Proposals (10:00 – 10:15)
  - a. Prohibition on Non-Endemic Worms
5. Discussion Items (10:15 – 11:30)
  - a. 2024 Quota Management Update
  - b. Federal Fisheries Management Update
  - c. Interstate Fisheries Management Update
  - d. Efforts to Modernize Management of Surf Clam Dredge Fishery
6. Presentation on Online Permitting System (11:30 – 12:00)
7. Other Business (12:00 – 12:15)
  - a. Commission Member Comments
  - b. Public Comment
8. Adjourn (12:15)

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

**Future Meeting Dates**

9AM  
November 19, 2024  
via Zoom

9AM  
December 17, 2024  
via Zoom

## **MARINE FISHERIES ADVISORY COMMISSION**

### **Draft Business Meeting Minutes**

**September 17, 2024**

**Kingston Town House**

**26 Evergreen Street**

**Kingston, MA 02634**

#### **In attendance:**

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

*Division of Marine Fisheries:* Daniel McKiernan, Director; Bob Glenn, Deputy Director; Kevin Creighton, Assistant Director; Story Reed, Assistant Director; Jared Silva; Nichola Meserve; Anna Webb; and Greg Skomal.

*Department of Fish and Game:* Tom O’Shea, Commissioner.

*Massachusetts Environmental Police:* Captain Robert Forsythe and Lieutenant Matt Bass.

*Members of the Public:* Ed Barret, Will Poston, Ray Jassaume, Raymond Jarvis, Mike Hogan, Eric Spicer, and Peter Fallon.

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the September 17, 2024 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW OF SEPTEMBER 17, 2024 BUSINESS MEETING AGENDA**

Chairman Kane asked if there were any amendments to the September 17, 2024 MFAC business meeting agenda. Director McKiernan requested two changes to the agenda. First, Bill Doyle had requested DMF provide a presentation on CSO-related shellfish closures in Buzzards Bay, and as Bill was unable to make the September meeting, DMF was moving to postpone this presentation. Second, DMF wanted to reorder the remaining discussion items to address false albacore and Atlantic bonito management first. There were no objections raised to these requested changes and the September 17, 2024 was thusly amended.

## **REVIEW AND APPROVAL OF AUGUST 20, 2024 DRAFT MEETING MINUTES**

Chairman Kane asked if there were any amendments to the August 20, 2024 draft MFAC business meeting minutes.

Mike Pierdinock requested an edit to his comments on page 15. The concern he stated was related to the unregulated discharge of pharmaceutical drugs in

wastewater, not just birth control pills.

Shelley Edmundson also requested an edit to her comments regarding food security earmarks on page 12. She asked that the minutes more clearly state that these grants have enabled the Martha's Vineyard Fisherman's Preservation Trust to purchase local seafood, pay a fair price to local fishers for the product, and donate the fish to island food insecurity groups.

No objections were raised to these amendments.

The Chairman requested a motion to approve the August 2024 MFAC business meeting minutes. **Tim Brady made the motion to approve the June 19, 2024 business meeting minutes as amended. Bill Amaru seconded the motion. The motion was approved 6-0-1 with Chairman Kane abstaining.**

### **LAW ENFORCEMENT COMMENTS**

Lt. Bass provided comments for the Massachusetts Environmental Police (MEP). The MFAC were updated on two outstanding enforcement issues related to lobster trap fishing in Cape Cod Bay. First, a criminal trial involving lobster gear violations was concluded with a jury finding in favor of MEP on all counts. Second, DMF came to a settlement agreement in an adjudicatory proceeding involving lobster trap limit and trap tag violations, which resulted in the primary violator forfeiting his permit and another permit involved faced sanctions limiting their ability to fish lobster traps moving forward. Lt. Bass also discussed an incident involving the assault of a federal fisheries observer and commercial striped bass violations on the North Shore.

There was some discussion among Lt. Bass, Director McKiernan, and Jared Silva regarding the settling of adjudicatory proceedings and what decisions are published to DMF's website. Jared noted that, as a matter of practice, proceedings that conclude by agreement are not published to the website so as to encourage parties to settle.

Regarding the commercial striped bass enforcement matters, MEP Captain Robert Forsythe noted it involved illegal catch occurring in New Hampshire (where commercial fishing is prohibited) for sale into Massachusetts and this required cross-jurisdictional cooperation. Kalil Boghdan commended MEP for their efforts

On personal issues, Lt. Bass stated that Acting Colonel Patrick Moran recently retired from MEP and Governor Healey has hired retired State Police Superintendent, Colonel Chris Mason, to serve as MEP's Interim Colonel until a more permanent candidate can be brought on board. Capt. Forsythe also noted that Jack Chapin was also recently promoted to North Shore Captain following AJ Ford's retirement earlier this year.

There was some follow-up discussion among Capt. Forsythe, Lt. Bass, Chairman Kane and Kalil Boghdan regarding personnel. Captain Forsythe confirmed there are currently 107 uniformed officers (including management) employed at MEP. Chairman Kane recalled ranks had historically been about 130 officers, which was thought to be an

appropriate level for MEP's ranks. Captain Forsythe noted MEP continued to try to work to increase their ranks and thanked the MFAC for their continued advocacy. There was then some discussion of the state's hiring process.

Chairman Kane, Bill Amaru, Capt. Forsythe, and Lt. Bass then discussed MEP's presence along the Outer Cape region. Amaru noted there were several new field officers along the Outer Cape this year but noted there he has not observed an on-the-water presence in the region. Lt. Bass noted MEP did not currently have a permanent patrol boat east of Bass River due to logistical issues, but some of the vessels are trailered. Bill and Ray both felt there should be a more robust on-the-water presence in this region given the breadth of fishing activity that occurs along the eastern shore of the Cape.

Tim Brady stated that smart management can also help MEP better allocate their limited resources. To this point, he described how the 2020 action to close the Cape Cod Canal to commercial striped bass fishing helped lessen the previously persistent enforcement and compliance issues at the project likely allowing MEP to allocate resources elsewhere.

### **COMMISSIONER'S COMMENTS**

Commissioner Tom O'Shea began by updating the MFAC on the status of the "Commercial Fisheries Commission." This public body was established by the Legislature in 2022; includes representatives from various commercial fishing organizations; is co-chaired by DMF and the Office of Coastal Zone Management (CZM); and is to focus on the development of sustainable fishers, particularly as it relates to offshore wind energy development. For a number of reasons, it has been challenging to launch this public body. Foremost, has been the appointment process, which was now concluding with only one outstanding appointment remaining. Additionally, DMF also recently loss personnel to administer and oversee this public body, including Dr. Justin Bopp (Wind Energy Specialist) and Julia Kaplan (Policy Analyst). DFG has prioritized backfilling Dr. Bopp's position and was hopeful a job listing would be posted this fall. Additionally, there were some concerns regarding how this new public body fits in alongside the MFAC and the Fisheries Working Group on Offshore Wind. He noted that unlike the MFAC, the new public body does not have a regulatory role. However, there may be some redundancy with the Fisheries Working Group. Tom's goal was to hold this body's inaugural meeting by the end of the year. To achieve this, he was considering bringing an outside group, such as the Consensus Building Institute (CBI), to help facilitate the onboarding process and refine the Commission's goals and objectives.

Kalil Boghdan asked for more clarity regarding the mission of the Commercial Fisheries Commission and expressed concerns that it could divert authority away from the MFAC.

Commissioner O'Shea stated that the enabling statute was broadly worded, but that his expectation is the body would primarily work on issues related to fisheries and



offshore wind. The statute also requires the Commission produce an annual report for the legislature on the various topics it works to address.

Director McKiernan added the public body should be renamed the Commercial Fisheries Commission on Offshore Wind, as the focus of the body is really to address the industry's concerns related to wind energy development. Dan also noted that the MFAC has very clear advisory and regulatory oversight authorities which this new public body does not possess.

Bill Amaru noted that a significant hurdle to filling out many state public bodies is the lack of compensation.

Moving on, Tom indicated Legislature would likely take up the Environmental Bond Bill in early-2025. Accordingly, the Department was looking to acquire capital funds for public access, habitat restoration, and land acquisition.

Commissioner O'Shea was looking forward to meeting and working with MEP's Interim Colonel. He noted there were currently several issues of common interest between the Department and MEP. Foremost among them is the new gun law and how it may impact hunters.

Tom recently attended an event at the New England Aquarium that provided a behind-the-scene's look at NOVA's three-part series titled "Sea Change: The Gulf of Maine". This series looks into the Gulf of Maine ecosystem and how this body of water is warming faster than much of the rest of the world's oceans. Tom spoke very highly of the series and encouraged MFAC members to view it. Bill Amaru strongly agreed.

Commissioner O'Shea recently presented to the National Caucus of Environmental Legislatures. The focus of the presentation was the state's Biodiversity Executive Order and Strategic Planning initiative. He noted that the presentation as well received and was in stark contrast to a presentation given by a State Representative from Florida.

### **DIRECTOR'S COMMENTS**

Director McKiernan began his comments by mentioning recent correspondence with the Massachusetts Shellfish Officers Association (MSOA). Earlier this summer, MSOA contacted DMF to raise concerns regarding how some municipalities were constrain the ability of their Constable to effectively conduct their job. Dan speculated some of this may be in response to concerns regarding how this job interfaces with Peace Officer Standards and Training (POST) requirements. In response, DMF issued a letter to MSOA that described DMF's expectations for how the shellfish constable job is to be conducted. This included working hours that allowed them to be in the field when shellfish fishing was occurring; conducting routine inspections; issuing citations and warnings, and working cooperative with DMF to implement emergency public health closures. DMF would forward MEP the letter.

DMF completed and published its 2023 Annual Report. This annual document effectively serves as a compendium on the breadth of the agency's infrastructure and work. Dan opined this was a critical document for organization posterity.

The Massachusetts Legislature will host Seafood Day at the State House on October 16. This is an annual event to celebrate the Commonwealth's Seafood Industry.

DMF was working to resolve some confusion regarding the state's marine lateral boundary with New Hampshire. Historic legal documents set the boundary as proceeding eastwards at 86° 07' 30" East from shoreline. However, there is confounding language New Hampshire statute that describes the boundary as proceeding more southeasterly at 107° East from the coast. This has led to some New Hampshire fishers setting lobster trap gear in Massachusetts state waters, including during the seasonal whale closure. DMF was working with the New Hampshire Department of Fish and Game to better educate the public on the maritime boundary.

DMF's fall trawl survey was experiencing some setbacks. The contracted vessel, the R/V Gloria Michelle, has been at the Fairhaven Shipyard undergoing repairs. While the start of the survey has been delayed, it should occur and conclude during the period when it has been historically conducted. However, this will likely require staff put in a series of long days and the upcoming weather forecast may further complicate completing this work on schedule.

At the upcoming ASMFC meeting, the Lobster Board will vote on Addendum XXXI. This addendum delays the implementation of the biological measures approved as part of Addendum XXVII from January 1, 2025 to July 1, 2025. This is designed to potentially accommodate Canadian rule making and address potential international trade impacts. This delay is not expected to have any impact on conservation given the limited lobster harvest during the winter and early spring period. If the ASMFC approves this addendum, DMF will recommend the MFAC vote to adopt the delayed implementation date at its October business meeting.

DMF and CZM are developing comments on NOAA Fisheries' proposed vessel speed rule that could affect vessel traffic, including ferries, in Nantucket Sound. DMF's focus has been on challenging NOAA's risk analysis. Once the letter is finalized, DMF will send the MFAC a copy.

Chris McGuire asked if CZM and DMF were proposing NOAA Fisheries adopt an alternative management strategy or more broadly objecting to the proposed speed limit rule. Bob Glenn stated the comment letter is stating DMF's objections to NOAA's preferred broad-scale speed restricted area while also supporting dynamic management (Alternative 4).

Bob noted that NOAA's preferred proposal is not sufficiently surgical or dynamic and its adoption is likely to have significant economic consequences, particularly related to the islands and their ferry traffic. Bob further opined that vessel strike risk is being attributed to nearshore areas like Vineyard Sound and Nantucket Sounds where right

whale sightings are highly infrequent. This is because of spill over risk from adjacent offshore areas like Coxes Ledge and Nantucket Shoals without consideration for differing environmental and oceanographic conditions between the areas that may influence where right whales are likely to occur.

McGuire noted that technology will likely play a critical role in implementing dynamic speed restriction areas. The Stellwagen Bank Sanctuary Advisory Council has successfully piloted broadcast notices through AIS to ship operators. Bob Glenn added that the federal funding through the Consolidated Appropriation Act to enhance right whale surveillance should also be able to eventually fund the monitoring arrays necessary to inform real-time dynamic management.

### **2024 QUOTA MANANAGED SPECIES REPORT**

Anna Webb provided an update on overall trends in fishery performance for black sea bass, summer flounder, horseshoe crabs, and tautog. DMF also discussed a recent transfer of menhaden quota from Rhode Island to Massachusetts that allowed the fishery to reopen at the 25,000-pound trip limit and would likely keep the fishery open for the remainder of the season. This was done to address concerns about a local shortage of lobster bait.

Bill Amaru requested DMF and the MFAC consider creating gear type specific sub-quotas for the inshore summer flounder fishery. He noted that while the mobile gear fleet may not object to taking the quota during the summer, this year's late August closure disadvantaged hook and line fishers who target summer flounder as they migrate out onto Nantucket Shoals later in the summer. Director McKiernan described some of the logistical challenges related to accurately monitoring gear type specific sub-quotas for the same species within the same time-period. Jared Silva agreed with Director McKiernan's assessment but noted that staff were analyzing this concept and would present on it at the industry meeting this fall.

Mike P., Bill Amaru, and Anna Webb discussed the collection of data regarding gear type and fishing location from dealer reports, state trip level reports, and federal vessel trip reports. Anna noted added that dealer data are due weekly for quota accounting purposes, whereas state-level harvester reports are due monthly, and with QA/QC processing, harvester data sets are generally not complete until the spring of the following year.

Mike P. asked whether menhaden caught in Massachusetts were servicing local bait markets or bait markets in other states. McKiernan indicated that DMF does not monitor for the end use of this fish and that DMF cannot regulate the fate of these fish. His understanding of the fishery is that a lot of the fish stays local, but some of it is trucked out of state. Mike P. then asked if out-of-state vessels (e.g., Maine) can fish or land in Massachusetts, bypass local demand, and truck the fish back home. Dan stated they could do so if they were correctly permitted but this has not yet occurred with any type of frequency.

Mike P., Dan, and Nic then discussed DMF's current quota use strategy to reduce trip limits based on quota use and rely on out-of-state transfers to keep the fishery open at throughout the season, versus Maine's strategy to use their quota up enter into the Episodic Event Set-Aside Fishery. Dan and Nichola indicated this would likely be the focus of the industry meeting this meeting.

## **UPCOMING PUBLIC HEARING ITEMS**

### Control of Use of Fish Pots in Federal Zone

Director McKiernan led a review DMF's proposal to address the use of fish and conch pots by Massachusetts commercial fishers in the federal zone. Bob Glenn and Jared Silva contributing to the briefing. The proposed actions were being driven by right whale entanglement concerns. DMF has observed an increase in fish and conch pot gear being fished in the federal zone immediately south and east of the Islands, which is a hot spot for right whale activity throughout the year. At present, there are not sufficient state or federal effort controls to limit the proliferation of this pot gear in these waters. Moreover, there is not sufficient clarity regarding how to mark these buoy lines so as to designate it federal waters gear, rather than state gear attributable to the Massachusetts Mixed Species Pot/Trap Fishery. This distinction is critical as we evolve towards a future where state fisheries are managed as discrete units under an Incidental Take Permit (ITP).

To address these concerns, DMF developed a two-pronged proposal. The first prong focused on enacting state controls to limit the proliferation of fish and conch pot gear in federal waters to control risk. This included requiring fishers hold a DMF-issued conch or fish pot permit to fish this gear in federal waters and possess or land catch from this gear in Massachusetts; to require all gear bear a Massachusetts' trap tag; and have the state trap limit and seasons apply regardless of where gear is set. The second prong addressed buoy line marking and would require this gear be marked consistent with the federal Atlantic Large Whale Take Reduction Plan (ALWTRP) rules for the Northern Nearshore Pot/Trap Fishery thereby distinguishing it from the Massachusetts Mixed Species Pot/Trap Fishery. However, the marking scheme for the Northern Nearshore Pot/Trap Fishery is currently very similar to the scheme for Massachusetts Mixed Species Pot/Trap Fishery.

Dan and Bob then discussed that the expansion of the conch pot fishery into the federal zone. Under the current management regime, it is conceivable that any commercial fisher with a DMF-issued shellfish permit can set an unlimited quantity of untagged conch pots in the federal zone year-round. Effectively, effort would only be limited by resource availability in federal waters, the capacity for the fisher to haul the gear, the seasonal behavior of whelks limiting their catchability at certain times of the year, and profitability. While concerns about scup and sea bass pot gear remain, they are less strenuous than conch pot gear. This is because there are federal FMPs for scup and black sea bass that result in federal limited entry permitting requirements to take these fish and quotas to control harvest. Layered on this, there is at least a limited entry permitting scheme to possess and land black sea bass in Massachusetts, seasons and trip limits to manage the state's quotas for both species, and at present, a limited market for scup.

Chairman Kane and Director McKiernan discussed DMF's ability to regulate state permit

holders and registered vessels in federal waters. Dan was confident DMF had the authority to do so out to 200 miles, particularly for the whelk fishery as there is no federal FMP.

Shelley Edmundson and Bill Amaru objected to DMF's proposal to require commercial fishers also hold the DMF-issued limited entry scup and black sea bass pot endorsements to fish this gear in federal waters. They noted that individuals have invested in federal limited entry federal permits to fish pot in federal waters and this would now eliminate their ability to do so unless they also obtained an expensive and difficult to come by state-issued pot endorsement. Amaru noted this created another barrier to entry and permit diversity, which he had been working with DMF to bolster.

McKiernan recognized these concerns and was willing to revisit his proposal. However, he noted that individuals who were currently fish potting in federal waters without a corresponding state pot fishery permit endorsement were likely violating state trap tag regulations. He noted these individuals would be ineligible to obtain trap tags and would thusly be in possession of untagged pots when transiting state waters to set and haul out the gear.

Shelley asked if the conch potting in the federal zone was currently being conducted by state conch pot endorsement holders. McKiernan confirmed that this was DMF's understanding.

Mike P. questioned why this fish pot activity was not managed through the ALWTRP. Glenn and Silva explained that the ALWTRP sets the buoy line marking and configuration rules for various buoed gears, but it does not control the number of traps or buoy lines that may be set. Moreover, the buoy line marking and configuration rules have not been recently updated to adopt the more robust buoy line marking requirements and weak rope rules like those affecting the lobster and Jonah crab trap fisheries.

Kalil Boghdan asked why the channeled whelk fishery was not managed by a quota. McKiernan and Glenn explained that federal requirements to end overfishing have produced federal and interstate fishery management plans that establish quotas based on federal and interstate assessments. Whelks are generally found in sandy, shallow, nearshore waters and have a limited migratory footprint. Accordingly, they are not subject to federal or interstate fishery management programs. Rather, management authority falls to the coastal states who generally do not dedicate their limited resources to produce and maintain a stock assessment of their channeled whelk population to justify a quota-based management model. Instead, the states have relied on effort and harvest controls to manage the fishery, similar to the management of other local shellfish resources. It is conceivable that Massachusetts may eventually adopt a quota-based management system for whelks and this is an area that the anticipated Management Strategy Evaluation by SMAST may address.

#### Entanglement Reporting

Bob Glenn stated that DMF was seeking to require all persons report turtle and large whale entanglements in fishing gear. This proposal responded to comments by NOAA

Fisheries during their review of DMF's Incidental Take Permit Application.

Director McKiernan and Bob Glenn both recognized there are some legitimate reservations about the scope of the rule. However, the proposal seeks to regulate best practices and use the regulation as a means of educating the boating public on how to identify and report entanglements.

Shelley Edmundson asked if there was turtle disentanglement training for commercial fishers. Bob indicated that such training does exist, but to date it has been focused on law enforcement and marine biologists.

#### Striped Bass Total Length Measurement Clarification

Nichola Meserve reviewed DMF's memorandum on striped bass total length measurement. When the fishery was managed by a minimum size, squeezing the tail to lengthen the fish was explicitly allowed by regulation. This allowance was maintained when the state moved to a slot limit. However, with the implementation of the maximum size in the slot limit, fishers began to fan the tail to shorten fish under the maximum size. While squeezing the tail is explicitly legal under state regulations, DMF views fanning the tail as being implicitly legal as the regulations do not contemplate its legality. Accordingly, there is interest from both anglers and MEP to provide clearer regulatory language on how to take total length measurement. At present, DMF was proposing to mandate squeezing the tail in the measurement of all striped bass and DMF's Recreational Fisheries Program was collecting data this season to help inform discussion of this proposal at public hearing in early 2025.

Mike P. noted that regardless of where the rule ends up, DMF should conduct outreach on the final rule to the phone applications that display state fishing regulations.

Kalil Boghdan expressed his interest in this being addressed coastwide through the ASMFC so that there is a uniform standard across states.

### **DISCUSSION ITEMS**

#### False Albacore and Atlantic Bonito Management

Director McKiernan explained that there has been increasing interest among a segment of recreational anglers to develop a management program for Atlantic bonito and false albacore. This is being driven by the expansion of these fisheries in the northeast and their increased seasonal importance to the recreational sector. Moreover, several years back there were serious concerns about the reported widespread retention of large numbers of young-of-the-year Atlantic bonito as bait.

The ASMFC Policy Board considered management but there was limited interest given personnel limitations and that these species fall under the jurisdiction of NOAA's Highly Migratory Species program and the International Commission for the Conservation of Atlantic Tunas. Instead, the ASMFC convened a working group of interested states, which DMF participated in. Dr. Greg Skomal has represented DMF at this working group.

Dr. Skomal then presented data on commercial and recreational catch characteristics for Atlantic bonito and false albacore. This included data on commercial landings and value, recreational catch and harvest, and recreational length frequency data. Massachusetts is a major player in the coastwide recreational fishery for both species. Our recreational fishery is predominantly catch and release, however, it is common for up to two Atlantic bonito to be retained. While there are commercial fisheries elsewhere along the coast (e.g., Florida, North Carolina, Rhode Island), Massachusetts does not have a commercial fishery for false albacore and contributes nominally (~3%) to coastwide commercial Atlantic bonito landings.

Mike P. stated he has heard anecdotal reports that there are expanding commercial hook and line fisheries for these species in Massachusetts, particularly Atlantic bonito. However, it does not appear that these landings are showing up at any real level in SAFIS data. Mike speculated this may be due to underreporting or illegal direct-to-public sales. Director McKiernan concurred that those would be reasons why SAFIS data would not capture landings. He also noted that direct-to-public sales may also raise issues with the Department of Public Health given the need to properly handle these fish to limit histamine production and the risk of histamine poisoning.

Mike P. then asked what commercial gear is likely responsible for Rhode Island's commercial landings. Skomal indicated that he did not analyze the commercial data based on gear type. McKiernan speculated that landings may be attributable to their inshore pound net fishery. Dan noted that these fish may also be caught in Massachusetts fish weirs but our landings may be limited by the interannual variability in weir fishery participation and local markets for the species.

Bill Amaru expressed his support for proactively managing these fisheries, particularly given the expansion of these resources into New England, as well as the current lack of stock assessment information and coastwide management programs.

No further comments were provided by the MFAC. At Director McKiernan's request, Chairman Kane accepted comments from the public.

Ray Jassaume stated that he became interested in pursuing a management program for Atlantic bonito several years back upon observing increased targeted fishing pressure, excessive catches, and the retention of large quantities of young-of-the-year fish as bait. As a shore-based angler, he was concerned that his mode of fishing would be disproportionately impacted if the resource was to become depleted. He opined that shore-based fishing is reliant on their being robust availability whereas vessel-based anglers can steam to where fish are aggregated. He advocated for DMF to pursue both size and bag limit rules.

Mike Hogan is the owner of Hogy Lures and Salty Cape out of Falmouth, MA. Through his businesses and recreational fishing activity, he has observed increasing interest and participation in the recreational fishery for false albacore and Atlantic bonito along the South Cape. He expressed his interest in proactively managing these resources, as well as his concerns about the growth of this fishery absent a conservation management

program. He opined that proactive management would likely be well received by the recreational fishing public.

Eric Spicer works for the Saltwater Edge in Rhode Island. He stated the recreational false albacore and Atlantic bonito fisheries have become an economic driver for bait and tackle shops in Southern New England. He was also concerned about the growth of this fishery absent a regulatory program and supported DMF taking a proactive management approach.

Peter Fallon is a charter boat captain who operates out of Falmouth, MA during the summer and he primarily target false albacore. Peter stated that both false albacore and Atlantic bonito fill a seasonal gap for anglers and charter boats in southern Massachusetts during August and September, as striped bass and bluefish have not been locally available, the black sea bass fishery closes in early September, and the tautog bite does not turn on until the early fall. Peter has observed a significant increase in recreational fishing effort for false albacore and Atlantic bonito during recent summers along with an apparent organized commercial harvest involving numerous anglers on jet skis repeatedly filling coolers and then returning to a “mothership” to offload their catch. He was also concerned that interstate and federal management conversations were trapped in a “Catch 22” situation whereby there is an unwillingness to manage these fisheries absent data describing there is a need to manage these fisheries but there are no assessments for these fisheries to provide the necessary data. He was enthused that DMF was willing to discuss a potential management program moving forward.

Director McKiernan asked how many fish his clients typically retain on a charter. Fallon indicated that his charters are primarily catch and release, but some clients may retain one or two Atlantic bonito.

Ray Jarvis spoke next. He is a charter boat captain out of Westport, MA. During the late summer, his charter business primarily targets false albacore and Atlantic bonito. Ray supported proactive management. He noted that these species comprise an important component of his business model and make southern Massachusetts a destination fishery for many anglers. Ray reiterated the previously stated observations regarding increasing recreational fishing effort, emerging commercial operations, and the retention of these fish as bait. With regards to the jet ski fishing activity, he opined that the fish was likely destined for into commerce and the fish were likely not being reported.

Will Poston spoke last. He is a policy associate for the American Saltwater Guides Association (ASGA). He discussed that expansion and growth in the Atlantic bonito and false albacore fisheries and his worries that this increased effort coupled with the lack of a cohesive management program along the coast would lead to eventual declines in abundance negatively impacting the health of the stocks and the viability of the recreational fishing sector in Southern New England. He discussed the false albacore tagging study that ASGA was involved in and how it demonstrates the geographic extent of this resource and fishery along the Atlantic coast. He advocated for Massachusetts to take a proactive, leadership role in managing these resources and hoped this would push other states to do the same.



Bill Amaru asked about the feeding behavior of these fish and whether they schooled together or separately. Jarvis, Poston, and Fallon discussed their observations of the feed behavior of both species. They generally agreed that they tend to school separately but may feed adjacent to one another. They also described a sequence in local availability whereby the Atlantic bonito arrive first, then the false albacore show up and Atlantic bonito availability starts to wane, then the false albacore migrate out, and a final run of Atlantic bonito generally follows. The in migration of false albacore appeared to assert some type of pressure on Atlantic bonito that affects their catchability and availability.

Chairman Kane, Director McKiernan, and Kalil Boghdan discussed the benefits of and challenges to moving forward with coastwide management. Director McKiernan noted that the lack of an interstate management framework does not prevent Massachusetts from acting unilaterally to implement a state-wide recreational or commercial fishery management program. He cited DMF's catch limits for sand eel and blue crab as examples of efforts to constrain the development of new industrial scale fisheries. However, any attempt to limit recreational harvest would need a corresponding rule to prevent the commercial permit from becoming a loophole.

Mike P. expressed his concern about managing these species outside the HMS and ICCAT frameworks because it would create a management baseline should conservation be needed on an Atlantic or coastwide basis. Based on his experience at ICCAT he felt this could ultimately disadvantage the proactive jurisdiction as they would be required to reduce harvest from their existing rules while other jurisdictions with unregulated fisheries only have to initiate a management process that moves them forward from an unlimited harvest baseline.

Chris McGuire noted that The Nature Conservancy has a decision support tool called Fish Path that assists in the development and stakeholder engagement process for building management strategies for undermanaged or unmanaged fisheries.

#### Update on Effort to Modernize Management of Surf Clam Dredge Fishery

Director McKiernan noted that DMF held an industry meeting on September 16 to discuss modernizing the spatial management of this fishery using geofences and cellular-based vessel monitoring. Representatives from three active vessels were in attendance and were generally supportive of DMF's initiative. DMF was now pivoting to meet with local municipalities to better understand what user group conflicts may exist in their waters. This directed public scoping will inform the development of a regulatory proposal for potential implementation next year.

McKiernan and Amaru briefly discussed the history of surf clam management issues in Provincetown.

Chairman Kane allowed a question from the public. Ed Barrett asked if VMS was sufficient to meet the proposed spatial monitoring requirement for the surf clam fishery. Dan stated VMS did not have a sufficient ping rate for the geofencing tools and the proposal was to require the same cellular-based device used in the federal lobster fishery. However, surf

clam permit holders would not be required to obtain the device unless they intended to participate in the fishery.

### **OTHER BUSINESS**

Chairman Kane asked DMF staff if they were investigating concerns regarding dragger caught lobsters and if they would be able to address it at MLA Weekend. Story Reed indicated staff have been meeting on this subject and an analysis will be forthcoming.

Mike P. noted there were pending changes to electronic reporting requirements associated with HMS permits. Additionally, he noted this would be his last MFAC meeting. His term expired in August 2024 and he was not seeking reappointment given his commitments as a member of the New England Fishery Management Council. commitments.

Bill Amaru again encouraged folks to watch the NOVA series on the Gulf of Maine.

### **PUBLIC COMMENTS**

No public comment was provided.

### **ADJOURNMENT**

Chairman Ray Kane requested a motion to adjourn the September 17, 2024 MFAC business meeting. **Shelley Edmundson made a motion to adjourn the meeting. The motion was seconded by Kalil Boghdan. The motion as approved 6-0-1 with Chairman Kane abstaining.**

## **MEETING DOCUMENTS**

- September 17, 2024 MFAC Business Meeting Agenda
- August 20, 2024 MFAC Draft Business Meeting Minutes
- Quota Monitoring Update for September 2024
- Proposal to Control Use of Fish and Conch Pots in Federal Waters
- Proposal to Require Marines Report Large Whale and Turtle Entanglements
- Total Length Measurement Proposal for Striped Bass
- Presentation of False Albacore and Atlantic Bonito Catch Characteristics

## **UPCOMING MEETINGS**

9AM  
October 29, 2024  
1 Rabbit Hill Road, Westborough

9AM  
November 19, 2024  
via Zoom

9A  
December 17, 2024  
via Zoom



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

(617) 626-1520 | [www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



MAURA T. HEALEY  
Governor

KIMBERLEY DRISCOLL  
Lt. Governor

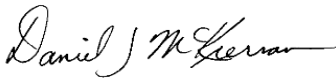
REBECCA L. TEPPER  
Secretary

THOMAS K. O'SHEA  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

**TO:** Marine Fisheries Advisory Commission

**FROM:** Daniel J. McKiernan, Director 

**DATE:** October 23, 2024

**SUBJECT:** Recommendation to Delay Implementation of the Biological Measures Adopted as Part of Addendum XXVII from January 1, 2025 to July 1, 2025

#### Recommendation

I recommend the MFAC vote to approve a new July 1, 2025 implementation deadline for the biological measures (Table 1) affecting the Gulf of Maine/Georges Bank (GOM/GBK) Lobster Stock as adopted under Addendum XXVII to the American Lobster Fishery Management Plan (FMP). This effectively postpones the implementation of the 2025 measures from January 1 to July 1, 2025 and move back the implementation of scheduled changes to biological measures in 2027, 2028, and 2029 from January 1 of that year to July 1. These biological measures were previously approved by the MFAC at their April 2024 business meeting<sup>1</sup>. Similarly, I recommend the previously approved three-month grace period that follows implementation of each adjusted biological measure allowing dealers to retain non-conforming lobsters purchased prior to the implementation of any scheduled adjustment to the biological measures be maintained but instead occur from July 1 – September 30 (rather than January 1 – March 31).

This recommendation does not extend to the implementation of rules that restrict the issuance of extra annual trap tags to permit holders in Lobster Conservation Management (LCMA) Areas 1 and 3. As previously approved, these rules will go into effect for 2025. This aspect of the regulations has been parsed out from the delayed implementation schedule so as to prevent any confusion about how many trap tags a permit holder may order when renewing their permit for the upcoming calendar year.

Please note that this recommendation is limited only to the implementation deadline. I am not reconsidering the previously approved measures. If this recommendation fails, DMF will move forward to the previously approved rules, which implement these biological measures beginning on January 1, 2025.

#### Background

The Atlantic States Marine Fisheries Commission (ASMFC) Lobster Board (Board) approved Addendum XXVII to the FMP at their May 2023 meeting. This addendum: (1) restricted the issuance of extra trap tags to commercial fishers in LCMA1 and LCMA3; (2) created common

<sup>1</sup> See the April 17, 2024 recommendation memorandum to the MFAC available in the April 23, 2024 [meeting materials](#).

biological measures for state and federal permit holders in the Outer Cape Cod LCMA; and (3) established a series of trigger-based adjustments to biological measures that would go into effect—if and when—there was a 35% decline in recruitment abundance indices for the Gulf of Maine/Georges Bank stock compared to the three-year average from 2016 – 2018. In October 2023, the ASMFC’s Technical Committee reported that recruitment abundance indices declined by 39%, exceeding the trigger and requiring management action for June 1, 2024.

This decline occurred sooner than the Board expected. At that October 2023 ASMFC meeting, Commissioner Kelliher (Maine) made a compelling argument and motion for states to delay implementation to allow potential regulatory coordination with Canada to avoid trade implications<sup>2</sup> and to ensure there a sufficient supply of gauges could be fabricated and made available to the LCMA1 lobster fishery. The motion was approved and the implementation deadline was pushed back from June 1, 2024 to January 1, 2025.

During the interim period, the Board conducted its due diligence into addressing trade concerns. This included members of the fishery managers from the affected LCMA1 states—Maine, New Hampshire, and Massachusetts—attending a June 2024 meeting in New Brunswick with Canadian fishery managers and US and Canadian industry representatives. At this meeting, Canadian industry representatives expressed an interest in potentially matching the US LCMA1 minimum size standard in the Gulf of Maine Canadian maritime fishery. However, as this Canadian fishery occurs primarily during the first half of the calendar year and any action would require an industry-driven recommendation, the Canadian management process could not accommodate a January 1, 2025 implementation date.

In response the Board drafted Addendum XXXI to the FMP at the May 2024 ASMFC meeting. This addendum again delays the implementation of the biological measures approved as part of Addendum XXVII from January 1, 2025 to July 1, 2025 (and similarly bumps back subsequent scheduled adjustments and dealer grace periods). The intent was to provide our Canadian counterparts with sufficient time to potentially adopt complementary minimum size standards for this Canadian fishery, and if they opted not to, the delay would not have a significant biological impact given US fishing effort in LCMA1 does not begin in earnest until late-spring and early-summer.

Addendum XXXI was approved by the Board at their October 21, 2025 business meeting. I now move to have you approve a complementary adjustment to the implementation schedule so that Massachusetts enacts the biological measures established by Addendum XXVII for July 1, 2025 rather than January 1, 2025. This recommendation is consistent with my commitment at the April 2024 MFAC business meeting that DMF would not proceed unilaterally to adopt any aspect of Addendum XXVII and would proceed only in concert with our neighboring states<sup>3</sup>.

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<sup>2</sup> Disparate minimum size standards between the US fishery in LCMA1 and maritime Canadian fishery in the Gulf of Maine creates a substantial regulatory burden on processors and dealers who move lobsters between Canada and the United States. US markets are particularly reliant on Canadian imports during the early season months when US landings are limited.

<sup>3</sup> In April 2024, the MFAC approved my initial recommendation to implement the various regulatory provisions established by Addendum XXVII. However, it soon became apparent that further implementation delays were likely as the Board began to address the international trade issues and develop Addendum XXXI. For these reasons, I temporarily held back filing the final

**Table 1. Recommended Addendum XXXI Implementation Schedule for Biological Measures Established by Addendum XXVII**

Effective	LCMA1 and Recreational Gulf of Maine	LCMA 3	OCCLCMA and Recreational Outer Cape
July 1, 2025 <del>Jan 1, 2025</del>	Minimum carapace size increase from 3 1/4" to 3 5/16".		Establish 6 3/4" maximum carapace size for state waters.  V-notch standard changes from 1/4" sharp v-notch without setal hairs to 1/8" v-notch with or without setal hairs for state waters.
July 1, 2027 <del>Jan 1, 2027</del>	Minimum carapace size increase from 3 5/16" to 3 3/8".	N/A	N/A
July 1, 2028 <del>Jan 1, 2028</del>	Trap escape vent size change from 1 15/16" by 5 3/4" rectangular or 2 7/16" circular diameter to 2" by 5 3/4" rectangular or 2 5/8" circular diameter.	N/A	N/A
Jan 1, 2029	N/A	Maximum carapace size decrease from 6 3/4" to 6 1/2".	Maximum carapace size decrease from 6 3/4" to 6 1/2".

regulation. In doing so, if Addendum XXXI was approved, I could adopt the implementation schedule without reinitiating the regulatory process, and if it was not approved, I could still meet the January 1, 2025 implementation schedule adopted in Addendum XXVII. Accordingly, if the MFAC approves this recommendation, I will move to immediately file the final regulations so that the trap tag rules are in effect at the outset of our permit renewal process with the biological measures set to go into effect on the schedule set forth in Addendum XXXI.

# Recommendation on Addendum XXXI

Effective	LCMA1 and Recreational Gulf of Maine	LCMA 3	OCCLCMA and Recreational Outer Cape
July 1, 2025 <del>Jan 1, 2025</del>	Minimum carapace size increase from 3 1/4" to 3 5/16".		Establish 6 3/4" maximum carapace size for state waters.  V-notch standard changes from 1/4" sharp v-notch without setal hairs to 1/8" v-notch with or without setal hairs for state waters.
July 1, 2027 <del>Jan 1, 2027</del>	Minimum carapace size increase from 3 5/16" to 3 3/8".	N/A	N/A
July 1, 2028 <del>Jan 1, 2028</del>	Trap escape vent size change from 1 15/16" by 5 3/4" rectangular or 2 7/16" circular diameter to 2" by 5 3/4" rectangular or 2 5/8" circular diameter.	N/A	N/A
Jan 1, 2029	N/A	Maximum carapace size decrease from 6 3/4" to 6 1/2".	Maximum carapace size decrease from 6 3/4" to 6 1/2".





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Director

### MEMORANDUM

**TO:** Marine Fisheries Advisory Commission  
**FROM:** Daniel J. McKiernan, Director   
**DATE:** October 23, 2024  
**SUBJECT:** Proposal to Prohibit the Possession and Sale of Pacific Lugworms

#### Proposal

I am proposing to adopt a new regulation that would prohibit the possession and sale of Pacific lugworms (*Perinereis aibuhitensis*) by dealers and fishers in the Commonwealth. My intention is to take this proposal out to public hearing this winter for implementation in 2025.

#### Background and Rationale

Earlier this year, officials from the Maine Department of Marine Resources (DMR) contacted me regarding the potential for Pacific lugworms (also known as the clamworm) to be imported and used as bait. There has been some increased interest in importing these worms into northeast bait and tackle shops, likely in response to an alleged intermittent decrease in availability of local sea worms.

Maine DMR has a strict regulatory framework regarding the importation, sale, and use of non-native baits. Accordingly, they produced a risk analysis on the importation of this species. This report was recently shared with DMF and is attached to this memorandum. The report concludes that the risk posed by this non-native species is primarily related to pathogen transmission. Of specific concern are White Spot Syndrome Virus (WSSV) and Convert Mortality Nodavirus (CMNV). WSSV is a disease that is known to cause mortality in shrimp and clinical studies show it is capable of infecting American lobster (Clarke, et al. 2013). CMNV is pathogen that is capable of infecting a large variety of shellfish, crustacean, and finfish species. The report also notes that the risk of this species becoming naturalized is moderately low at this juncture given the difference in the temperature regimes between the sub-tropical climate where it naturally exists and the northwest Atlantic. However, our inshore waters and mudflats do experience temperatures within the favorable temperature regime (71°F - 77°F) and the periods when these temperatures are being experienced have been increasing.

Given the risk posed by this species—particularly as it relates to the biosecurity of lobster fishery—I support taking a precautionary approach and banning fishers and dealers from possessing and selling the Pacific lugworm. However, I recognize that enforcing this prohibition may be challenging. Staff have analyzed the scientific literature regarding the phenotypic differences between local marine worms and the Pacific lugworm and found that differentiating worms at a species level is exceptionally difficult in the field. Moreover, the Pacific lugworm



can be readily purchased through the internet. Accordingly, enforcement will likely have to rely on chain of custody information to enforce the prohibition. Outreach and education are thus critical to ensuring compliance. Given the market for this product is not yet robust and the risk posed by its import is significant, I think a robust outreach and education initiative should be fruitful. DMF's Recreational Fisheries Project will work with bait dealers and anglers to educate them on the rationale for this prohibition, should it be adopted.

As discussed at our August meeting, biosecurity concerns related to the use of non-native baits in the marine environment are not just limited to the Pacific lugworm. I have tasked staff with continuing to review how DMF should address these concerns moving forward. I also intend to work closely with the Department of Fish and Game on this subject given the potential risks of introduced species to biodiversity in the Commonwealth and the need to further define the scope of challenges related to managing non-native species in Massachusetts<sup>1</sup>.

## **Attachments**

Maine DMR's Risk Analysis on Pacific Lugworm

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<sup>1</sup> The management framework within Massachusetts is rather complicated. The Department of Conservation and Recreation (DCR) is the principal authority for managing aquatic nuisance species in our inland waters and is the state agency that sits on the US Fish and Wildlife's Aquatic Nuisance Species Task Force. On the marine side, DMF does have the legal authority to manage the use of bait in the marine environment, including controlling the types of baits a bait dealer may possess and sell (i.e., use of permit) and the types of baits fishers may use (i.e., use of permits and means of fishing), but does not have broader regulatory authority. On the inland side, the Division of Fisheries and Wildlife (DFW) regulates the importation of live fish, amphibians, reptiles, birds, and mammals and dead bodies or carcasses thereof, but they have informed DMF that their regulatory authority does not extend to non-native invertebrates or bait fish that have been preserved by means other than freezing.

## **Risk Analysis on Importation of *Perinereis aibuhitensis* (aka Clamworm aka Lugworm)**

Katie Stein, BVMS (DVM)

*Fisheries Pathologist, Maine Department of Marine Resources*

On May 20, 2024, MDMR received an import application for *Perinereis aibuhitensis*, a species of marine worm to be utilized as bait. As these organisms are novel to the department and have yet to be evaluated, a risk assessment was conducted to aid in determining the status of the application.

**Background biology:** *Perinereis aibuhitensis* is a sediment-dwelling, marine polychaeta indigenous to the Northwestern Pacific and Indian ocean. It is omnivorous and has been cultured and utilized in China, Korea, and Thailand as an important bait species for the shrimp industry (Yang et al, 2023). It lives in burrows in mudflats and has a natural temperature range around 19-28°C. Their reproduction appears to be controlled both by temperature as well as photoperiod with ideal reproduction occurring at 25°C in the January and February (Chunhabundit and Yeemin, 2017). They are batch spawners that time their reproduction with lunar phases and then



die after releasing their eggs and sperm.

**Facility:** All information provided via import contact (Kenny Lim, sales@piecesoftheocean.com)

**Facility Address:** Baishui Village, Xitou Town, Yangxi County, Guangdong, China

**Description:** Adult worms are raised in what appear to be concrete beds containing sediment and plastic tubs for free-swimming larval stages of the worms. The facility is 650,000 sqft with concrete beds located both indoors and outdoors with varying degrees of cover. Intake water is from a salt water well and does not receive any treatment or filtration prior to application. The entire facility is a flow-through system. *P. aibuhitensis* are the only species raised in the facility.



Facility larval tubs (left) and concrete sediment beds (right)



They are reared on a commercial shrimp feed containing fish meal, squid meal, soybean meal, shrimp bran, yeast powder, gluten flour, minerals, trace elements, multivitamins, and other ingredients. Viable spawners are identified and removed prior to spawning and placed in isolated tubs to control reproduction. Worms are flushed with sea water from the well prior to transport and are selected for viability and quality before being packaged and transported to final destinations.

Commercial shrimp feed used

### US Importation Documentation:

USFWS operates under the regulations of Title 50 which—in summary—prohibits the importation of any endangered species or injurious wildlife. *P. aibuhitensis* is not a listed species under Title 50 and is therefore granted entry into the United States. It should be noted that Title 50 has no restrictions on any marine polychaeta or any invertebrate aside from mollusks and crustaceans.

All lots of lugworms receive a health certificate from China prior to exportation. (See Appendix)

The importer has also provided pathology testing for this lot of worms for three pathogens performed prior to exportation (WSSV, DIV1, & *V. parahemolytica*, see Appendix). All three tests were negative, but it is unclear as to what test was conducted and at what assumed pathogen prevalence rate. Pathology testing is performed on the lot of worms to be imported at the request of the importing country. Testing can be performed either by a laboratory in China or by a lab of the receiving country's choice, with a sample of worms shipped to the requesting body. It is

unknown what the sample size or what tests were used to determine the status of the received pathology tests. Routine pathology testing is not performed on the worms at the facility. If the importing country does not request additional pathology testing, the worms will only be screened for the presence of *Salmonella* species.

### Pathogens of Concern:

The below pathogens have been found to be carried by *P. aibuhitensis* and are endemic to the Guangdong area:

Pathogen	Affected Species	Disease Signs	Status in Maine	Transmission Route
White Spot Syndrome Virus (WSSV)	Shrimp Prawn Lobster Crab Crayfish	High mortality White spots on the carapace	Exotic	Horizontal & vertical
Decapod Iridescent Virus (DIV1)	Shrimp Prawn Crayfish	High mortality	Exotic	Unknown
Covert Mortality Nodavirus (CMND)	<b>Very Broad!</b> Shrimp (salt and freshwater) Japanese flounder Hermit crab Barnacle Pacific oyster Rotifers Ghost crab Fiddler crab	Morbidity with shell softening, anorexia, and decreased swimming function	Exotic	Horizontal (potentially vertical)
Infectious Hypodermal Hematopoietic Necrosis Virus (IHHNV)	Shrimp Prawns	High morbidity & mortality Inability to swim Anorexia	Exotic	Ingestion Horizontal & Vertical

\*Vertical transmission refers to the ability of a virus to incorporate into the host's DNA and be passed down to the offspring.

Disinfection *P. aibuhitensis* eggs with peroxymonosulfate can successfully eliminate CMNV (Yang et al, 2023). Disinfection techniques for live lugworms could not be found.

### Discussion:

*P. aibuhitensis* is an exotic marine worm that is cultured in Guangdong, China that has been used as bait for both fishing and the aquaculture shrimp industry. They are naturally subtropical species and tend to reproduce and survive best at water temperatures around 22-25°C. While the Gulf of Maine does not experience these temperatures year-round, mudflats and

other shallow areas along the coastline routinely experience warming equivalent to this during summer months. The likelihood of these animals, if escaped or released into the wild, surviving and successfully reproducing appears to be low, but not impossible. Climate change is also warming the Gulf of Maine at a more rapid rate than the rest of globe, making it more susceptible to subtropical invasive species.

Biosecurity measures at the culture facility are unclear as is the historical disease status of this population. The pathogens of concern are all transmitted via ingestion of an infected worm or the fecal material from it. Due to the fact that worms are imported live, there are no sterilization or other disinfection measures that are feasible to eliminate pathogens without also destroying the integrity of the bait product. Of the pathogens listed, the most concerning are WSSV and CMDV.



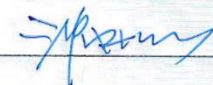

WSSV is an OIE notifiable disease. It causes massive mortalities in shrimp. Maine's wild shrimp population has been in decline for many years with a moratorium placed on fishing back in 2014. Climate change has often been suspected of leading to the fishery's collapse. The addition of a novel pathogen in combination with warming waters could be highly detrimental to the already fragile population. Additionally, WSSV is capable of infecting the American Lobster as demonstrated in clinical studies (Clark, et al, 2013). The lobster industry is one of Maine's most important sources of income. While the likelihood of introduction of this virus is low, the potential effects of introduction are devastating.

CMDV is another pressing concern due to its ability to infect a large variety of species. It has been shown to be carried and infect not only crustaceans and mollusks but has been seen to "jump" to finfish as well (Wang, et al, 2019). An introduction of this virus, while potentially less hazardous, would be next to impossible to predict or control its spread. It is unknown whether striped bass are a susceptible species. Additionally, fisherman cannot control what may bite their line or even if they lose bait in the process.

The chances of introduction of this species to the natural ecosystem of Maine as well as potential pathogens they carry appears to be moderately low. However, the potential consequences of such introductions are numerous and negatively impactful.



## Appendix

		<b>中华人民共和国出入境检验检疫</b> ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA		<b>正本</b> <b>ORIGINAL</b>	
		<b>动物卫生证书</b> ANIMAL HEALTH CERTIFICATE		共1页, 第1页Page1of1 编号 No.: 224N23090003779001	
发货人名称及地址 Name and Address of Consignor		YANCHENG FENG YUE YUAN FISHING BAIT CO., LTD. NO.6 MUDFLAT DIKE, SHEYANG PORT, SHEYANG, YANCHENG, JIANGSU, CHINA			
收货人名称及地址 Name and Address of Consignee		PIECES OF THE OCEAN 1664 Hylan Blvd. STATEN ISLAND, NY 10305			
动物种类 Species of Animals		AQUATIC ANIMAL		动物学名 Scientific Name of Animals	
				PERINEREI AIBUHITENSIS	
动物品种 Breed of Animals		LIVING LUGWORMS		产地 Place of Origin	
				JIANGSU, CHINA	
报检数量 Quantity Declared		240KGS/20CTNS		检验日期 Date of Inspection	
				27 Mar., 2024	
启运地 Place of Despatch		GUANGZHOU		发货日期 Date of Despatch	
				***	
到达国家/地区 Country/Region of Destination		U.S.A		运输工具 Means of Conveyance	
				BY AIR	
THIS IS TO CERTIFY THAT: 1. THE GOODS MENTIONED ABOVE ARE FROM NON-INFECTED AREA. 2. THEY WERE EXAMINED BY THIS SERVICE AND ARE IN GOOD CONDITIONS. 3. THE GOODS ARE NOT FIT FOR HUMAN CONSUMPTION. *****					
		签证地点 Place of Issue		签证日期 Date of Issue	
Official Stamp		YANCHENG, CHINA		27 Mar., 2024	
官方兽医 Official Veterinarian		SHEN SHANJIANG		签名 Signature	
					
中华人民共和国出入境检验检疫机关及其官员或代表不承担签发本证书的任何财政责任。No financial liability with respect to this certificate shall attach to the entry-exit inspection and quarantine authorities of the P. R. of China or to any of its officers or representatives. [c4-1(2018.4.20) * 1]					
 BB0005415					



TESTING CNAS L0313

# 检测报告

TEST REPORT

报告编号  
REPORT NUMBER W240168

样品名称  
SAMPLE(S) NAME

沙蚕LIVING LUGWORM

委托单位  
CUSTOMER

盐城

检验类别  
TEST CATEGORY

委托检验 Consignment inspection

签发日期  
ISSUED DATE

2024-03-22

连云港海关综合技术中心  
LIANYUNGANG CUSTOMS COMPREHENSIVE TECHNOLOGY CENTER

连云港海关综合技术中心  
Lianyungang Customs Comprehensive Technology Center

报告编号No.: W240168第 1 页/共 2 页: Page 1 Of 2

样品名称 Sample(s) Name	沙蚕LIVING LUGWORM	样品来源 Sample(s) from	送样 Received sample
样品数量 Sample(s) Quantity	1	收样日期 Received Date	2024-03-19
委托单位 Customer	盐		
样品描述 Sample(s) Description	活体LIVING BODY。		
检验项目 Test Items	详见下页		
检验结论 Test Conclusion	—		
备注 Note			
拟制人 Prepare	徐少东	复核人 Check	孟祥龙
		授权签字人 Approve	徐晖

声 明 STATEMENT

1. 本实验室应委托人的要求对检测的结果和有关技术资料保密。According to the requirement of applicant, no inspection results & related technical informations will be discoured.
2. 委托人对本实验室的检验结果有异议的，可在收到检验结果之日起十五日内向本实验室或者上级机构申请复验。对食品安全监督抽检和风险监测涉及的复检和异议，按《食品安全抽样检验管理办法》等规定执行。Any objection to the result(s) can be raised for re-inspection within 15 days from receiving the report. Any disputed inspection and test results for the food safety supervision and spot check and risk monitoring can be raised for re-examination according to <<The administrative mesures on food safety sampling and testing>>and relevant requirements.
3. 本报告涂改、缺页、部分复印无效。The report will be invalid if altered, deficient or partly duplicated.
4. 若非本单位抽样，本报告仅对收到的样品负责。The report is responsible for the received samples only, unless the samples are taken by ourselves.

电 话 / 传 真 Tel / Fax	0518-82320137	电子信箱 E - mail	702269314@qq.com
通 讯 地 址 Postal Address	江苏省连云港市连云区海棠北路187号 No. 187, Haitang North Road, Lianyun District, Lianyungang, Jiangsu, China		



连云港海关综合技术中心  
Lianyungang Customs Comprehensive Technology Center

报告编号No. : W240168 第 2 页/共 2 页; Page 2 Of 2

样品编号 Sample Number	检验项目 Test Item	检验结果 Test Result	单位 Unit	检验依据 Test Method
W240168-1	十足目虹彩病毒1核酸 DIV1	未检出 ND		SC/T 7237-2020
W240168-1	致急性肝胰腺坏死病副溶血性弧菌核酸 AHPND	未检出 ND		WOAH《水生动物疾病诊断手册》(2023版) 第2. 2. 1章
W240168-1	白斑综合征病毒核酸 WSSV	未检出 ND		WOAH《水生动物疾病诊断手册》(2023版) 第2. 2. 8章

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## References:

Xu T, Liu S, Li X, Zhang Q. Genomic characterization of covert mortality nodavirus from farming shrimp: Evidence for a new species within the family Nodaviridae. *Virus Research*, 2020, Vol 286, 198092.

Liu S, Wang X, Xu T, Li X, Du L, Zhang Q. Vectors and reservoir hosts of covert mortality nodavirus (CMNV) in shrimp ponds. *J Invertebr Pathol*. 2018 May;154:29-36. doi: 10.1016/j.jip.2018.03.011. Epub 2018 Mar 21. PMID: 29573994.

Wang C, Liu S, Li X, Hao J, Tang KFJ, Zhang Q. Infection of covert mortality nodavirus in Japanese flounder reveals host jump of the emerging alphanodavirus. *J Gen Virol*. 2019 Feb;100(2):166-175. doi: 10.1099/jgv.0.001177. Epub 2018 Nov 21. PMID: 30461374.

Yang M, Zeng C, Xia J, Liu Q, Fang J, Zhang Q. Disinfection of *Perinereis aibuhitensis* eggs with peroxymonosulfate to eliminate covert mortality nodavirus (CMNV). *Aquaculture*, Volume 572, 2023, 739539, ISSN 0044-8486, <https://doi.org/10.1016/j.aquaculture.2023.739539>.

Clark K, Greenwood S, Acorn A, Byrne P. Molecular immune response of the American lobster (*Homarus americanus*) to the White Spot Syndrome Virus. *Journal of Invertebrate Pathology*. Volume 114, Issue 3, November 2013, Pages 298-308.

Jitao Xia, Wang C, Yao L, Wang W, Zhao W, Jia T, Yu X, Yang G, and Zhang Q. Investigation on Natural Infection of Covert Mortality Nodavirus in Farmed Giant Freshwater Prawn (*Macrobrachium rosenbergii*). *Animals (Basel)*. 2022 Jun; 12(11): 1370.

Sanchez-Paz, A. White spot syndrome virus: an overview on an emergent concern. *Vet Res*. 2010 Nov-Dec; 41(6): 43.

# 2024 Quota Managed Species Update

Data shown through week ending 10/19/24; as of 10/25/24 and subject to change. Data Source: SAFIS eDR, 2024 Data are preliminary

MFAC meeting, 10/29/24



# 2024 Quota Species Overview

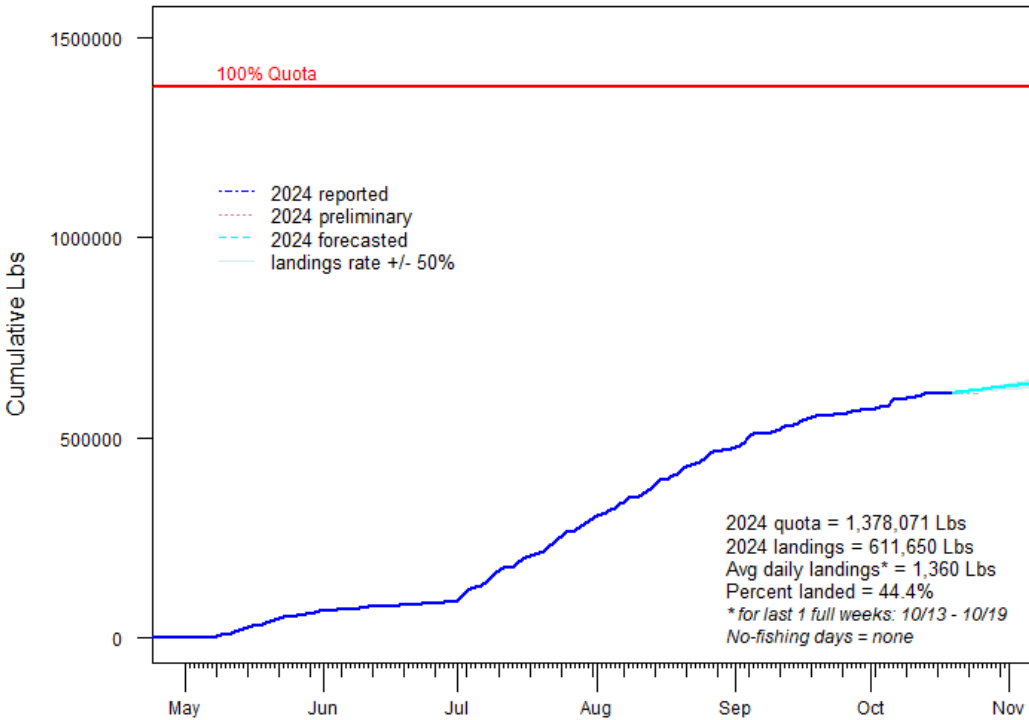
Includes Tautog, Black Sea Bass, Horseshoe Crab, Scup, Menhaden, and Bluefish.  
Busy October!



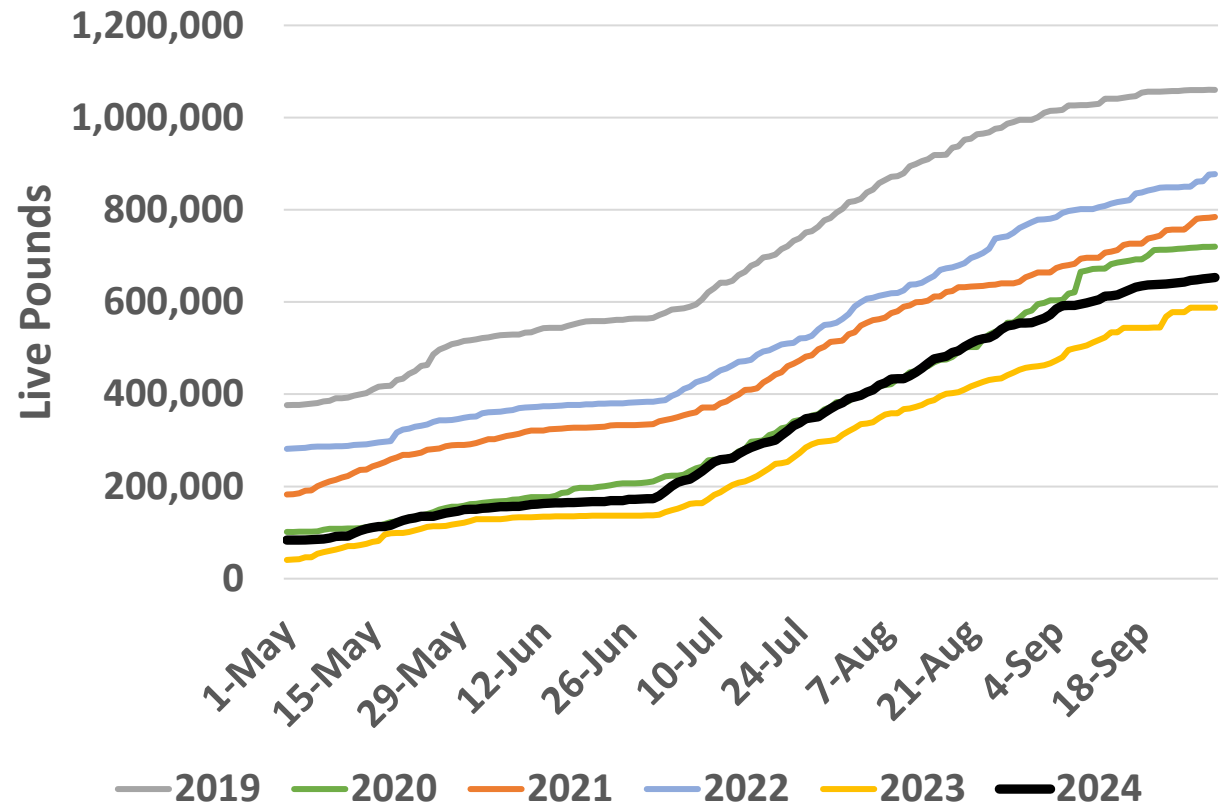
# Summer Scup: Landings – Season Ended 9/30

## 2024 SCUP Quota Monitoring

as of October 25, 2024 09:42 AM



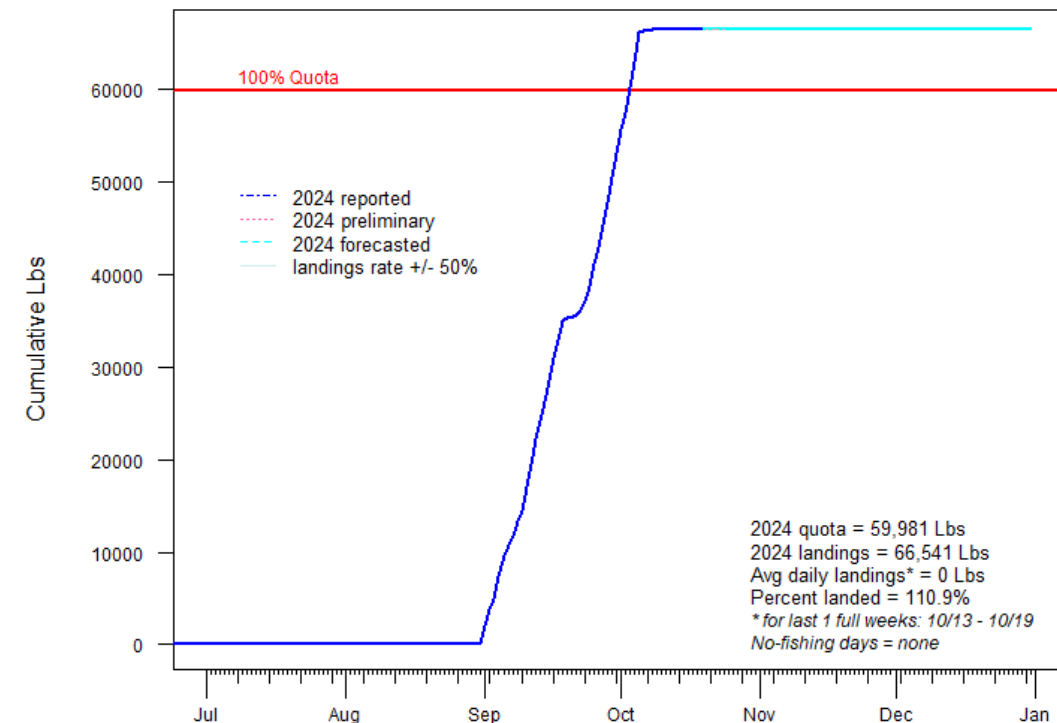
## Annual Running Totals of Landings: Scup



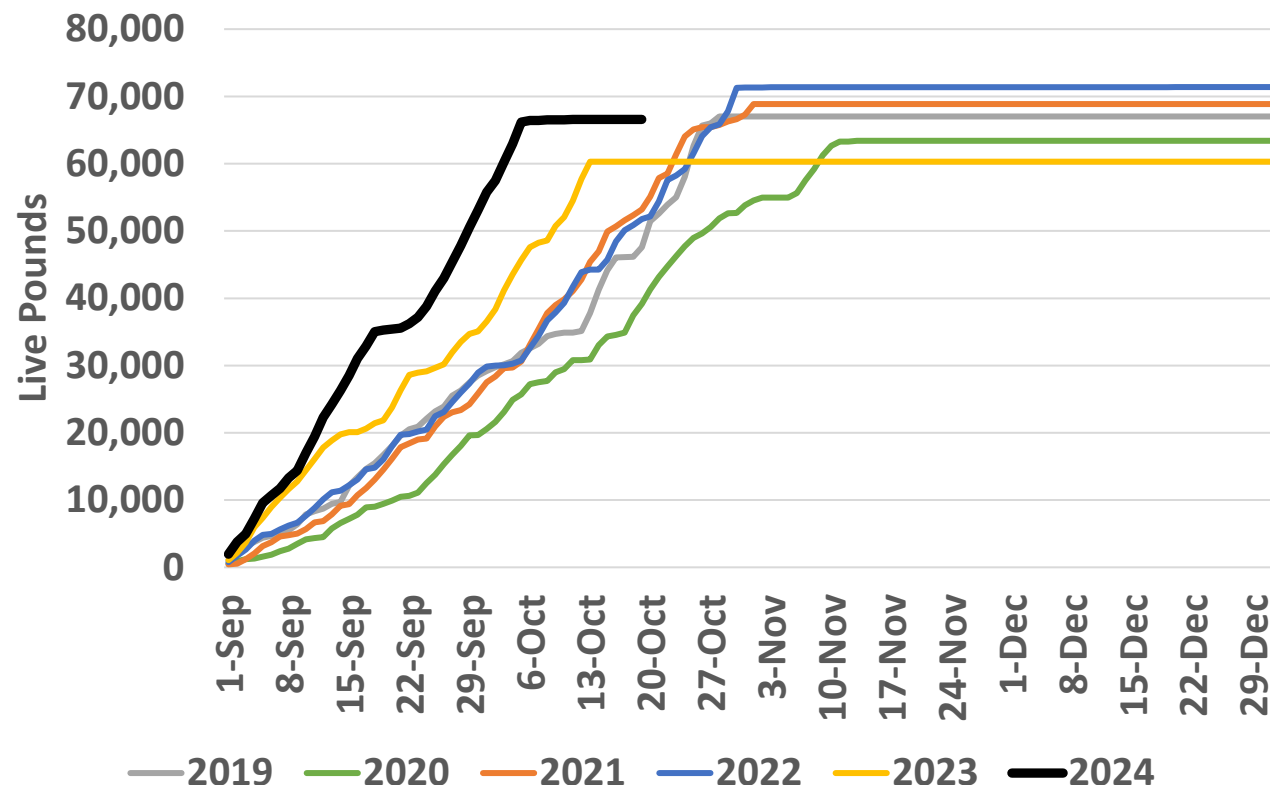
# Tautog: Landings – CLOSED 10/5

## 2024 TAUTOG Quota Monitoring

as of October 25, 2024 09:34 AM

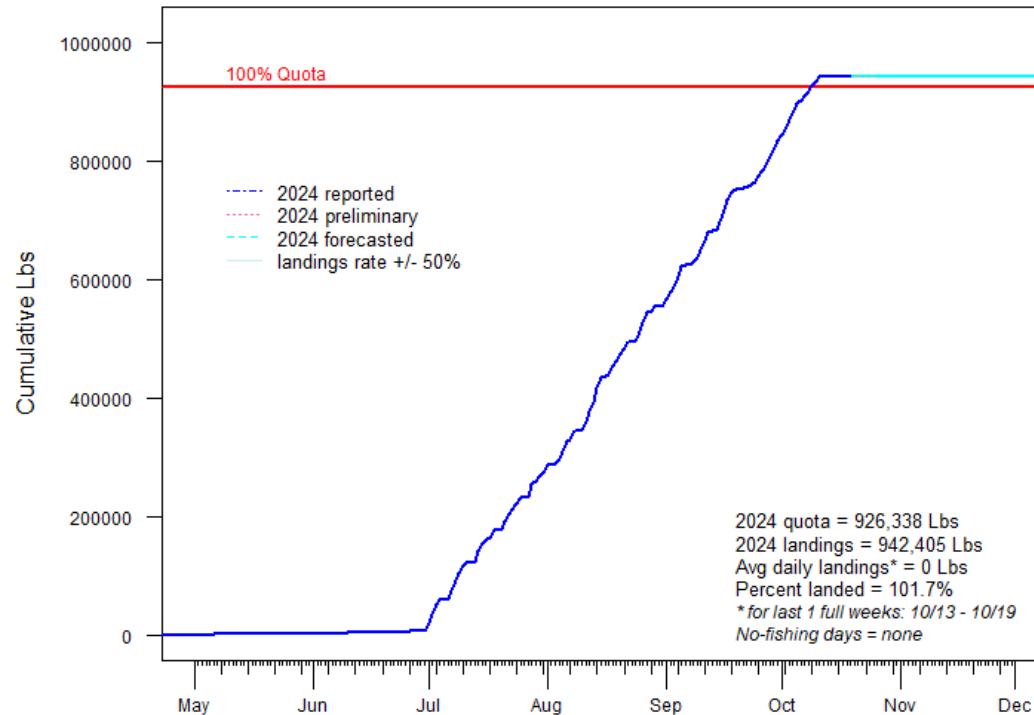


## Annual Running Totals of Landings: Tautog



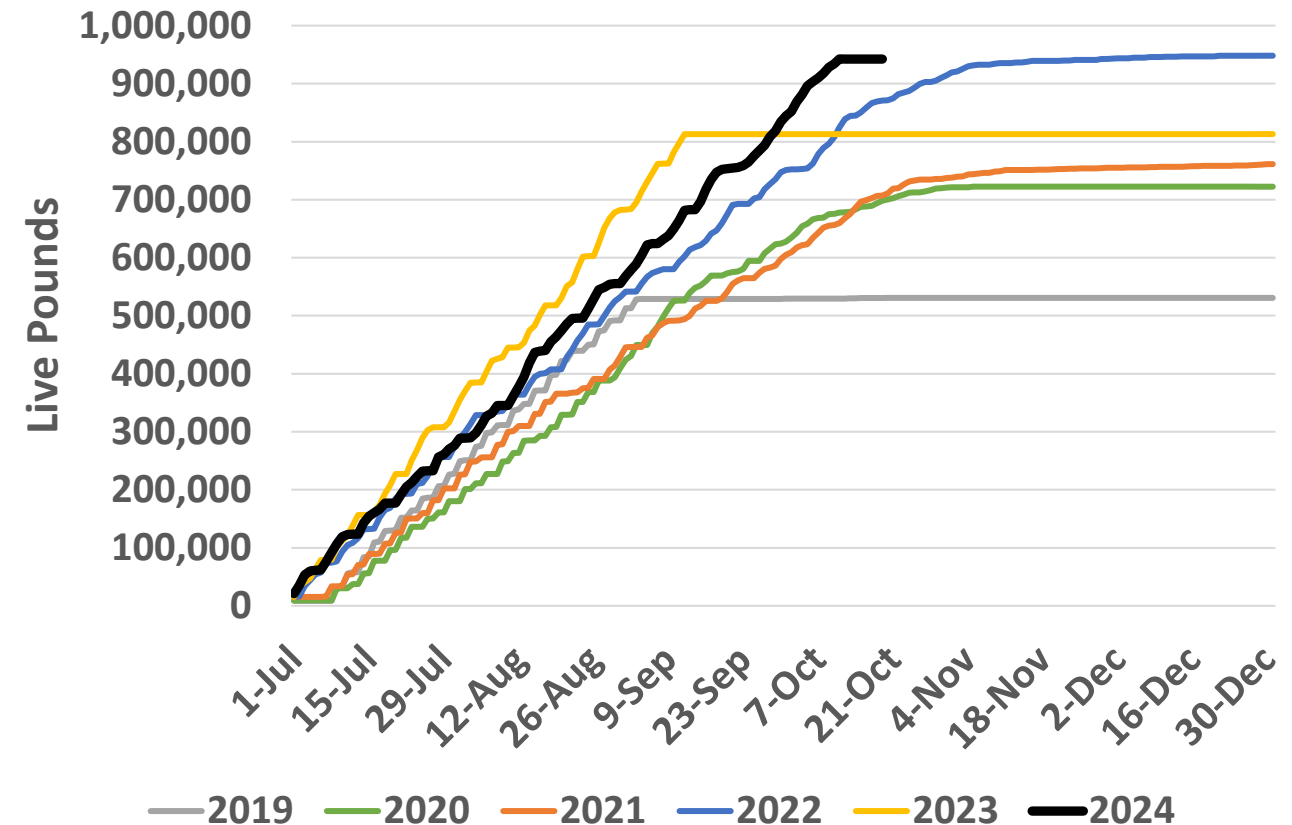
# Black Sea Bass: Landings – CLOSED 10/11

2024 BASS, BLACK SEA Quota Monitoring  
as of October 25, 2024 09:33 AM



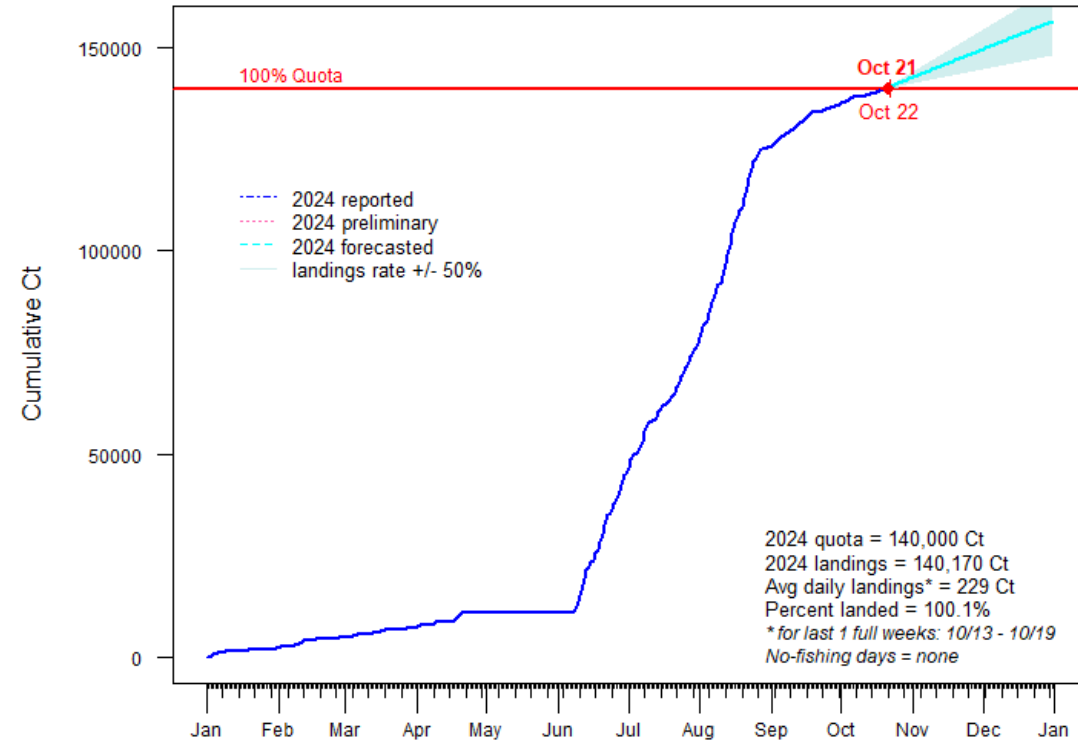
Quota significantly increased 2020 and 2022,  
decreased 2023, increased again 2024

Annual Running Totals of Landings: Black Sea Bass



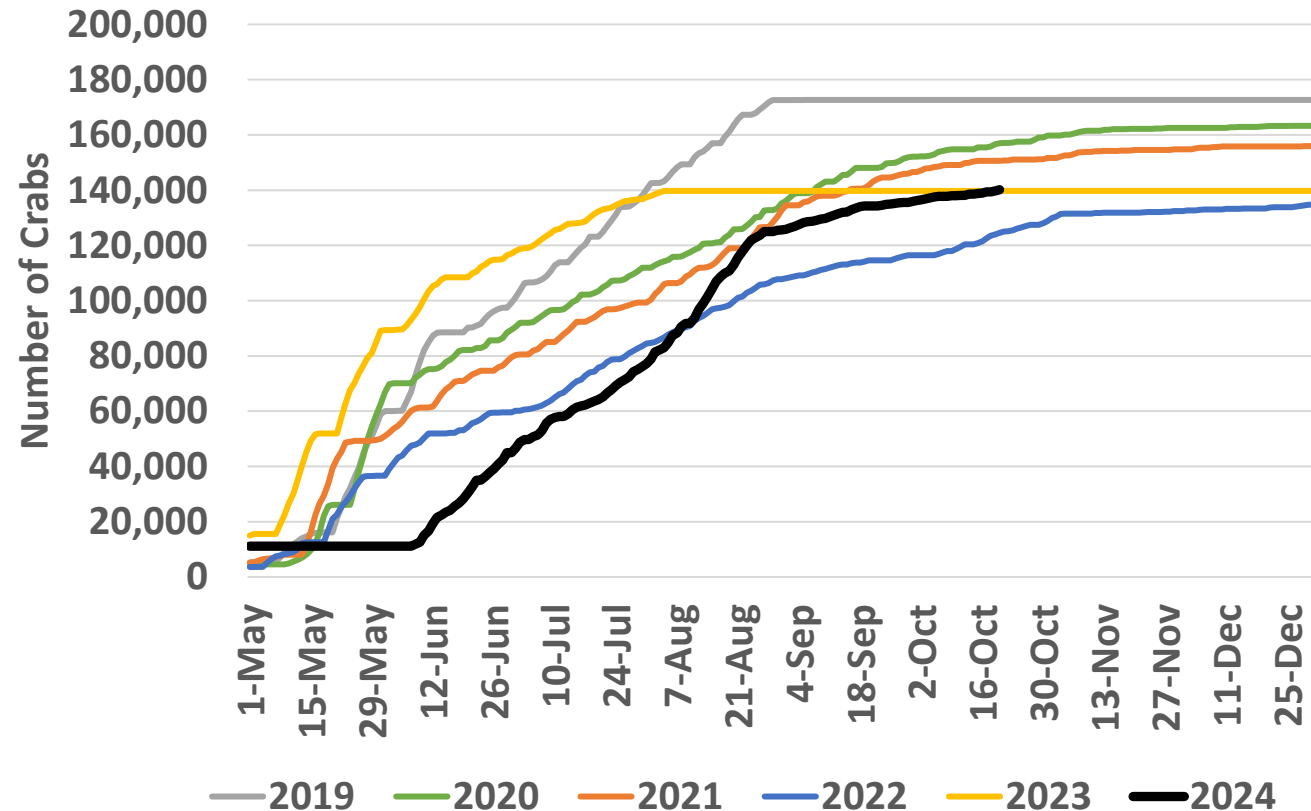
# Bait Horseshoe Crab: Landings – CLOSED 10/20

2024 CRAB, HORSESHOE Quota Monitoring  
as of October 25, 2024 09:32 AM



4/15-6/7 closure implemented in 2024

Running Total of Bait Landings: Horseshoe Crab



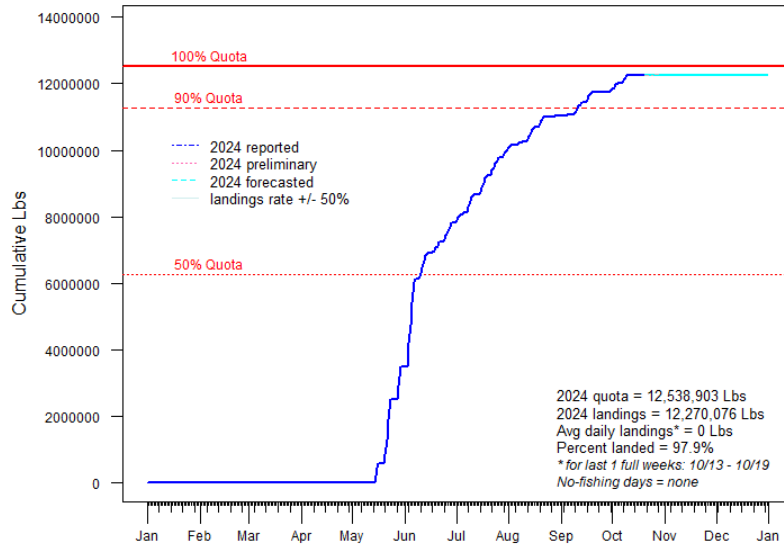
Massachusetts Division  
of Marine Fisheries





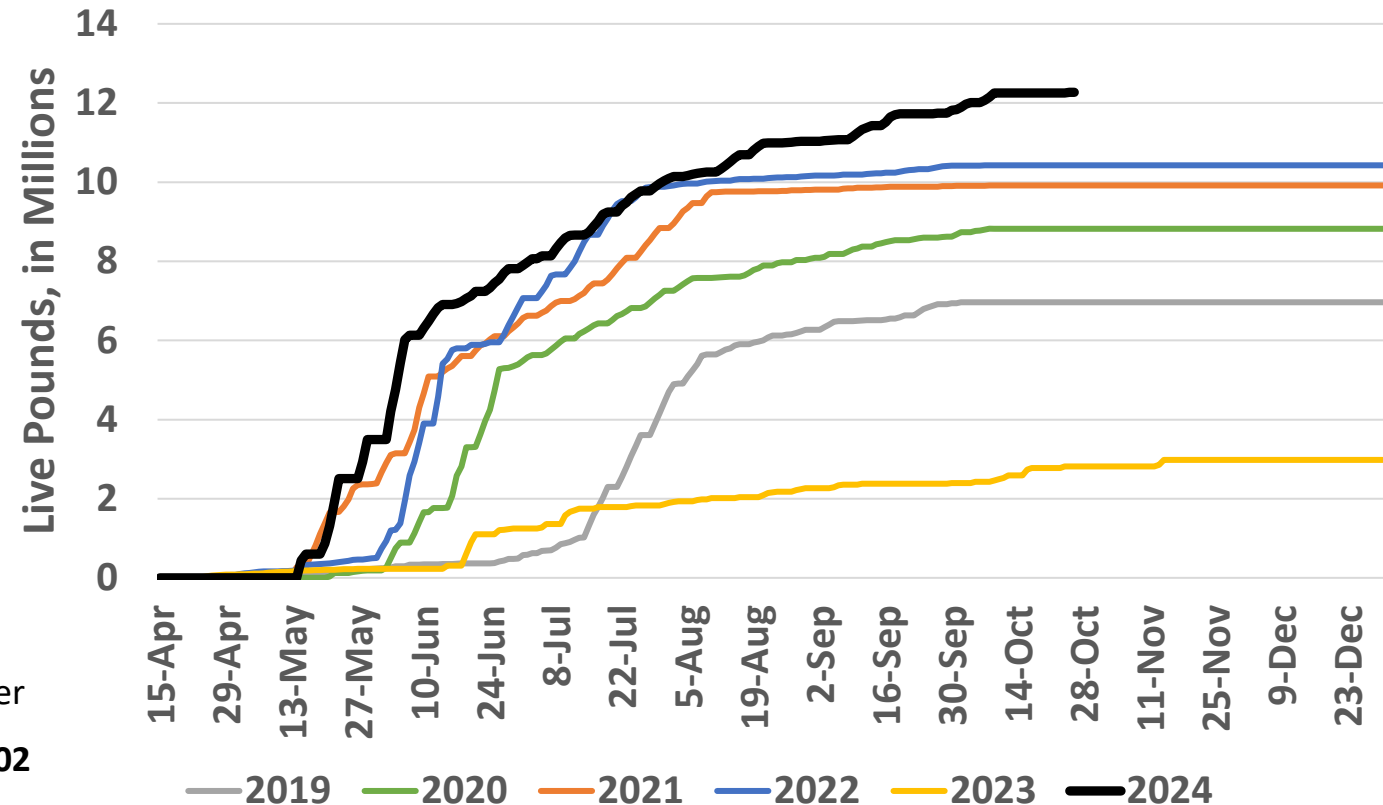
# Menhaden: Landings

2024 MENHADENS Quota Monitoring  
as of October 28, 2024 03:20 PM



- **2024 Possession Limit Changes**
  - 120,000 lb Limit: last day 6/6, limit dropped to 25,000 lbs
  - 25,000 lb Limit: last day 8/21, limit dropped to 6,000 lbs
  - 25,000 lb Limit: reinstated 9/9 due to transfer and 9/1 trigger
- **Quota Transfer in July of 1.2 million lbs raising quota to 12,038,902**
- **Quota Transfer in September of 500,000 lbs raising quota to 12,538,902**

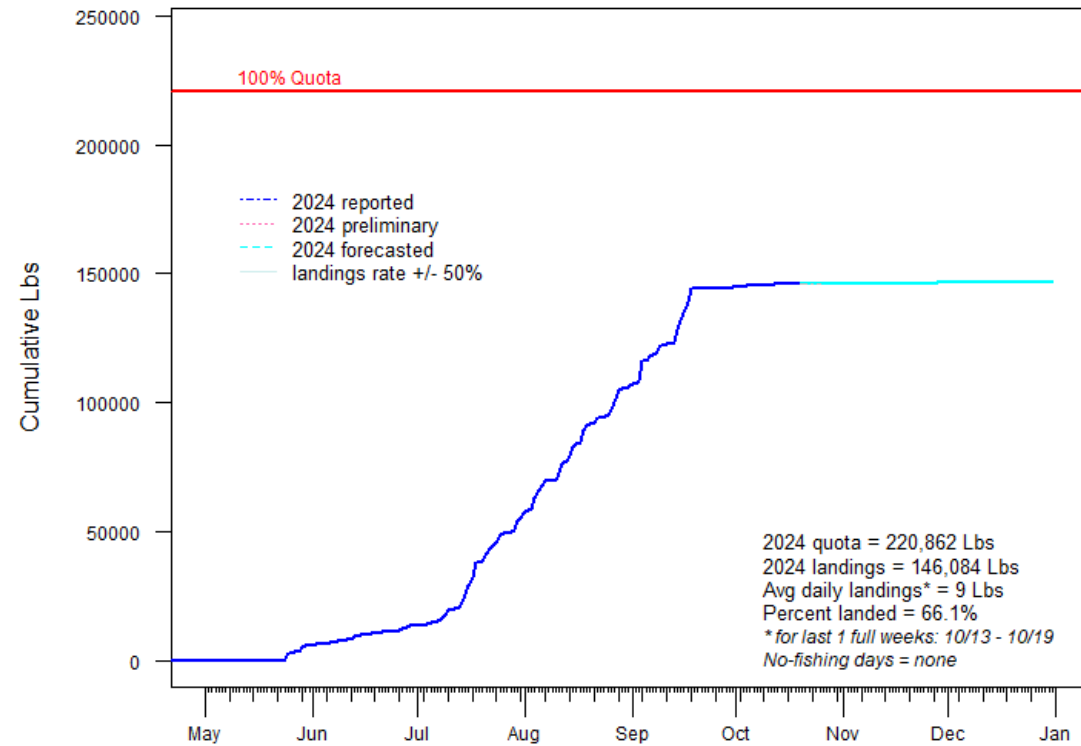
## Annual Running Totals of Landings: Menhaden



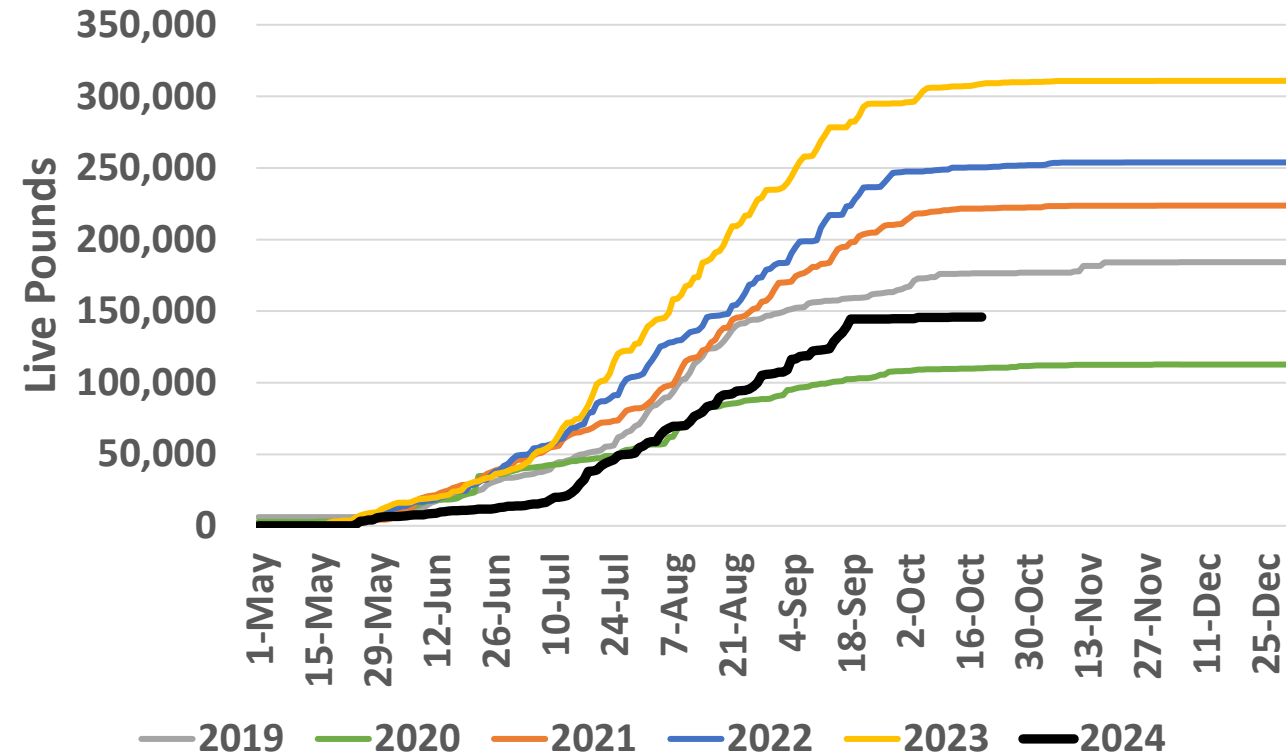
# Bluefish: Landings

## 2024 BLUEFISH Quota Monitoring

as of October 25, 2024 09:26 AM



## Annual Running Totals of Landings: Bluefish



# Questions?

Email: [anna.webb@mass.gov](mailto:anna.webb@mass.gov)

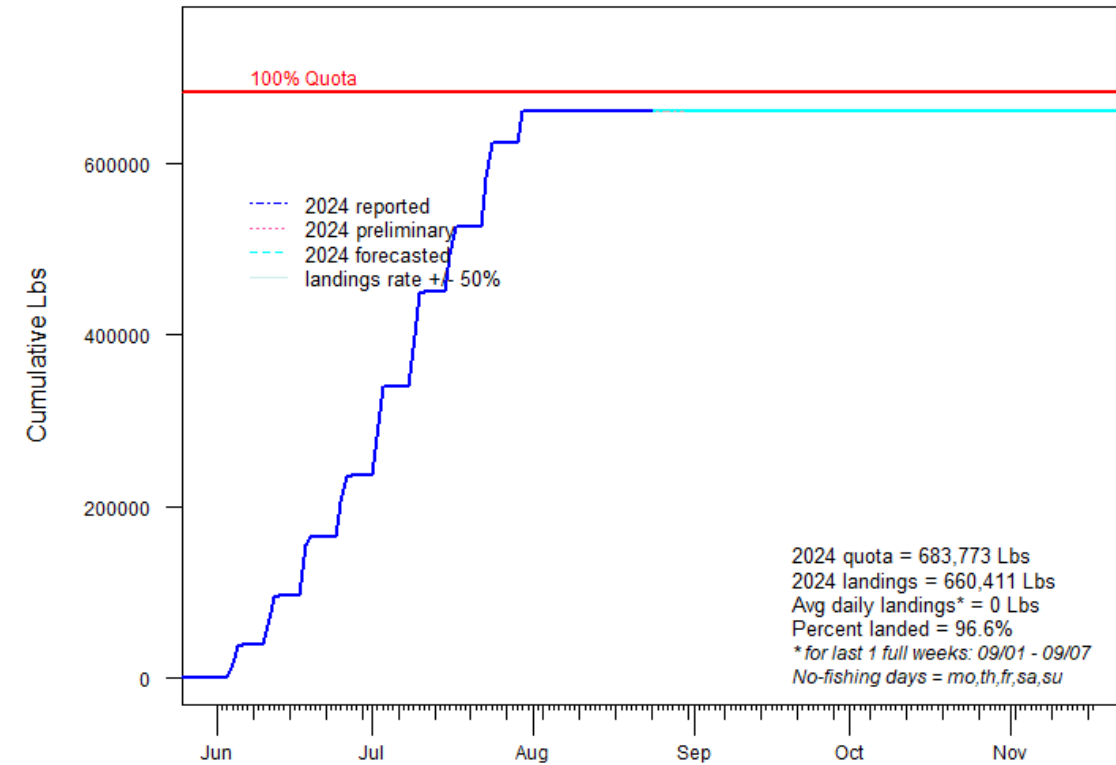
Office Phone: 978-491-6212

Cell Phone: 978-559-1948

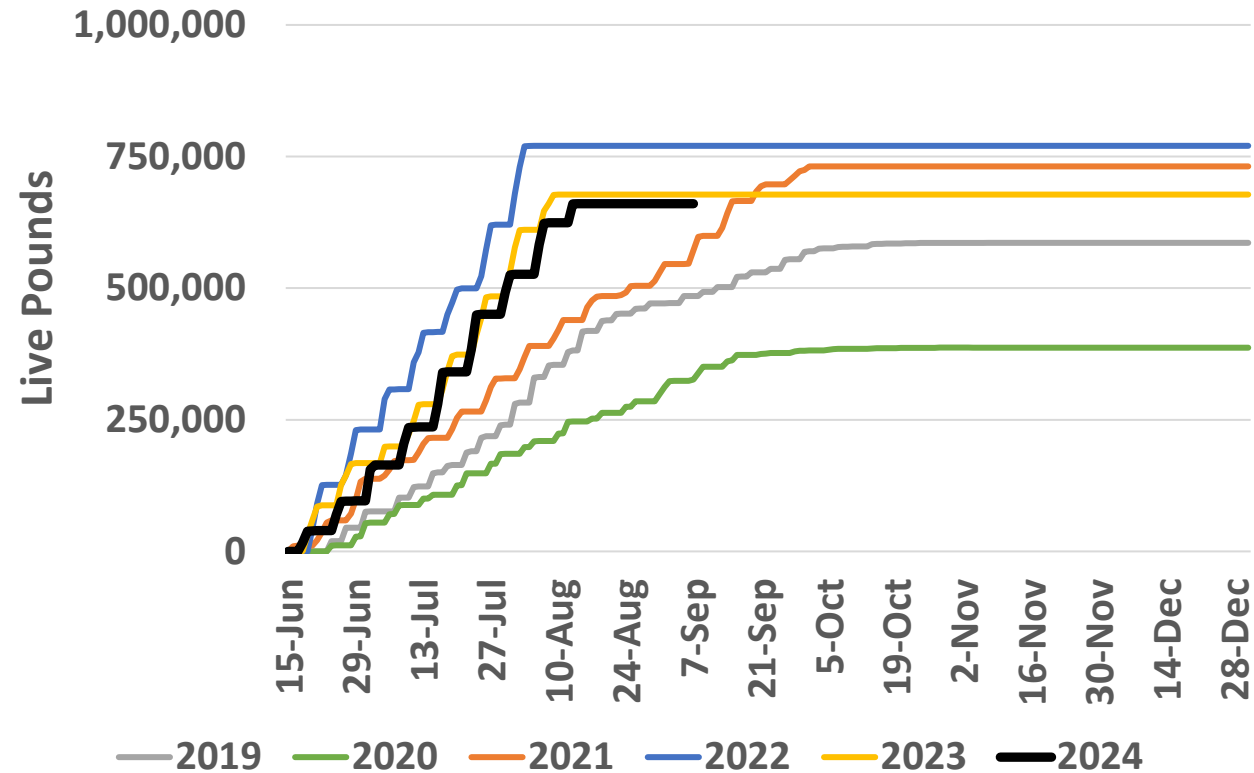


# Striped Bass: Landings – CLOSED 8/14

2024 BASS, STRIPED Quota Monitoring  
as of September 13, 2024 03:12 PM



Annual Running Totals of Landings: Striped Bass

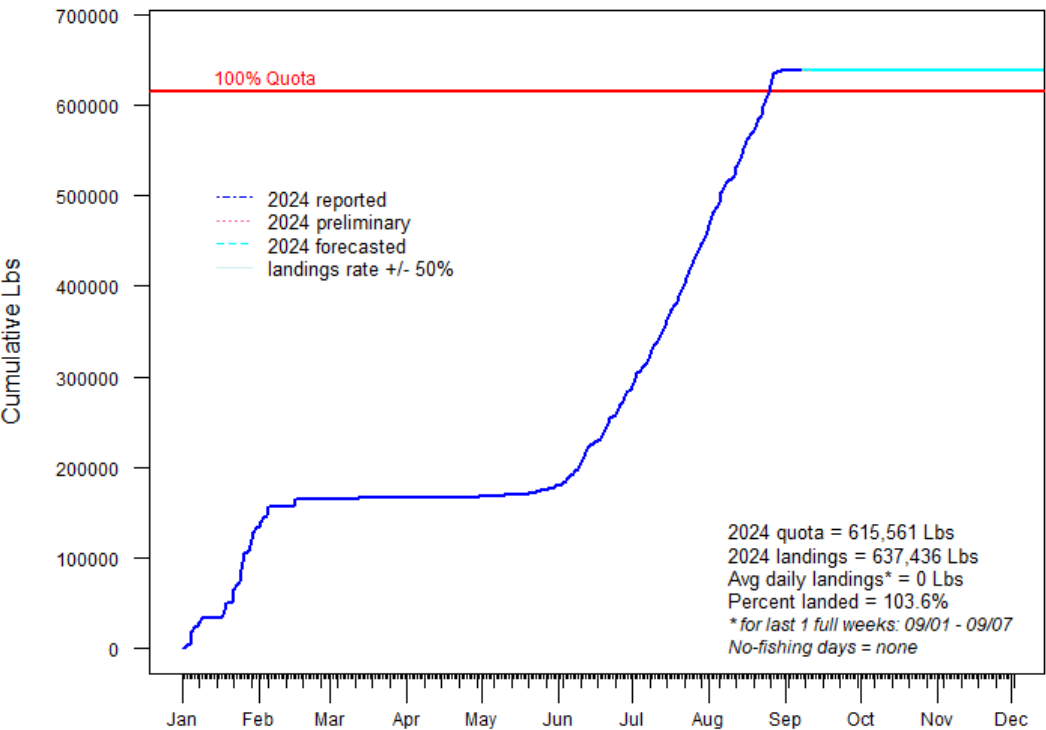


Quota decreased in 2020, 2024



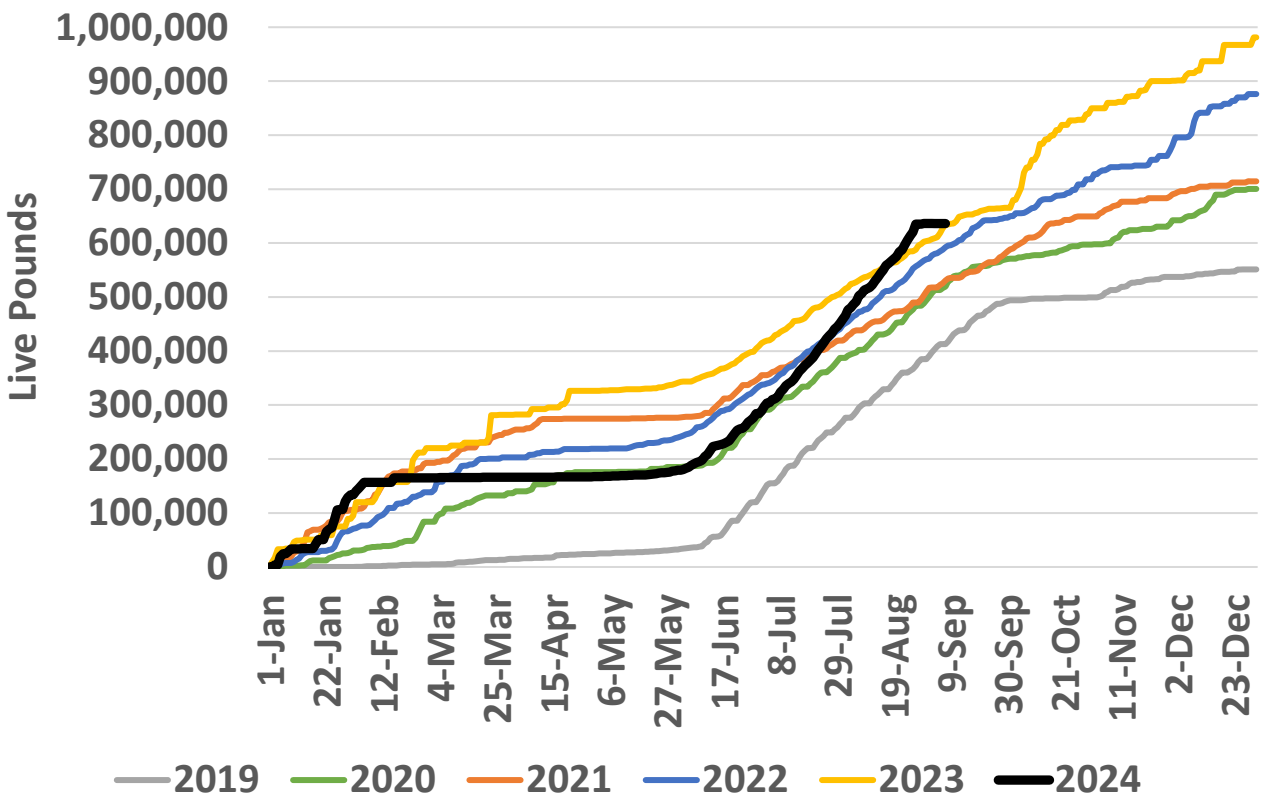
# Summer Flounder (Fluke): Landings – CLOSED 8/28

2024 FLOUNDER, SUMMER Quota Monitoring  
as of September 12, 2024 10:25 AM



Quota significantly decreased 2024

Annual Running Total of Landings: Fluke



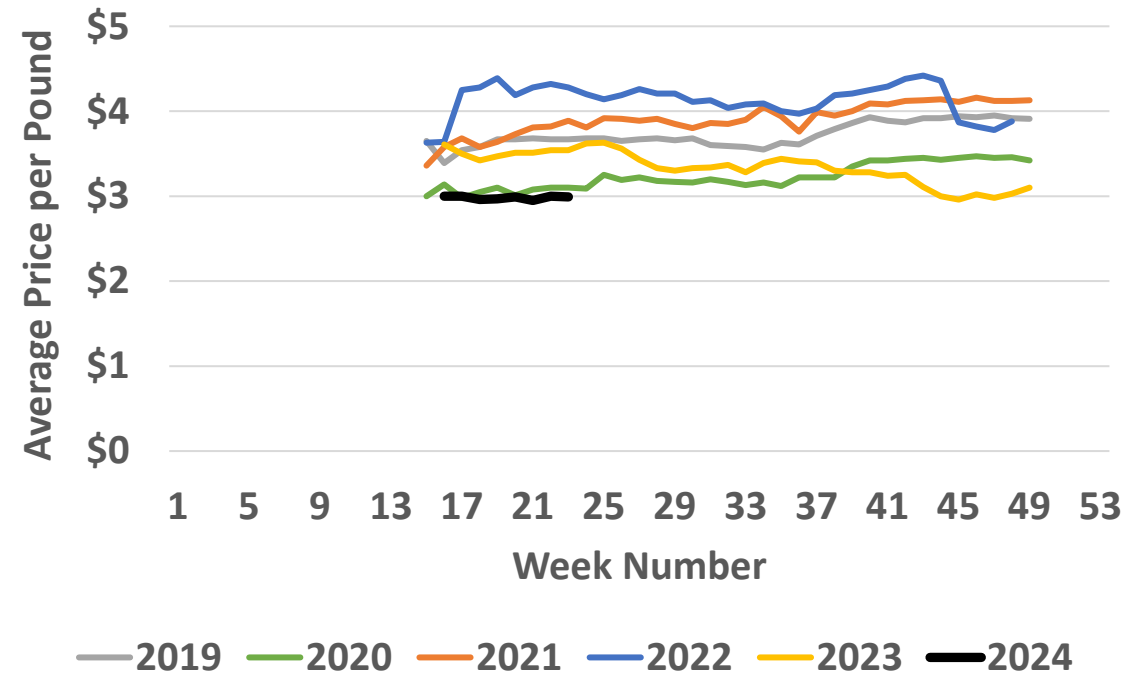
# 2024 Other Species of Interest

Includes Channeled Whelk and Longfin Squid



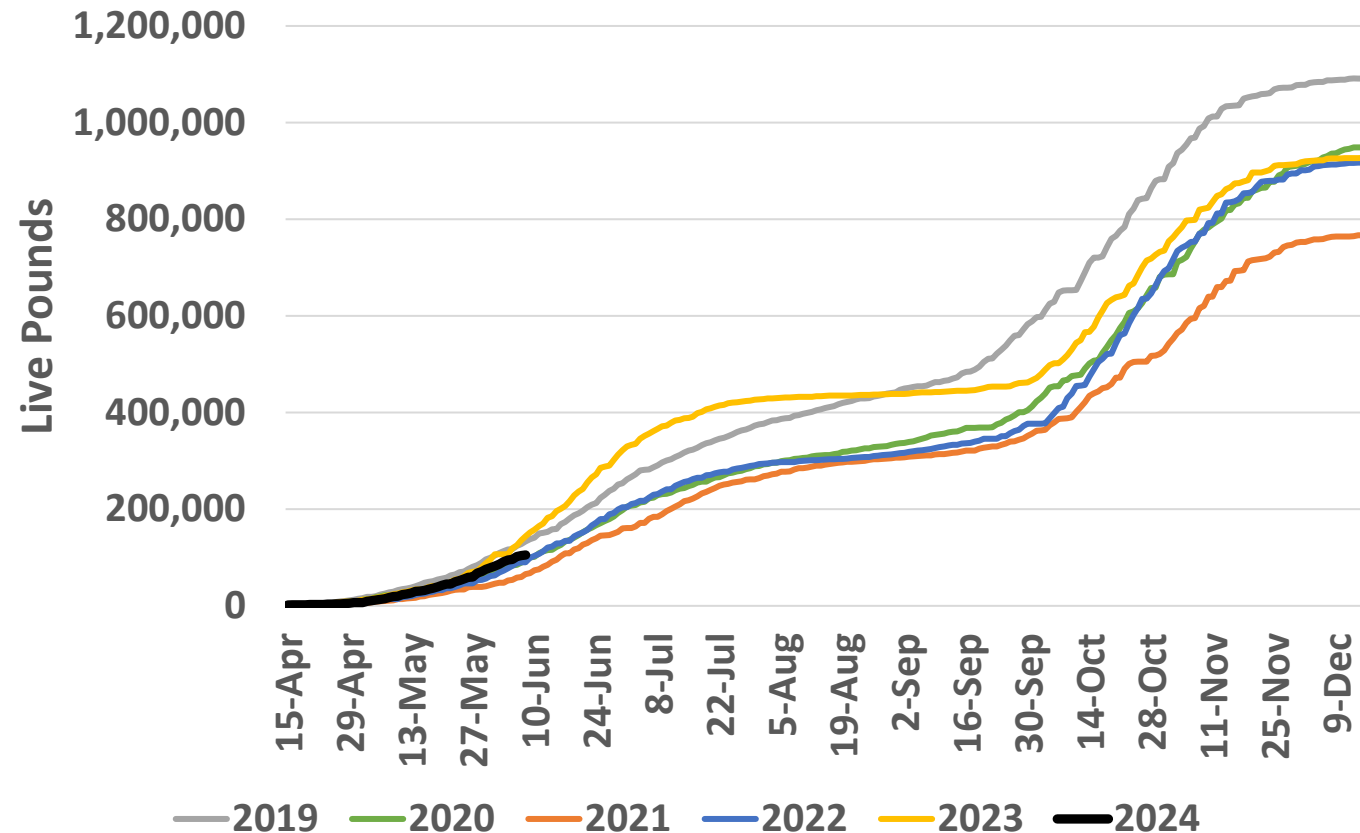
# Channeled Whelk

## Weekly Average Prices: Channeled Whelk



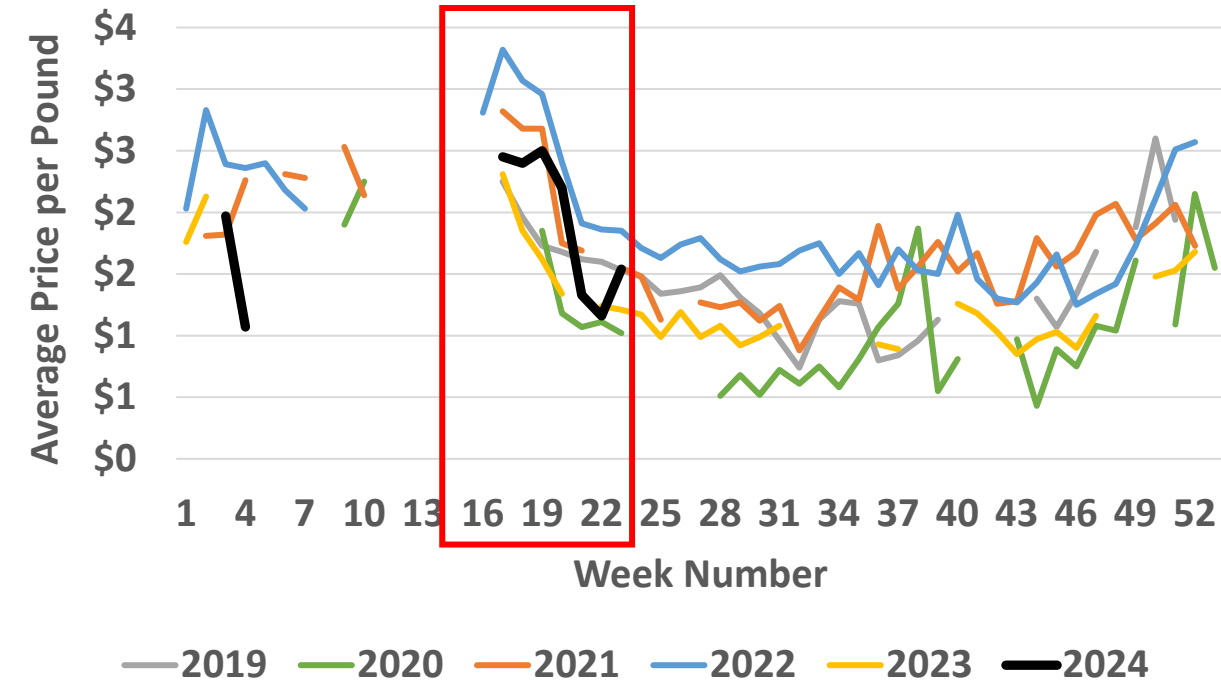
2024 week 23 = June 2-8

## Annual Running Totals of Landings: Channeled Whelk



# Longfin Squid

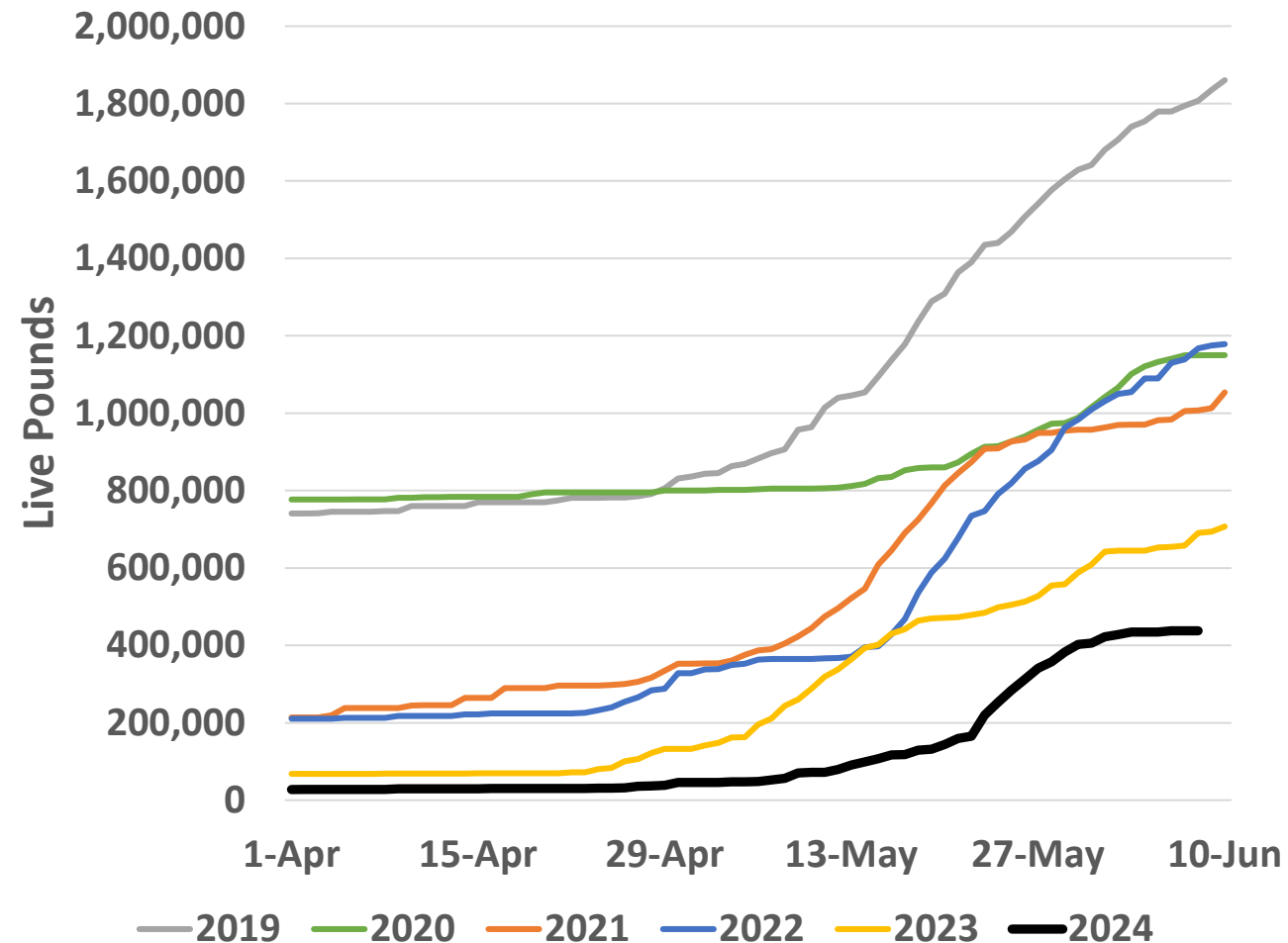
Weekly Average Prices: *Loligo*



**2024 week 23 = June 2-8**

Red box highlights landings shown to the right

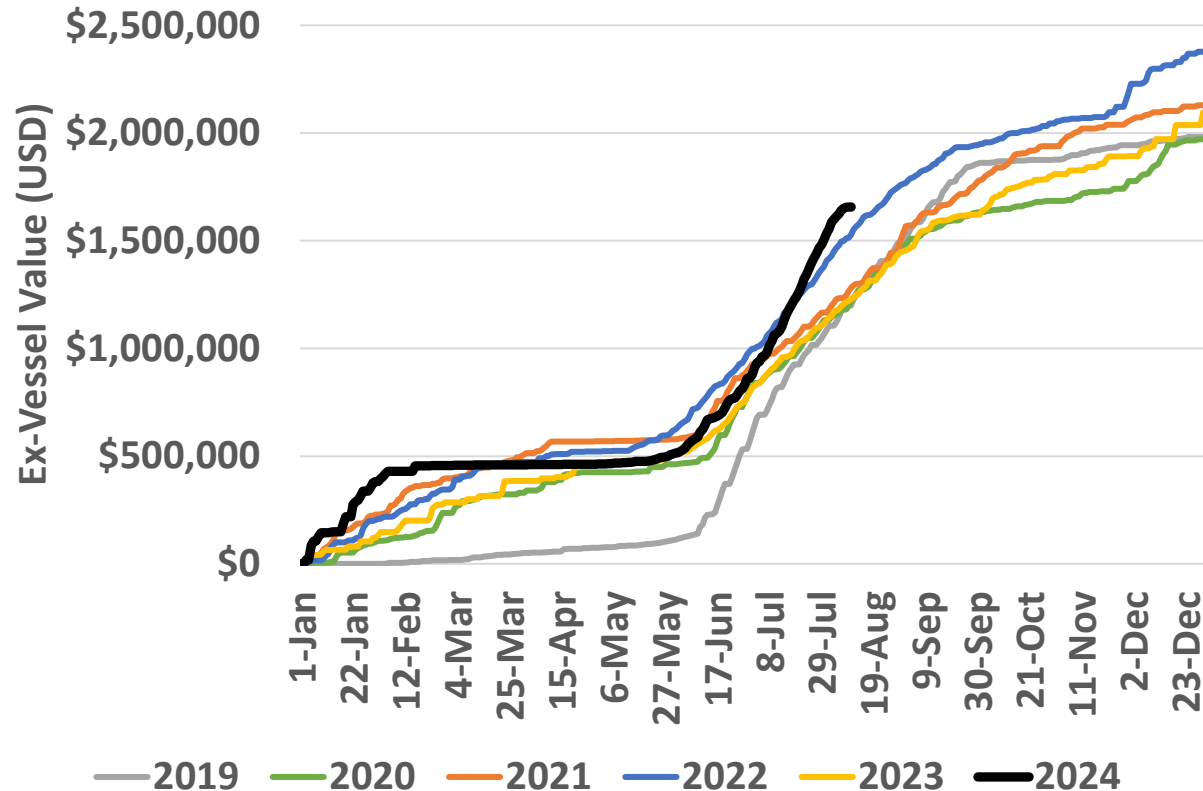
Annual Running Totals of Landings: *Loligo*



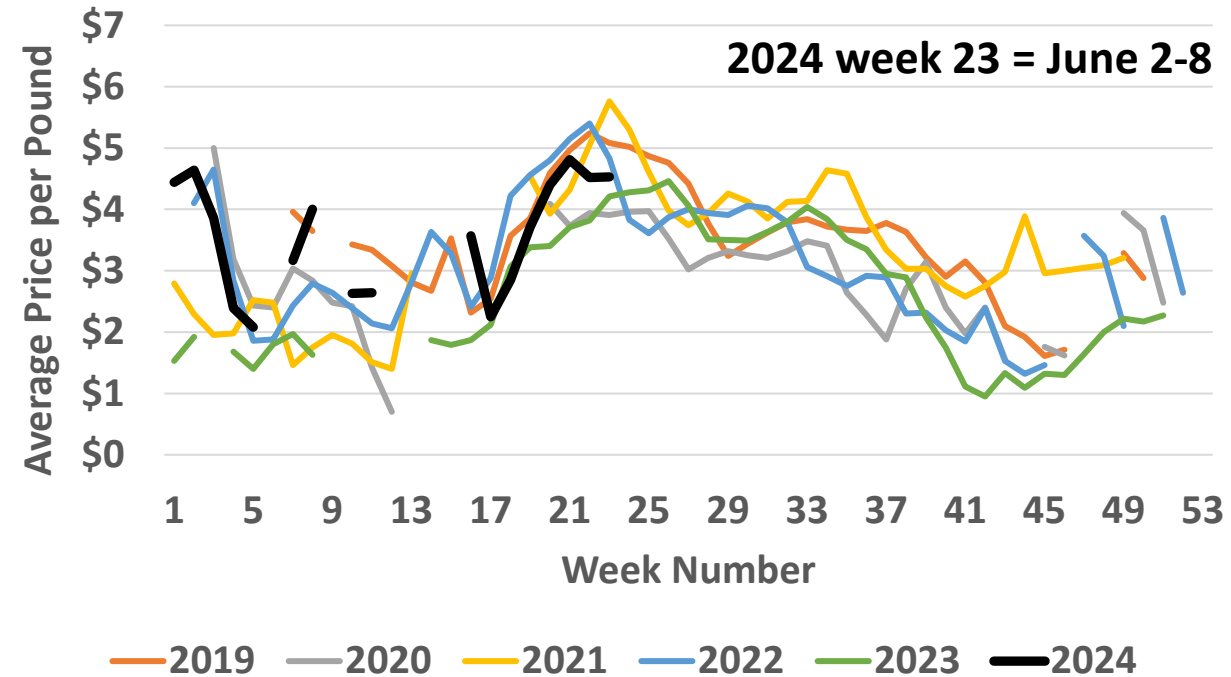


# Summer Flounder (Fluke): Value

Annual Running Total of Value: Fluke



Weekly Average Prices: Fluke



All market categories are trending similar to the overall trend for 2024 with recent average prices over \$4 for all categories.



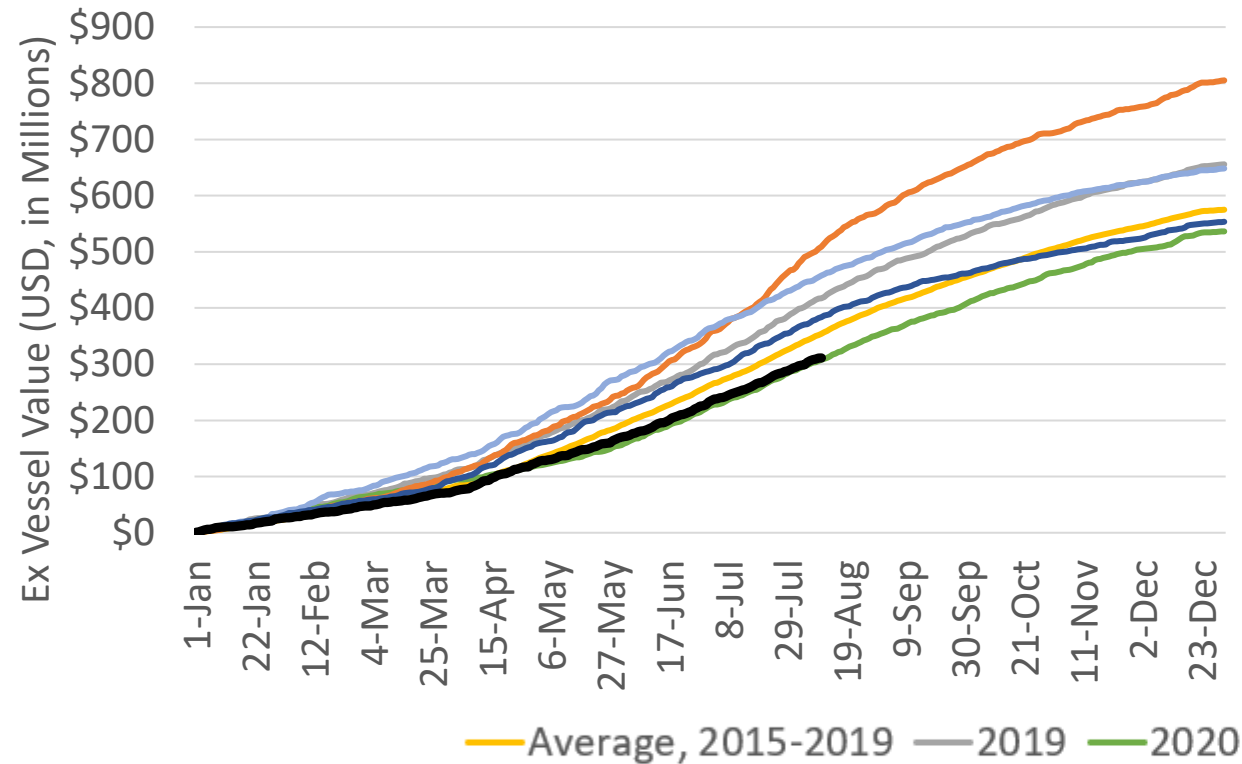
# 2024 Overview

Overall Trends to date

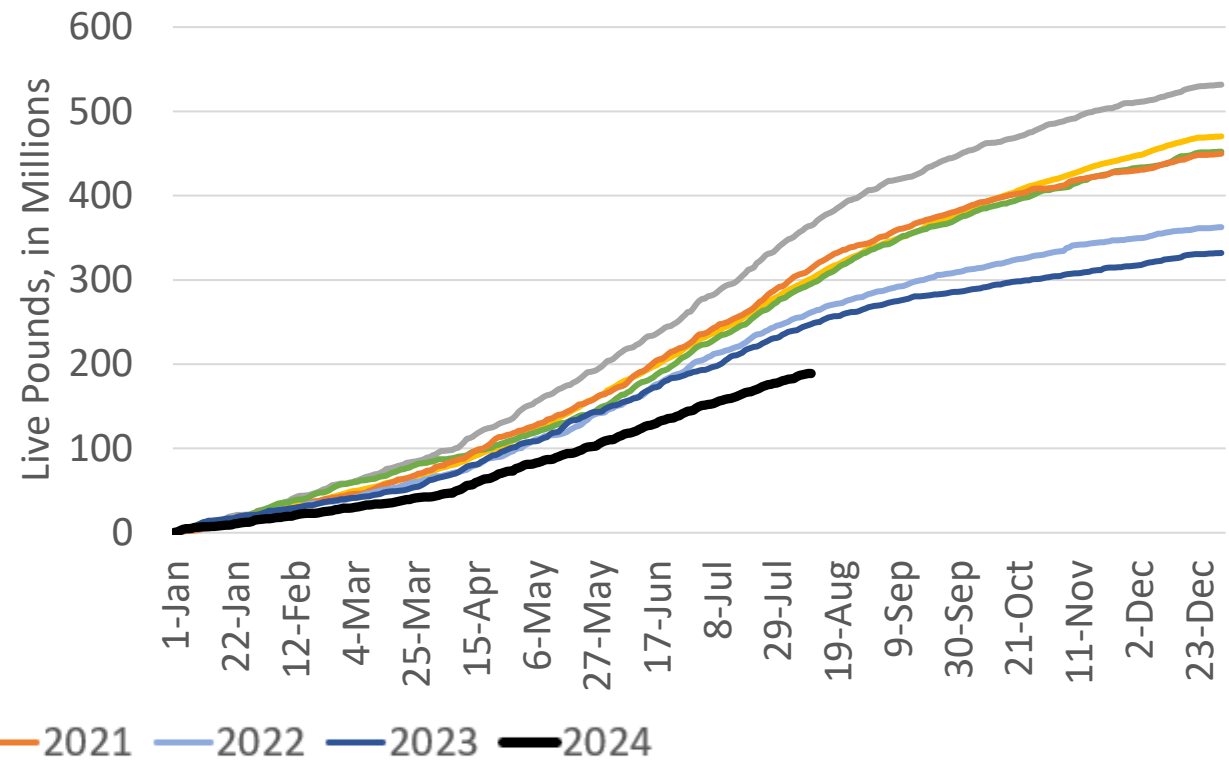


# Running Total of Ex-Vessel Value & Landings Across All Species\*

Running Total of Ex-Vessel Value Across All Species



Running Total of Live Pounds Landed Across All Species

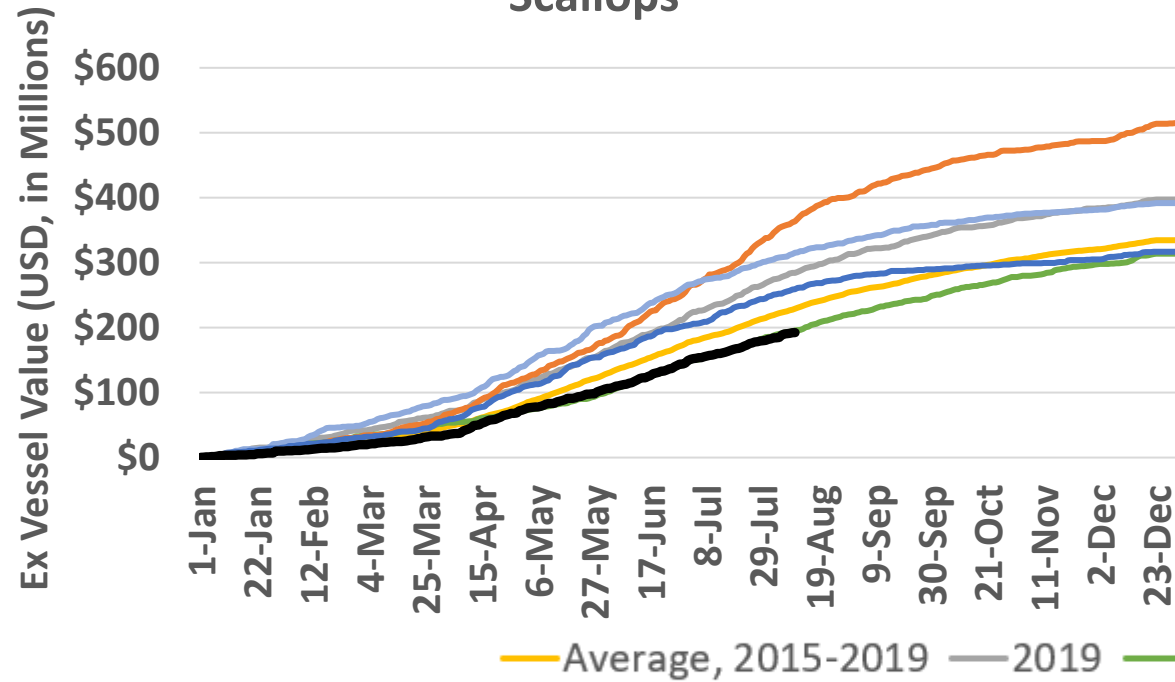


\*Excludes surf clams and ocean quahogs

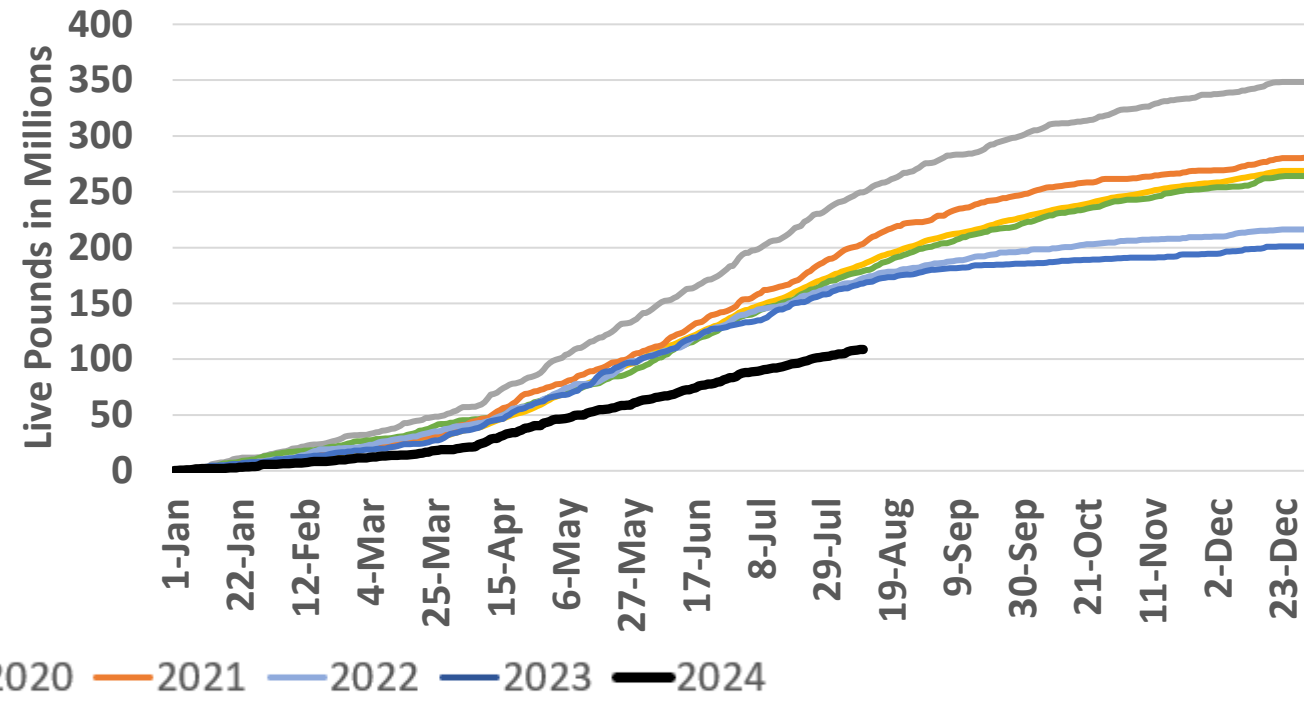


# Running Total of Ex-Vessel Value & Landings: Sea Scallop

## Running Total of Ex-Vessel Value: Sea Scallops



## Running Total of Live Pounds Landed: Sea Scallops

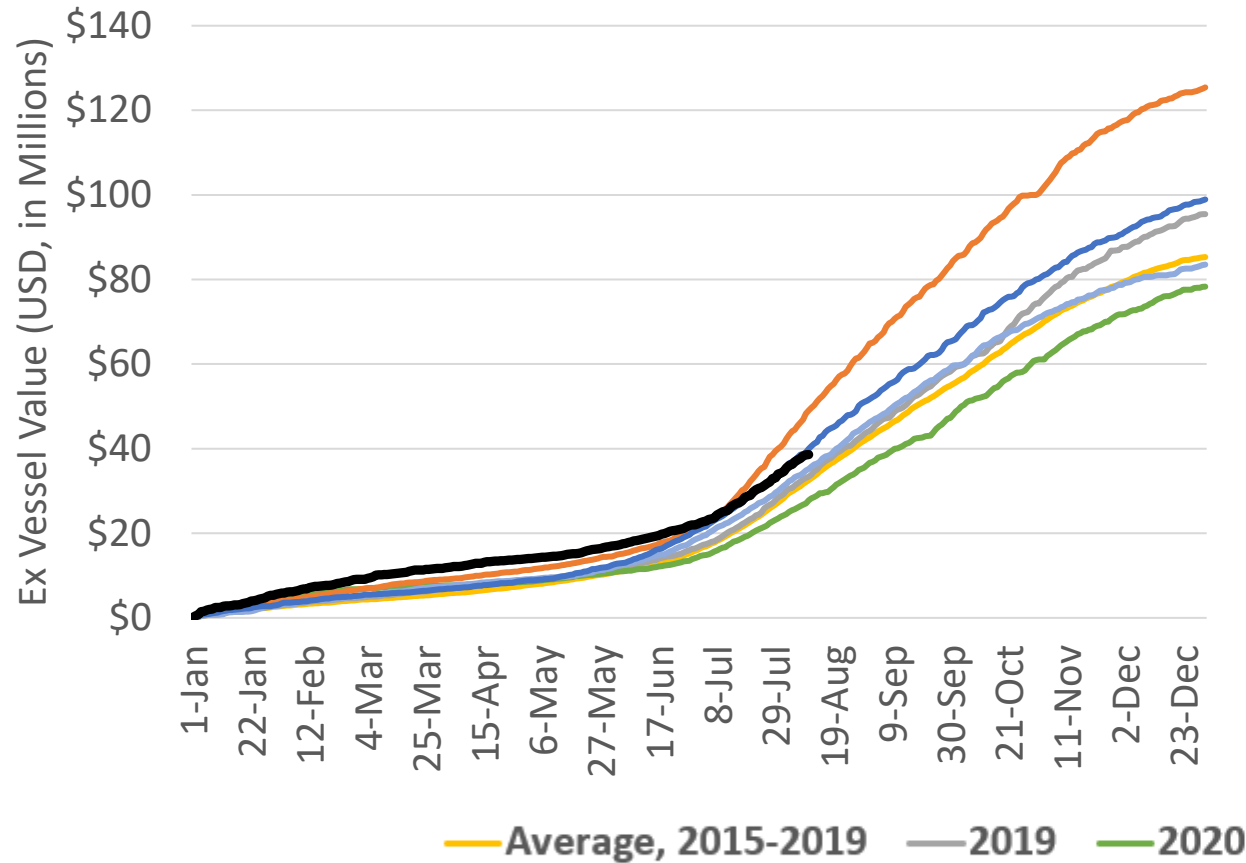


- Reduction in Sea Scallop landings is the driver of the overall trend in previous slide.
- Lobster (ranks 2<sup>nd</sup>) and Eastern Oyster (ranks 3<sup>rd</sup>) ex-vessel value are trending similar or slightly higher than last year.
- A more detailed analysis will be completed in spring 2025.

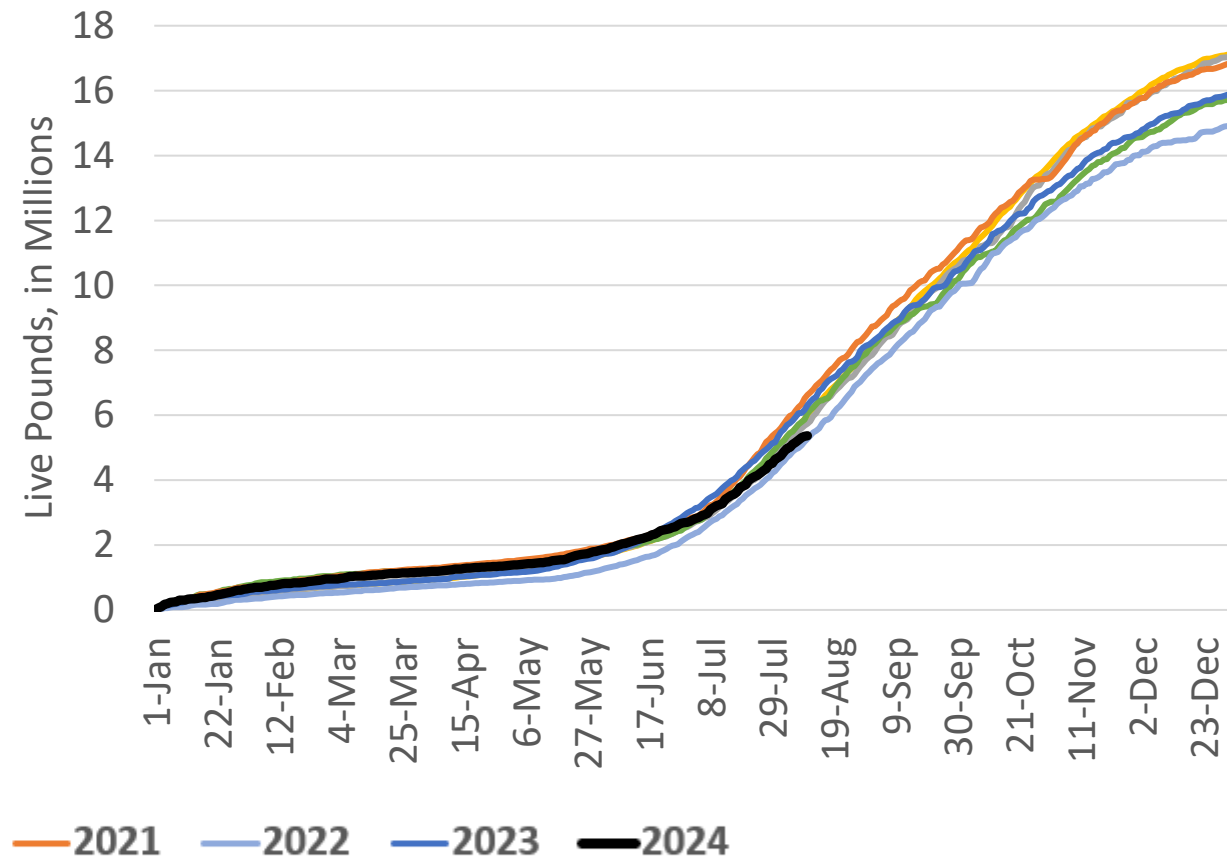


# Running Total of Ex-Vessel Value and Landings: Lobster

## Running Total of Ex-Vessel Value: Lobster

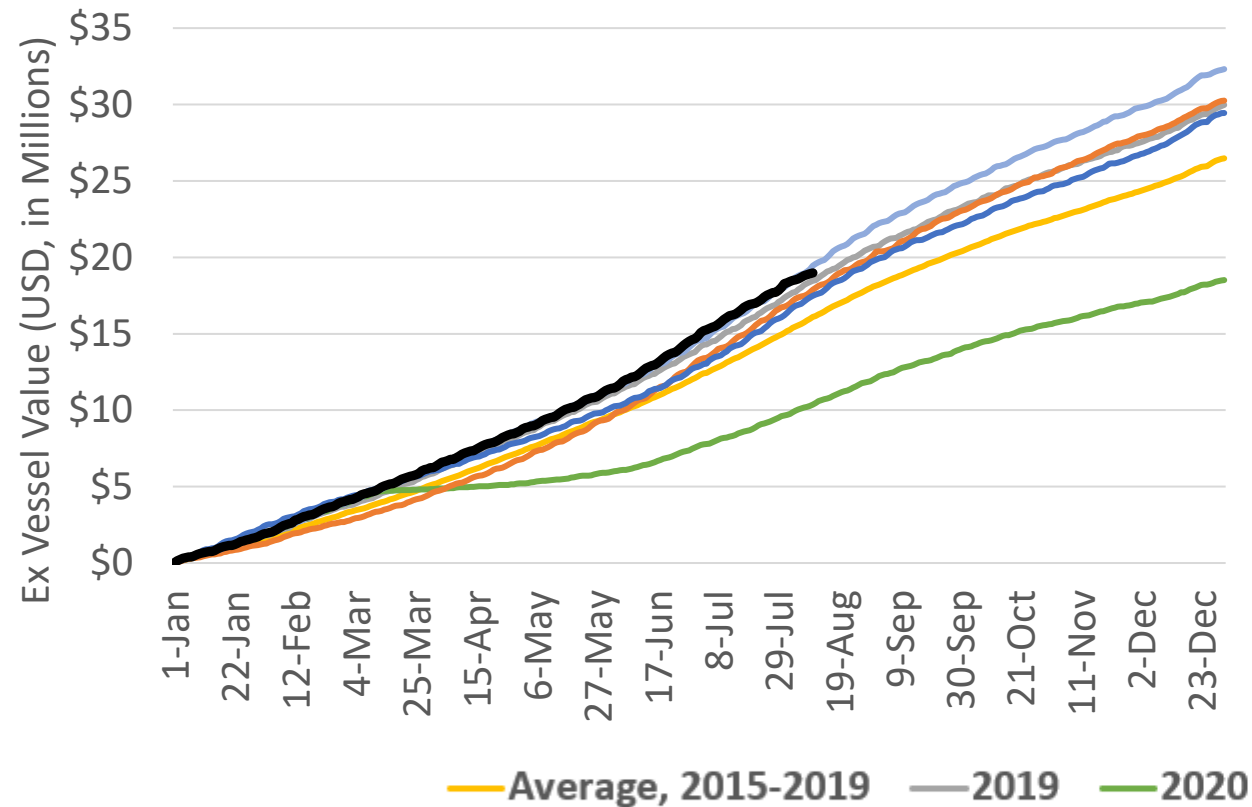


## Running Total of Live Pounds Landed: Lobster

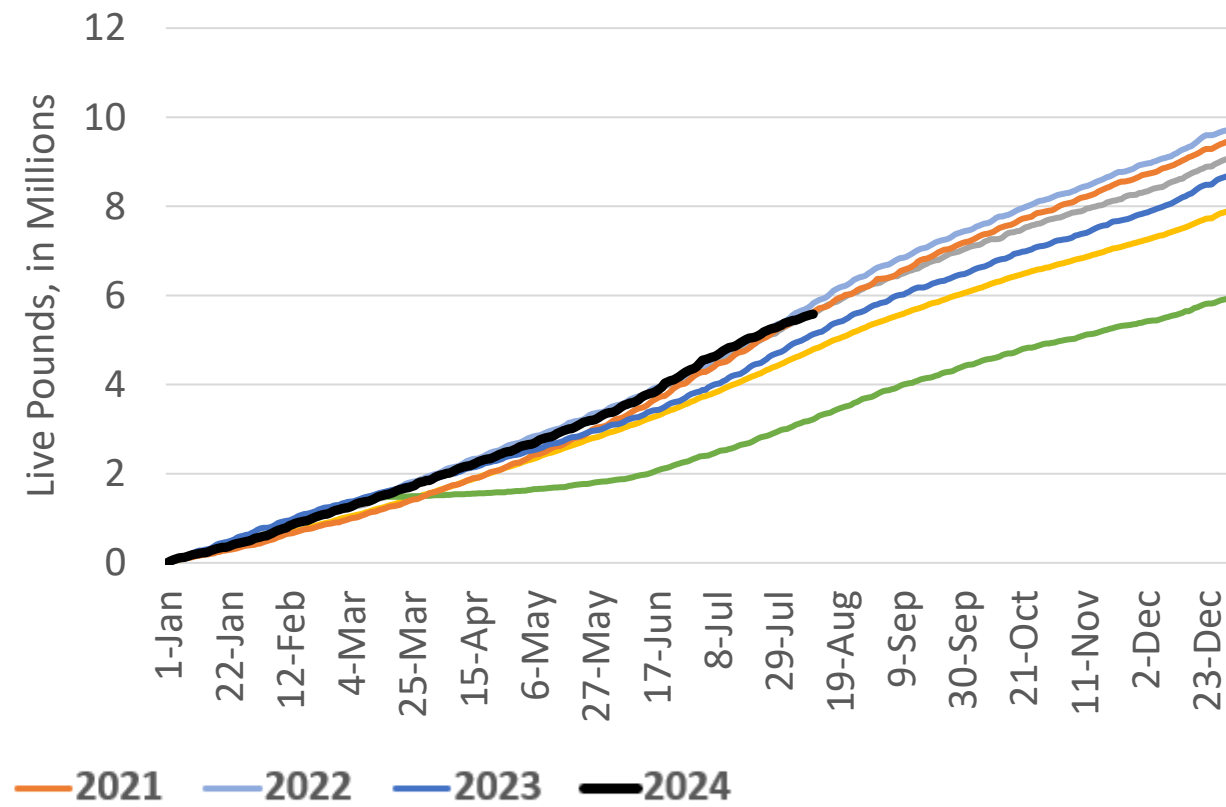


# Running Total of Ex-Vessel Value and Landings: Oyster

## Running Total of Ex-Vessel Value: Eastern Oyster



## Running Total of Live Pounds Landed: Eastern Oyster



## SEPTEMBER 2024 COUNCIL MEETING

The New England Fishery Management Council (NEFMC) met September 24-26 in Gloucester, MA. Below, find meeting highlights with **Council motions** denoted in bold (consensus unless tallied) and embedded links to relevant Council documents. The NEFMC meets next in Newport, RI on December 3-5, 2024.

### Council Announcements:

- **Membership:** The Council elected Rick Bellavance (RI) to serve as Chair and Dan Salerno (NH) as Vice Chair for this coming year, and appointed Melanie Griffin (MA), Megan Ware (ME), and John Pappalardo (MA) to the Executive Committee. Two new Council members were sworn in for three-year terms, Ted Platz (RI) & Bill Lucey (CT). Michael Pierdinock (MA), Togue Brawn (ME), and Geoff Smith (ME) were appointed to their second terms.

## COUNCIL ACTIONS

**ATLANTIC HERRING** – The Council received an overview of the [2024 Atlantic Herring Management Track Assessment](#). The stock continues to experience poor recruitment. The Council received the Scientific and Statistical Committee's (SSC) [recommendation](#) on overfishing limits (OFL) and acceptable biological catches (ABC) for Atlantic herring for fishing year (FY) 2025 to 2027. After accounting for scientific and management uncertainty buffers, the resulting FY2025 annual catch limit (ACL) represents an 86% cut from 2024, and the lowest ACL in the FMP's history. To address the need for timely implementation of specifications to stay within catch limits, the Council agreed to **request the NOAA Fisheries Regional Administrator, under existing authority allow for in-season adjustments, take action to reduce the 2025 specifications of Atlantic herring consistent with the SSC's recommendation of an OFL of 18,273 mt and an ABC of 6,741 mt for FY2025**. A management uncertainty buffer of the 10-yr average catch from the Canadian NB weir fishery (4,031 mt) was subtracted from the ABC to produce the ACL, with existing sub-ACLs proportions for herring management areas maintained. Under the new specifications, the FY2025 sub-ACL in Area 1A is 783 mt, Area 1B is 117 mt, Area 2 is 753 mt, and Area 3 is 1,057 mt. The Council **approved Atlantic herring fishery specifications for 2025-2027, as described under [Section 5.0 Draft action and changes from the original action](#) in the draft supplemental information report, requested nullification of any carryover for the 2023 fishing year into the 2025 fishing year, and agreed to submit the document as amended to NOAA Fisheries**. Next, the ASMFC Atlantic Herring Management Board meets October 21 to set specifications. Target implementation is January 1, 2025, the start of the Atlantic herring fishing year. A Research Track Assessment for herring is ongoing with a peer review scheduled for 2026.

**GROUND FISH** – The Council received an overview of 2024 Management Track Assessments for the four new Atlantic cod stock units: [Georges Bank](#), [Southern New England](#), [Western Gulf of Maine](#), and [Eastern Gulf of Maine](#). The Council took final action on **Amendment 25, to incorporate those four new cod stock units into the Northeast Multispecies FMP and agreed to submit the document to NOAA Fisheries**. Continuing on other groundfish priorities, the Council discussed remaining key decisions points for [Framework Adjustment 69](#), an action to define FY2025-2026 specifications and management measures for several groundfish stocks. Final action on Framework 69 is expected in December. Regarding recreational allocations, the Council agreed to **use the updated 27.5% of the ABC for the Western Gulf of Maine cod recreational sub-ACL in Framework 69, and to create a recreational sub-ACL for Southern New England cod using recent PDT analysis of recreational/commercial catches for the most recent ten years and appropriate accountability measures**. Framework 69 also addresses revision of accountability measures (AM) for flatfishes caught in the scallop fishery; the Council agreed to **recommend including an alternative to revise the scallop fishery AM trigger for Georges Bank yellowtail and Northern windowpane flounder, where the scallop fishery AM would only get triggered if the fishery exceeds its sub-ACL and the overall ACL for the stock is exceeded for either Georges Bank yellowtail or Northern windowpane flounder**. To further refine the framework, the Council agreed to **recommend as preferred, the alternative removing the requirement for sectors to submit federal and state permit information**, a redundant reporting provision. Also, the Council **requested from NOAA Fisheries,**



summarized cod catch data to be provided to individual sectors based on recent observer/ASM data to be provided to sectors before the FY2025 roster deadline which GARFO noted is already in progress. And, agreed to submit a letter to the ACCSP Recreational Technical Committee recommending that recreational dockside intercepts be changed to include the general location for a fishing trip, describing where fish were caught/released in addition to the interview location.

**ECOSYSTEM, CLIMATE, & INFLATION REDUCTION ACT (IRA) INITIATIVES** – Following the June Council decision to transition away from additional work on Ecosystem Based Fishery Management (EBFM), the Council approved the Executive Committee's consensus recommendation to approve the name, goal and objectives, membership scope, solicitation, and terms, and the planned initial and next steps for the [Climate and Ecosystem Steering Committee](#), and agreed to discontinue the EBFM Committee and Plan Development Team. The new Climate and Ecosystem Steering Committee will provide overarching guidance and support for design and implementation of climate-ready management approaches across the Council's fishery management plans, assist in steering integration of the Council's [Inflation Reduction Act project](#) activities and results, and help to develop ecosystem approaches for its various FMPs. A [solicitation](#) for external qualified applicants is open through October 18.

**RISK POLICY** – The Council affirmed the completion of the Risk Policy Working Group's review of the Council's current risk policy (2014), and adopted the Working Group's revised [Risk Policy Statement and new Risk Policy concept](#) (including factors, scoring, and weightings). The new statement will take effect January 1, 2025. The Risk Policy Working Group will continue to refine the concept based on simulation testing. [Worked examples](#) for scallops and Gulf of Maine haddock were overviewed.

**MONKFISH** – The Council received this year's monkfish fishery [performance report and an update](#) on non-regulatory improvements to the Monkfish RSA program. In response to continued low ability of industry to utilize available Monkfish RSA days-at-sea (DAS), the Council agreed to request that GARFO pause the Monkfish RSA Request for Proposals solicitation for new projects until the program's economic and programmatic issues are addressed by the NEFMC, MAFMC, and GARFO. The Council also requested GARFO consider enabling the two current Monkfish RSA projects to continue selling RSA DAS into 2025 and 2026, if needed. In April, the Council released an overview of those [active 2024 Monkfish RSA projects](#) and how RSA DAS can be purchased to encourage project fulfillment.

## **COUNCIL DISCUSSION & UPDATES**

**SEA SCALLOP** – The Council received the SSC subpanel's review supporting the NOAA Northeast Fishery Science Center's (NEFSC) proposed redesign of scallop survey dredge strata and sampling approach, specifically a transition to a [Generalized Random Tessellation Stratified \(GRTS\)](#) sampling design over simple random or random stratified. GRTS strata are spatially balanced with station intensity based on prior density information. The change will be implemented for the federal scallop dredge survey in 2025 and align scallop survey strata with spatial area management (SAMS) boundaries. The Council received an update on 2024 [scallop survey results and preliminary projections](#) which will inform development of Framework Adjustment 39 for FY2025 fishery specifications and FY2026 default measures for rotational access and open areas. Areas of recruitment were noted in Georges Bank and the Mid-Atlantic, however biomass indices are lower in 2024 than 2023. Final action on Framework 39 is expected in December. A [Strategic Plan](#) for scallops is also under development, with stakeholder outreach meetings being arranged for spring and summer 2025.

**MONITORING & FISHERY PERFORMANCE REPORTS** – For FMPs without annual specifications, Council staff with input from PDTs, advisors and committee, prepare annual fishery monitoring reports reviewing survey indices, catch and landings, and other metrics on fishery performance. In September, the Council received FY2023 performance reports for the [monkfish](#), [skate complex](#), and [whiting](#) FMPs. The Council discussed approaches for improving efficiency and utility of future monitoring reports.

**ON-DEMAND FISHING GEAR CONFLICT WORKING GROUP** – The On-Demand Gear Conflict Working Group reviewed progress and provided the Council with a final report on "[Advice for Reducing Gear Interactions Resulting from Risk Reduction Measures Under Consideration for Gillnet and Other/Trap Pot Fisheries](#)" (Sept 2024). The Working Group shared a [draft regulations strawman discussion document](#) intended to identify potential revisions/additions to surface marking standards. NEFMC intends to work with the Mid-Atlantic Council and ASMFC to develop revised gear marking standards in 2025 for Northeast



multispecies, monkfish, and red crab fisheries that would allow for trained operators to fish without surface gear markings and reduce gear conflict between on-demand fishing gear and other gear types. In support of the Working Group's consensus statement, the Council agreed to **task the Enforcement Committee to provide input for the On-Demand Fishing Gear Conflict Working Group as it continues to develop recommendations for reducing gear conflict**. NOAA Fisheries staff also presented updates on [NEFSC On-Demand Fishing Research](#) and the [Status of Atlantic Large What Take Reduction Plan Modifications](#).

**NORTHEAST TRAWL ADVISORY PANEL (NTAP)** – The Trawl Advisory Panel is nearing completion of its Bigelow Contingency Plan outlining contingencies for when the primary NEFSC survey vessel is unavailable; the NOAA Ship Pisces is the primary backup and will be trialed in November. The Panel is defining a plan for an Industry Based Survey (IBS) to compliment the NEFSC bottom trawl survey that would be capable of surveying within offshore wind energy areas. Pilot operations for the proposed IBS are planned for spring 2025 and full-scale survey implementation by spring 2027, pending funding prioritization.

**AGENCY ACTIVITIES REPORTS** – [Council Executive Director](#), [GARFO Regional Administrator](#), [Northeast Fisheries Science Center](#), [Mid-Atlantic Fishery Management Council](#), [ASMFC](#), [US Coast Guard](#), [NOAA Enforcement](#), [Highly Migratory Species Advisory Panel](#).

### ***LOOKING AHEAD***

In December, the Council will take final action on (i.e., final approval of):

- Northeast Multispecies fishery specifications in Framework Adjustment 69
- Scallop specifications in Framework Adjustment 39
- 2025 Council Work Priorities

Additionally, NOAA Fisheries is slated to present an overview of a revised Draft Batched Biological Opinion on Greater Atlantic Region Fishery Management Plans and on its [Regional EEJ Implementation Plan](#).

# New England Regional Fishery Updates



## NEFMC

- September 24-26, Gloucester
- December 3-5, Newport



# NEFMC Elections 2024-2025

- **Council Chair** – Rick Bellavance (RI)
- **Vice Chair** – Dan Salerno (NH)
- **Executive Committee** – Melanie Griffin, John Pappalardo (MA), Megan Ware (ME)



# Atlantic Herring

- Took final action on Atlantic herring 2025-2027 Specifications
- Annual Catch Limit 85% lower than 2024, lowest ACL in FMP history

## Resulting sub-ACLs for 2025:

Area 1A - 783 mt

Area 2 - 753 mt

Area 1B - 117 mt

Area 3 - 1,057 mt

- Council requested nullification of carryover (FY2023 to 2025)
- If new specifications are delayed (FY starts Jan 1), Council requested NOAA Fisheries take in-season action to reduce the 2025 default



Source: NOAA Fisheries

Massachusetts Division  
of Marine Fisheries



# Groundfish

- Took final action on Amendment 25 - incorporate four new cod stock units into Northeast Multispecies FMP

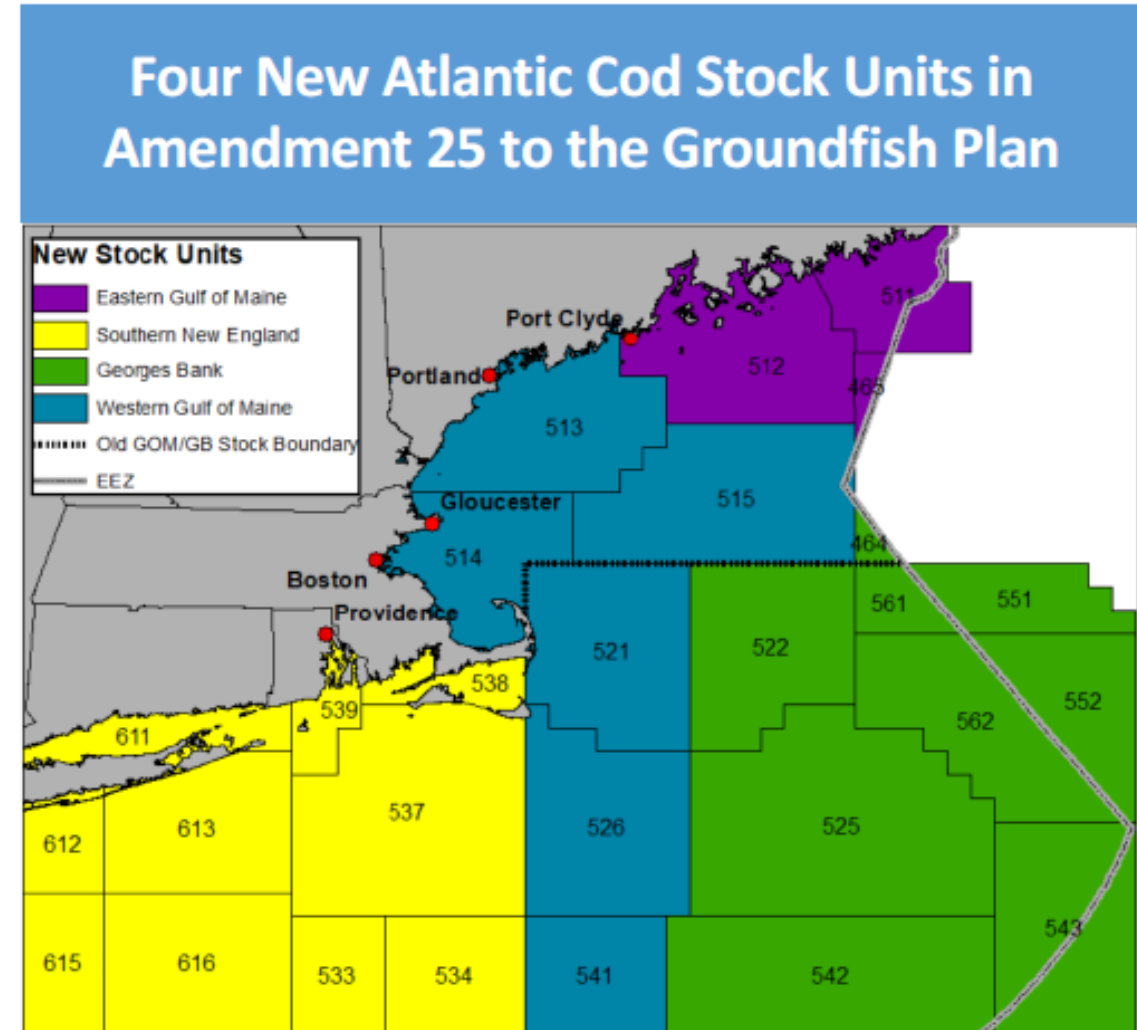
**Eastern Gulf of Maine** as a new stock unit

**Western Gulf of Maine** as a new stock unit

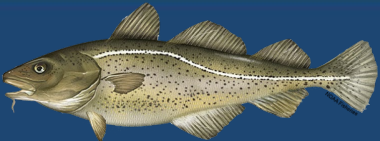
**Georges Bank** as a revised stock unit

**Southern New England** as a new stock unit

- Framework Adjustment 69 – December final action (for May 1)



Source: NEFMC



Source: NOAA Fisheries

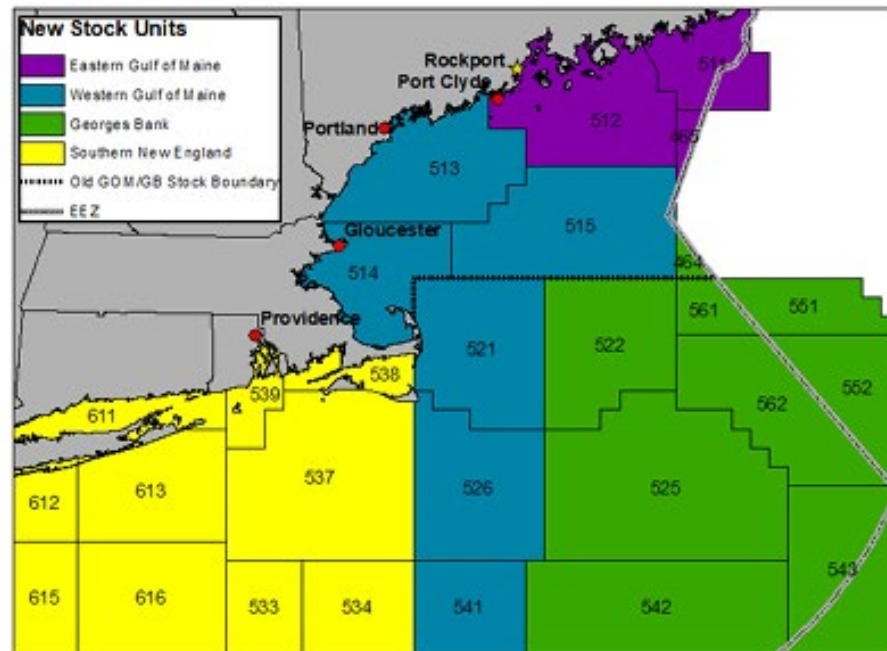
Massachusetts Division  
of Marine Fisheries



# Cod Management Transition Plan

## Multi-Year Council Priority, Initiated 2023

Develop a transition plan for Atlantic cod management from the current two management units to up to five management units. This will include addressing allocation issues and consider potential new measures to protect Atlantic cod spawning.

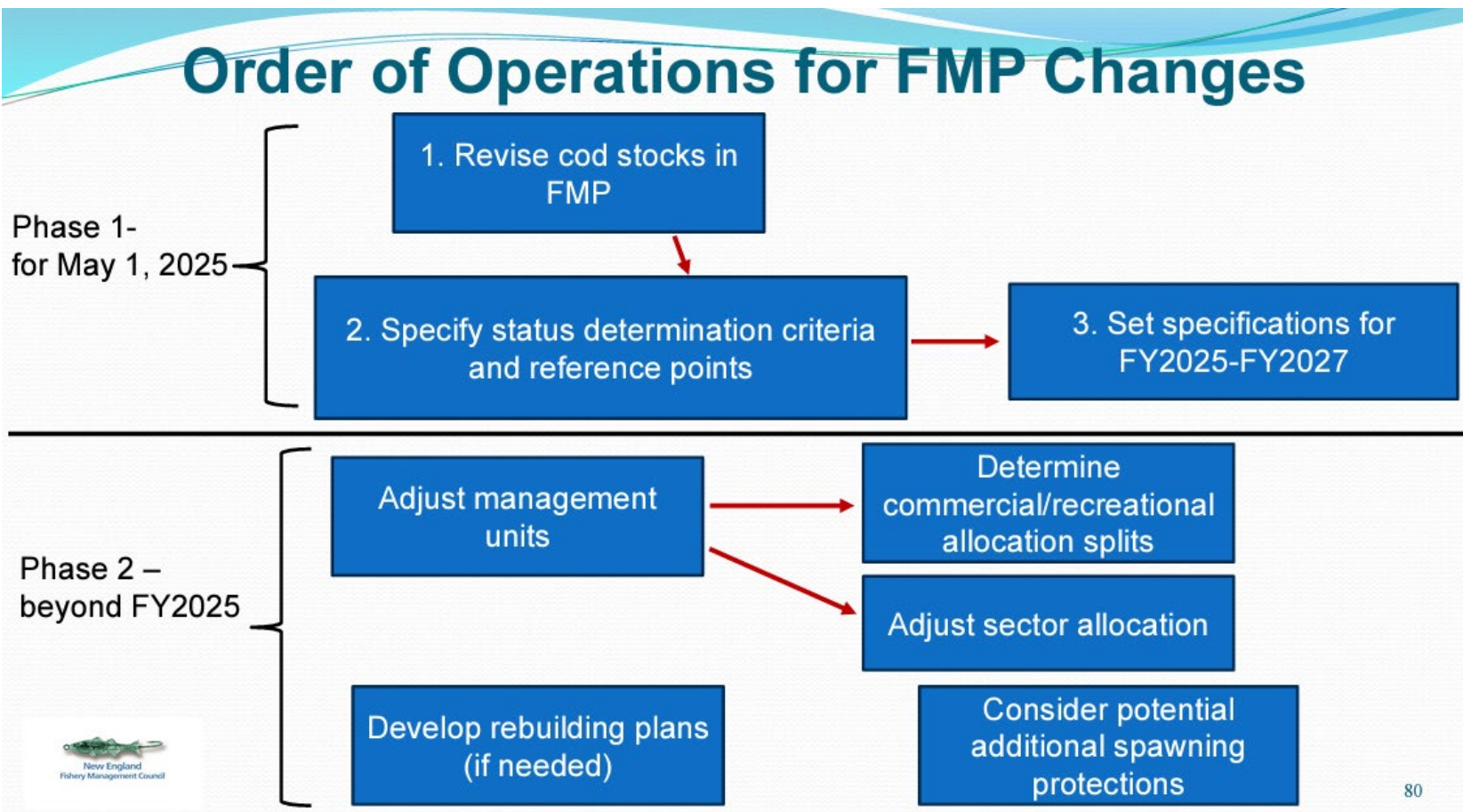


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# Cod Management Transition Plan

## PHASE 1



**Amendment 25**  
(Sep 2024)

**Framework 69**  
(Dec 2024)

**Future framework  
or amendment**  
(begin Jan 2025)

Source: NEFMC

Massachusetts Division  
of Marine Fisheries



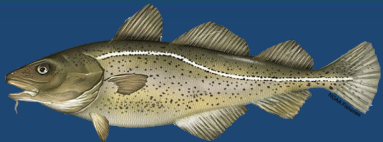
# Groundfish Framework 69

## Cod Management Transition Plan – Phase 1

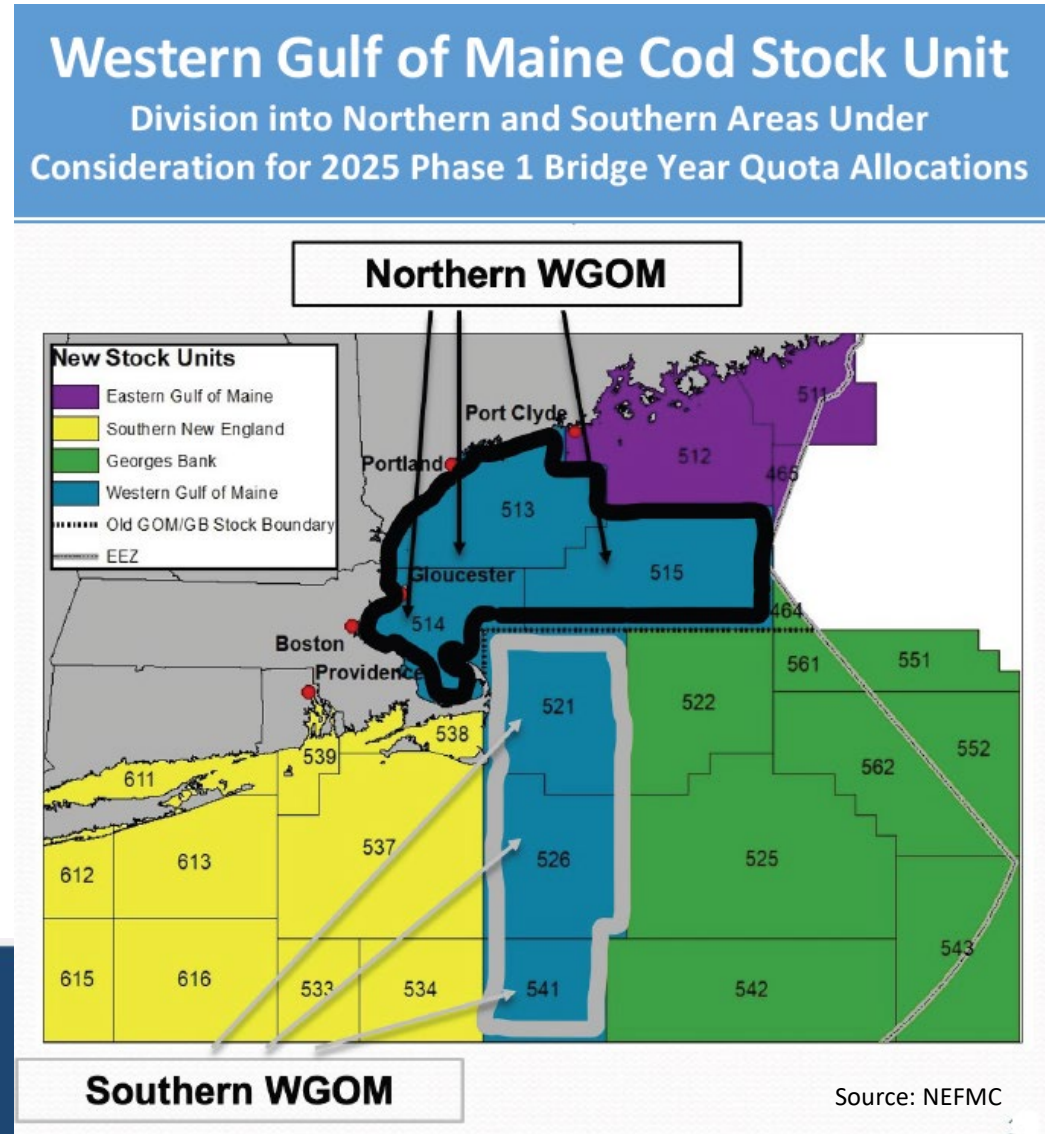
- Adopt status determination criteria
- 2025 Bridge Year allocations (short-term)
  - Options for prorating sector cod allocations, splitting WGOM stock unit into N & S
  - State waters subcomponents, common pool apportionments; recreational subcomponent

## FY2025-2027 specifications for several stocks

- June MTA: Reduced 2025 cod catch limits
- Haddock, plaice, witch flounder, pollock, Atlantic halibut, yellowtail flounder



Source: NOAA Fisheries



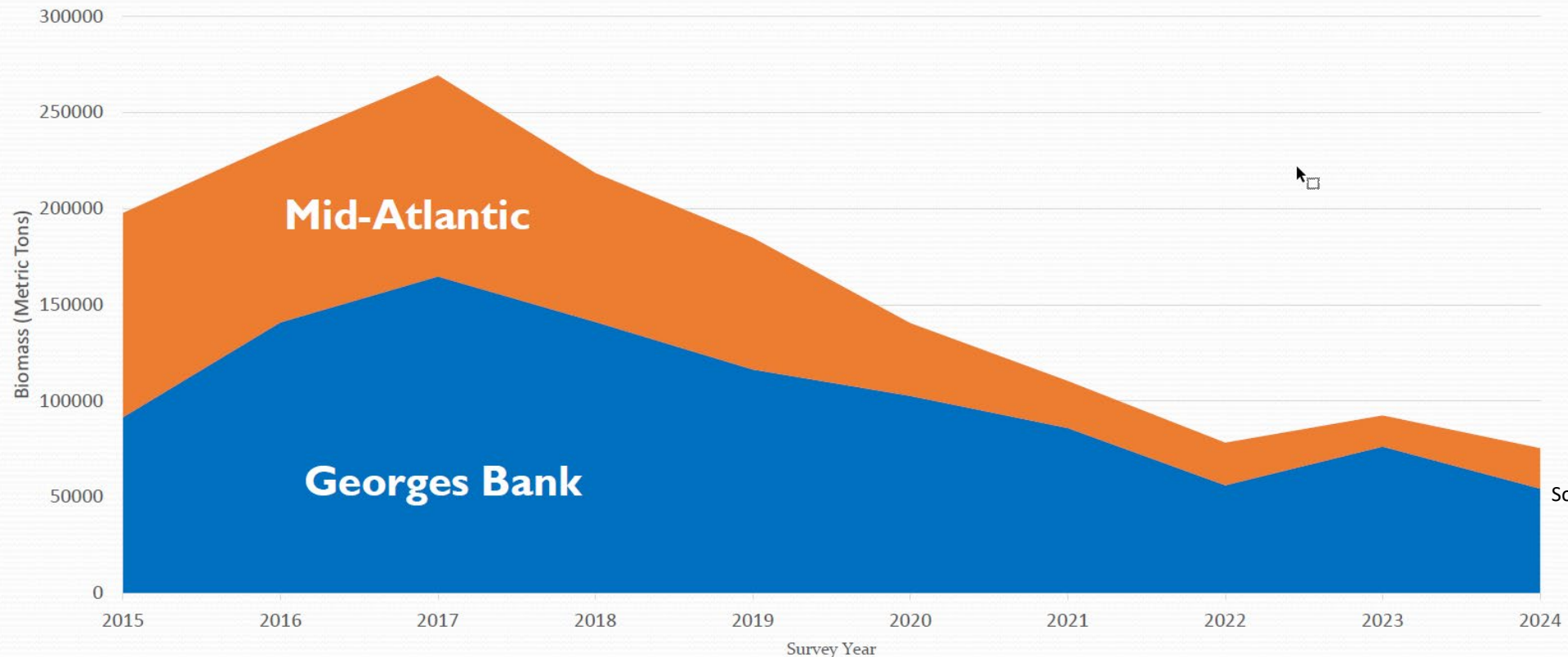


# Atlantic Scallops

- Received overview of 2024 surveys in September
- Framework 39 for 2025 scallop specifications – December final action



## Georges Bank and Mid-Atlantic Biomass Estimates (2015 – 2024)

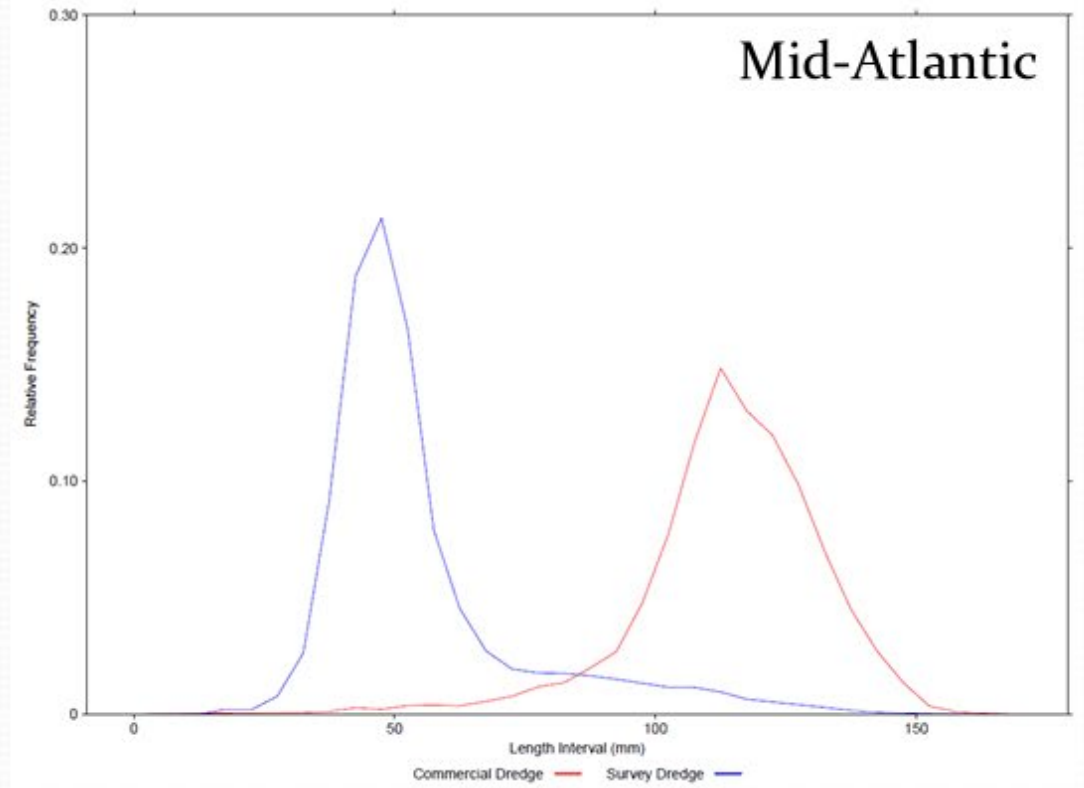
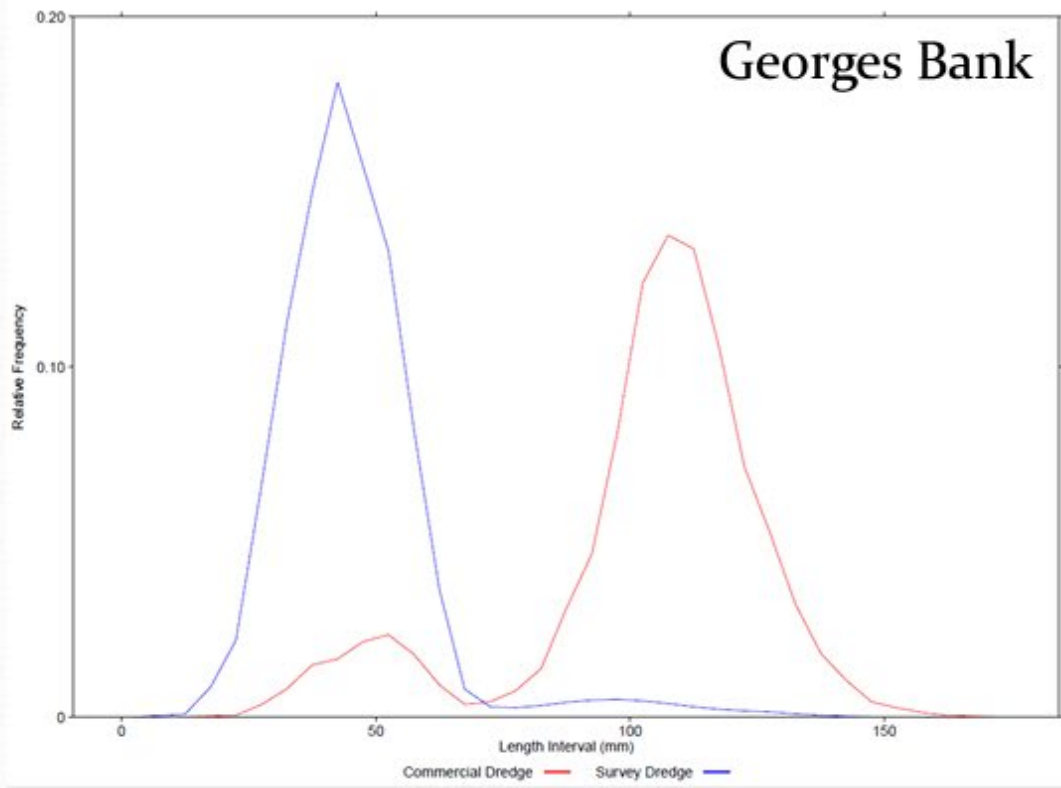
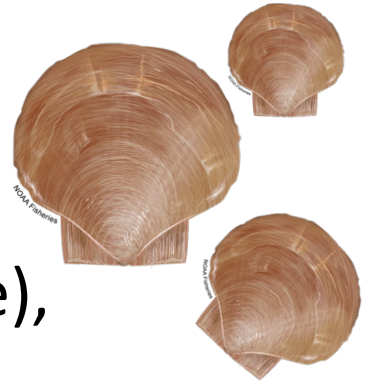


Source: NEFMC



# Atlantic Scallops

- Dominant 2-year-old cohort in Georges Bank and Mid-Atlantic (blue), largely unavailable to fishery before 2027



# Atlantic Scallops



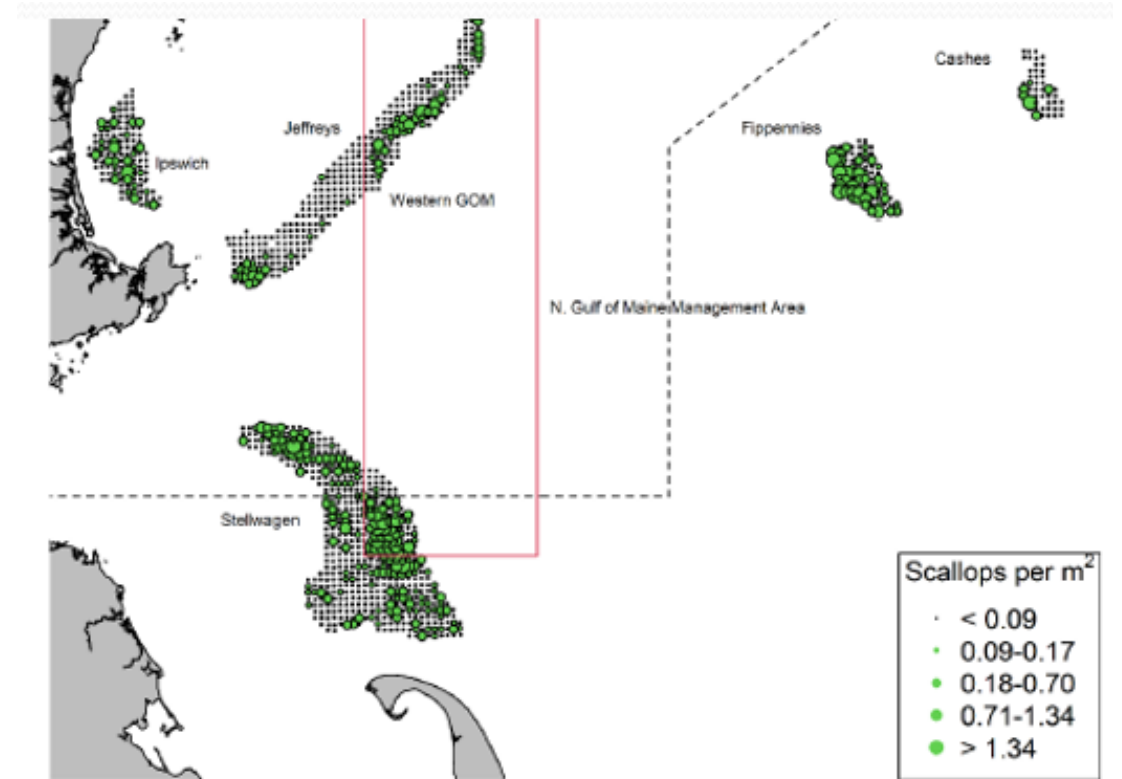
Framework 39 FY2025 Specifications will consider:

- Access Area trips and trip limits - Georges Bank
- Level of fishing effort in open bottom areas
- Closures to protect recruits: Nantucket Lightship & Elephant Trunk
- Delayed opening - May 15<sup>th</sup> vs April 1<sup>st</sup> for improved meat yields



# Atlantic Scallops

- Northern Gulf of Maine (NGOM) total allowable landings
- Stable biomass
- Bulk of resource on Stellwagen Bank north of  $42^{\circ} 20'$



Northern Gulf of Maine, Scallops >75 mm shell height  
2024 SMAST drop camera survey

Source: NEFMC



Source: NOAA Fisheries

Massachusetts Division  
of Marine Fisheries



# Monkfish

- Council requested GARFO pause solicitations for new Monkfish RSA projects
- Requested extension of current projects, sell RSA DAS 2025 & 2026
- Industry Workshops in Chatham & Gloucester to inform CPUE indices



Source: NOAA Fisheries

## Monkfish Industry In-Person Workshops

INVITATION BY THE CAPE COD COMMERCIAL FISHERMEN'S ALLIANCE AND UMASS DARTMOUTH SCHOOL FOR MARINE SCIENCE AND TECHNOLOGY

### WHY WE NEED YOU:

The biology, distribution and size/sex composition of monkfish between management areas is poorly understood, because very few monkfish are caught in the Northeast Fisheries Science Center (NEFSC) bottom trawl survey conducted in the spring and fall, making the survey indices for the species highly variable.

We propose to develop standardized fishery catch rates for trawls in the northern management area, and gillnets in the southern management area to provide fishermen's perceptions on factors that influence monkfish catch rates, to improve the accuracy of monkfish stock assessments and improve fishery management of New England monkfish.

### HOW YOU CAN HELP:

Attend a workshop to discuss monkfish fishing trends, catch rates, fishing behavior, fishing gear modifications that target or avoid certain species.

SMAST will present their initial results from fishery monitoring data (Vessel trip reports (VTR), observer, dealer, study fleet) for a stock index, but they have questions about the data that only fishermen can answer!

### IN-PERSON LOCATIONS:

- **Monday, October 21st (4-6 PM): Superior Trawl, RI**
  - 55 State Street, Narragansett, RI
- **Tuesday, October 22nd (5-7PM): [Virtual](#)**
  - Mtg for NJ/NY fishermen
  - Zoom Meeting ID: 857 1289 4433
  - Passcode: 686675
- **Thursday, October 24th (5-7 PM): SMAST**
  - 836 S Rodney French Blvd, New Bedford, MA
- **Monday, November 4th (5-7pm): GMRI**
  - 350 Commercial St. Portland, ME
- **Wednesday, November 6th (5-7PM): CCCFA**
  - 1566 Main Street, Chatham, MA
- **Tuesday, November 12th (3:30-5:30 PM): Sector 2 Office**
  - 10 Witham Street, Gloucester, MA



## RSVP TO A MEETING!

Please reach out to Aubrey if you would like to attend or have any questions.

[aubrey@capecodfishermen.org](mailto:aubrey@capecodfishermen.org)

973-508-5365



# Upcoming Meetings

## **GROUNDFISH**

FW69

October 29

November 14

November 21

November 25

Groundfish Committee

Recreational Advisory Panel

Joint Advisory Panels (GAP & RAP)

Groundfish Committee

## **SEA SCALLOP**

FW39

November 20

November 21

Scallop Advisory Panel

Scallop Committee

## **OTHER**

November 6-7

November 18

November 18-22

Northeast Region Coordinating Council

Enforcement Committee – On-Demand

Yellowtail Flounder RTA Peer Review

See [www.nefmc.org](http://www.nefmc.org) for details and webinar links

Massachusetts Division  
of Marine Fisheries





# Atlantic States Marine Fisheries Commission

## ASMFC 82<sup>nd</sup> Annual Meeting

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*Sustainable and Cooperative Management of Atlantic Coastal Fisheries*

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ASMFC 82<sup>nd</sup> Annual Meeting  
October 21 - 24, 2024

For more information, please  
contact Toni Kerns, ISFMP,  
Tina Berger, Communications  
or the identified individual at  
703.842.0740

### Meeting Summaries, Press Releases and Motions

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## **ATLANTIC HERRING MANAGEMENT BOARD (OCTOBER 21, 2024)**

### ***Meeting Summary***

The Atlantic Herring Management Board met to consider setting specifications for the 2025-2027 fishing years and to set quota periods for the 2025 Area 1A fishery.

In September 2024, the New England Fishery Management Council (NEFMC) voted on a 2025-2027 specifications package to be submitted to NOAA Fisheries for review and approval. NEFMC's recommended specifications are based on the 2024 Atlantic herring stock assessment and use the Atlantic herring biomass-based control rule. NEFMC noted these specifications are very low, and the 2025 Annual Catch Limit (ACL) would be the lowest in the history of the FMP. In addition to the specifications package, NEFMC also put forward two requests to NOAA Fisheries. First, the Council requested an in-season adjustment to reduce the default 2025 specifications (currently in place) to the new, lower specifications before the 2025 fishing year begins. Second, NEFMC also requested nullification of the quota carryover from 2023 to 2025 given concern about the magnitude of those carryover amounts relative to the very low quotas for 2025. The Board adopted the 2025-2027 specifications package as recommended by NEFMC, contingent on the final rule being published by NOAA Fisheries.

The Board considered quota periods for the 2025 Area 1A fishery. Per Amendment 3 to the Interstate Fishery Management Plan for Atlantic Herring, quota periods shall be determined annually for Area 1A. The Board can consider distributing the Area 1A sub-ACL using bi-monthly, trimester, or seasonal quota periods. The Board can also decide whether quota from January through May will be allocated later in the fishing season, and underages may be rolled from one period to the next within the same year. For the 2025 Area 1A fishery, the Board adopted a seasonal quota approach with 72.8% available June-September and 27.2% available October-December with underages from June through September rolled into the October through December period, if applicable. These 2025 quota periods are the same as the quota periods implemented for the last five fishing years.

For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at [EFranke@asmfc.org](mailto:EFranke@asmfc.org).

### ***Motions***

**Move to adopt the following specifications for the 2025-2027 fishing years for Atlantic herring as recommended by the New England Fishery Management Council, contingent on the final rule being published by NOAA Fisheries:**

#### **For 2025**

- Annual Catch Limit (ACL) / Domestic Annual Harvest = 2,710 mt
- Area 1A Sub-ACL = 783 mt
- Area 1B Sub-ACL = 117 mt
- Area 2 Sub-ACL = 753 mt
- Area 3 Sub-ACL = 1,057 mt

### **For 2026 and 2027**

- Annual Catch Limit (ACL) / Domestic Annual Harvest = 6,854 mt
- Area 1A Sub-ACL = 1,981 mt
- Area 1B Sub-ACL = 295 mt
- Area 2 Sub-ACL = 1,905 mt
- Area 3 Sub-ACL = 2,673 mt
- For all three years
- Border Transfer = 0 mt each year
- Fixed Gear Set-Aside = 30 mt each year
- Research Set-Aside as a Percentage of Sub-ACLs = 0% each year

Motion made by Ms. Patterson and seconded by Mr. Hasbrouck. Motion passes (7 in favor, 1 opposed).

Roll Call: In favor – ME, NH, MA, RI, NY, NJ, NOAA Fisheries; Opposed – CT.

**Move to implement seasonal distribution of quota for the 2025 Area 1A sub-ACL with 72.8% available from June through September and 27.2% allocated from October through December, with no landings prior to June 1, and for underages to be rolled over into the next quota period. The fishery will close when 92% of the seasonal period's quota has been projected to be harvested.**

Motion made by Ms. Patterson and seconded by Mr. Kaelin. Motion carries with one abstention (NOAA Fisheries).

### **AMERICAN LOBSTER MANAGEMENT BOARD (OCTOBER 21, 2024)**

#### ***Press Release***

#### **American Lobster Board Approves Addendum XXXI to Postpone Implementation of Addendum XXVII Measures**

Annapolis, MD – The Commission's American Lobster Management Board approved Addendum XXXI to Amendment 3 to the Interstate Fishery Management Plan for American Lobster. The Addendum postpones the implementation of certain measures from Addendum XXVII to July 1, 2025 to allow Canada more time to consider implementing complementary management measures, as well as reduce potential impacts to the US and Canadian lobster industries.

In October 2023, a series of changes to the current gauge and escape vent sizes in Lobster Conservation Management Areas (LCMAs) 1 (Gulf of Maine), 3 (federal waters), and Outer Cape Cod (OCC) were triggered based on observed changes in recruit abundance indices. Initially, these measures were to be implemented in June 2024. However, in response to concerns raised by industry and the State of Maine, the Board extended the implementation date to January 1, 2025 to allow the Gulf of Maine states the opportunity to coordinate with Canada regarding possible trade implications, and give the industry and gauge makers additional time to prepare for these changes.

In June 2024, US and Canadian lobster fishery managers and industry members met to discuss the management structures and stock assessments of the two countries. Based on these discussions, the Board determined that postponing implementation for an additional six months would allow further consideration of complementary measures by Canada, as well as offset potential impacts to the lobster industry that imports smaller lobster in the early part of the year.

Based on Addendum XXXI, the following measures will be implemented starting July 1, 2025:

- Measures under Section 3.1 of Addendum XXVII to create a common size limit and v-notch definition for state-only and federal permit holders fishing in OCC
- Increases in the LCMA 1 minimum gauge and vent sizes, and decrease to the maximum gauge size for LCMA 3 and OCC under Section 3.2 of Addendum XXVII

Addendum XXXI does not postpone regulations prohibiting the issuance of 10% additional trap tags in Areas 1 and 3 above the trap limit or allocation; this provision will become effective January 1, 2025. Addendum XXXI will be available on the Commission website, [www.asmfc.org](http://www.asmfc.org), on the American lobster webpage by next week. For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org) or 703.842.0740.

###

PR24-29

### ***Meeting Summary***

In addition to approving Addendum XXXI, the Board received a stock assessment progress update, a data update of American lobster stock indices, a report on the Fishery Management Plan (FMP) Review for the 2023 Fishing Year, and discussed Addendum XXIX vessel tracking requirements.

The ongoing benchmark stock assessment is expected to be completed and presented to the Board in October 2025. Two workshops have been held to review available data and discuss modeling methods. An assessment workshop will be held in February to finalize the assessment models.

The Board reviewed the annual Data Update for American lobster stock indices, as recommended by the 2020 stock assessment. The Data Update provides the Board with the most recent indices of exploitable lobster stock abundance conditions so it can monitor changes in stock abundance between assessments. Young-of-year (YOY) settlement indicators, trawl survey indicators, and ventless trap survey abundance indices were updated with 2023 data, and compared to the stock assessment time series. Since the last year of assessment data (2018), Gulf of Maine indicators for recruits and adults continue to show declines from time series highs observed during the stock assessment, but YOY indicators show some improvement. Georges Bank indicators show slight improvement since the stock assessment, while Southern New England indicators show continued unfavorable conditions, with most updated indicators at or near time series lows.

The Board approved the FMP Review and state compliance reports for American lobster and Jonah crab for the 2023 fishing year, as well as de minimis status for Delaware, Maryland, and Virginia. Additionally, it discussed the requirement of Addendum XXIX for federally-permitted vessels to use tracking devices for the collection of spatial fishing effort data at all times. The Board acknowledges privacy concerns from fishermen about tracking data being collected during personal non-fishing trips, and is also considering law enforcement concerns about the difficulty of enforcing the regulations if the devices could be turned on and off manually. The Board will continue to explore possible modifications to the approved tracking devices and rules that could address these concerns while minimizing data losses and enforcement challenges.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator at [cstarks@asmfc.org](mailto:cstarks@asmfc.org).

### ***Motions***

#### **Move to adopt Option B and approve Addendum XXXI, as modified today, to be effective immediately**

Motion made by Mr. McKiernan and seconded by Mr. Grout. Motion passes with one objection. Roll Call: In favor – ME, NH, MA, RI, CT, NY, NJ, DE, MD, VA; Opposed – NOAA.

#### **Move to approve the Lobster and Jonah Crab FMP Reviews for the 2023 fishing year, state compliance reports, and de minimis status for DE, MD, and VA.**

Motion made by Mr. Luisi and seconded by Mr. Train. Motion passes without opposition.

### **ATLANTIC COASTAL FISH HABITAT PARTNERSHIP STEERING COMMITTEE (October 21 & 22, 2024)**

#### ***Meeting Summary***

The ACFHP Steering Committee approved several key items, including the New England Fishery Management Council membership application and the FY26 Project Funding Application. The Committee also discussed an operations budget increase from \$85,000 to \$125,000, with an additional \$40,000 in coordination funding under consideration. Updates on Science & Data initiatives included plans to inform guidance for seed-based submerged aquatic vegetation (i.e., eelgrass) restoration techniques and develop related workshops. Two new work groups were created to engage with the Federal Energy Regulatory Commission relicensing process for hydropower projects and updates to State Wildlife Action Plans. Additionally, the Committee began developing the next 2025-2026 ACFHP action plan to guide upcoming priorities. Guest speakers Jason Olive (USFWS), Alex McOwen (NOAA), and Daniel Wieferich (USGS) contributed updates on National Fish Habitat Partnership (NFHP) activities and insights on national habitat initiatives and opportunities for collaboration.

Project updates included progress on FY24 restoration efforts, such as the Maryland Coastal Bays Salt Marsh Restoration project, which recently expanded its scope from 39 to 114 acres of wetland restoration across two private properties, and the design and permitting for the Upper E.R. Collins Dam Removal, opening 3 miles of the Pequest River in New Jersey. For FY25, ACFHP retained top-tier funding status, securing approximately \$300,000 for three projects: Cedar Grove Dam and No Name Dam removals on the Pequest River, which will restore 57 miles of river habitat as part of a larger dam removal initiative that includes the Upper and Lower E.R. Dams; and the Matanzas River Oyster Reef Restoration in Florida, which will create 500 feet of living shoreline using innovative oyster arches. The meeting also highlighted the new [NFHP Project Accomplishment Map](#), now live on the NFHP website ([fishhabitat.org](https://fishhabitat.org)), which showcases project successes and active initiatives across the 20 regional fish habitat partnerships (FHPs).

For more information, please contact Simen Kaalstad, ACFHP Director, at [skaalstad@asmfc.org](mailto:skaalstad@asmfc.org).

### **ATLANTIC COASTAL COOPERATIVE STATISTICS PROGRAM COORDINATING COUNCIL (OCTOBER 21, 2024)**

#### ***Meeting Summary***

The ACCSP Coordinating Council met to consider the FY2025 Partner and administrative proposals. The Council approved the ACCSP administrative grant and all three (3) maintenance proposals for FY2025 ranked and recommended by the Advisory and Operations Committees. The Council also voted

to fully support the top four ranked new proposals, with the additional support for the Maine halibut sampling if funding allows. The Council noted appreciation to the Operations and Advisors on the work done to rank proposals and provide thoughtful recommendations to utilize available funding.

The Council was presented an update of ACCSP program activities, including software development timelines, status of 2024 action plan items, planning for 2025 ASMFC Action Plan, and the need for more Advisors to be appointed by Council members.

For more information, please contact Geoff White, ACCSP Director, at [geoff.white@accsp.org](mailto:geoff.white@accsp.org).

### ***Motions***

#### **Move to approve the ACCSP Administrative Proposal.**

Motion made by Ms. Salmon and seconded by Mr. Gary. Motion passes by unanimous approval.

#### **Move to approve the three (3) Maintenance Proposals as recommended by the Operations and Advisory Committees.**

Motion made by Ms. Kennedy and seconded by Mr. Dyar. Motion passes by unanimous approval.

#### **Move to approve the top four (4) ranking New Proposals, through the Maine Black Sea Bass project.**

Motion made by Mr. Carmichael and seconded by Mr. Owens. Motion passes by unanimous consent.

#### **Move that the Maine halibut proposal remain above the line to be funded if additional funding become available.**

Motion made by Mr. Keliher and seconded by Ms. Burgess. Motion approved by consent.

#### **Move to approve Rene Zobel as Vice-chair of the ACCSP Coordinating Council**

Motion made by Mr. Beal and seconded by Mr. McKiernan. Motion passes by consent.

### **HORSESHOE CRAB MANAGEMENT BOARD (OCTOBER 21, 2024)**

#### ***Press Release***

#### **Horseshoe Crab Board Sets 2025 Specifications for Horseshoe Crabs of Delaware Bay-Origin and Initiates Draft Addendum IX to Consider Multi-Year Specifications**

Annapolis, MD – The Commission’s Horseshoe Crab Management Board approved harvest specifications for horseshoe crabs of Delaware Bay-origin. Taking into consideration the output of the Adaptive Resource Management (ARM) Framework, the Board set a harvest limit of 500,000 male horseshoe crabs and zero female Delaware Bay-origin horseshoe crabs for the 2025 season.

The Board elected to maintain zero female horseshoe crab harvest for the 2025 season as a conservative measure, considering continued public concern about the status of the red knot population in the Delaware Bay. To make up for the lost harvest of larger female crabs, the Board agreed to increase Maryland and Virginia’s male harvest quotas with an offset ratio of 2:1 males to females. Using the allocation methodology established in Addendum VIII, the following quotas were set for New Jersey, Delaware, Maryland, and Virginia:

	Delaware Bay Origin Horseshoe Crab Quota (no. of crabs)	Total Quota**
State	Male Only	Male Only
Delaware	173,014	173,014
New Jersey	173,014	173,014
Maryland	132,865	255,980
Virginia*	21,107	81,331

\*Virginia harvest refers to harvest east of the COLREGS line only

\*\*Total harvest quotas for Maryland and Virginia include crabs which are not of Delaware Bay origin.

The Board also initiated Draft Addendum IX, which will consider adding an additional specifications tool that would allow for male-only harvest for multiple years. The Draft Addendum responds to recommendations from the Horseshoe Crab Management Objectives Workshop held in July 2024. The Workshop convened a small group of stakeholders to explore management objectives for the Delaware Bay-origin horseshoe crab fishery. The workshop participants recommended the Board establish an interim solution to maintain male-only harvest while changes to the ARM Framework are explored to better align the model with stakeholder values.

The Board will consider Draft Addendum IX for public comment in February 2025. For more information, please contact Caitlin Starks, Senior Fishery Management Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org) or 703.842.0740.

###

PR24-30

### **Meeting Summary**

In addition to setting Delaware Bay harvest specifications and initiating Draft Addendum IX, the Board also considered a report on the outcomes of the July Management Objectives Workshop, and the FMP Review for the 2023 fishing year.

In July, a workshop was held with stakeholders interested in Delaware Bay region horseshoe crab management. Workshop participants represented harvesters and dealers, biomedical industry, environmental NGOs, shorebird and horseshoe crab scientists, and resource managers. The workshop aimed to identify stakeholders' values and concerns regarding the ARM Framework, as well as common ground for management. The Board considered several potential next steps based on the consensus recommendations developed at the workshop. In addition to considering the ability set multi-year specifications for male-only harvest through Draft Addendum IX, the Board supported recommendations to begin a dialogue with key stakeholders to better understand essential concerns for management, explore changes to the reward and utility functions of the ARM model with stakeholder input, evaluate the Advisory Panel membership to ensure adequate representation of various stakeholder groups, and improve science communication about the ARM and channels for public participation.

The Board approved the FMP Review and state compliance reports for horseshoe crab for the 2023 fishing year, as well as *de minimis* status for South Carolina, Georgia, and Florida. The Plan Review Team recommended the Board evaluate the season start date for commercial bait harvest in the Delaware Bay region; a common season start date for Delaware, Maryland, and Virginia to protect crabs during the spawning season will be considered in Draft Addendum IX.

Lastly, Eric Reid from Rhode Island was elected Vice-Chair to the Horseshoe Crab Board. For more information, please contact Caitlin Starks, Senior Fishery Management Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org).

### ***Motions***

**Move to initiate an addendum to consider the ability to set multi-year specifications for male-only horseshoe crab harvest of Delaware Bay-origin Horseshoe Crab based on the ARM Framework or an alternative male-only harvest specification setting method.**

Motion made by Mr. Clark and seconded by Mr. McKiernan. Motion approved by consent with 3 abstentions (South Carolina, Georgia, and Florida).

**Move to accept the 2025 Adaptive Resource Management harvest specifications with 500,000 males and no female harvest of Delaware Bay-origin crabs. In addition, the 2:1 offset will be added to MD's and VA's allocations due to no female harvest.**

Motion made by Mr. Cimino and seconded by Mr. Clark. Motion approved by consent with 3 abstentions (South Carolina, Georgia, and Florida)

**Move that the draft addendum initiated today also consider establishing a season start date of June 8 for the Delaware Bay region.**

Motion made by Mr. Clark and seconded by Mr. Kane. Motion passes with abstentions from South Carolina, Georgia, and Florida.

**Move to approve the Horseshoe Crab FMP Review for the 2023 fishing year, state compliance reports, and *de minimis* status for South Carolina, Georgia, and Florida.**

Motion made by Mr. Luisi and seconded by Mr. Geer. Motion passes by unanimous consent.

**Move to nominate Eric Reid as Vice-Chair of the Horseshoe Crab Board.**

Motion made by Mr. McKiernan and seconded by Mr. Luisi. Motion passes.

### **SCIAENIDS MANAGEMENT BOARD (OCTOBER 22, 2024)**

#### ***Press Release***

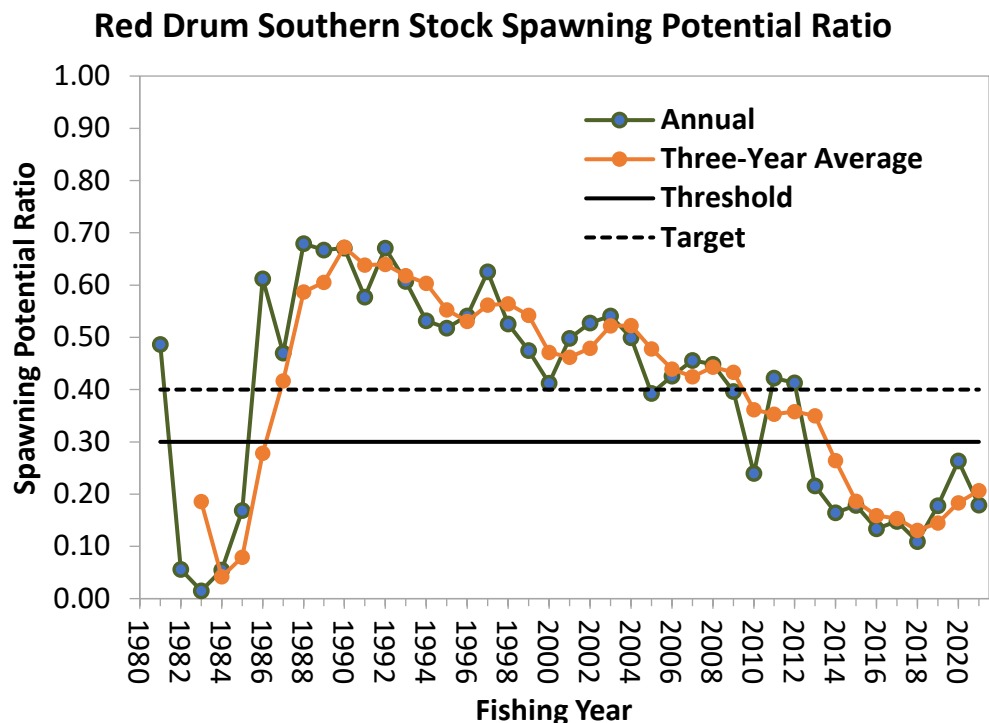
#### **Red Drum Benchmark Stock Assessment Finds Mixed Results for the Northern and Southern Stocks: Northern Stock Not Overfishing and Overfishing Not Occurring; Southern Stock Overfished and Experiencing Overfishing**

Annapolis, MD – The 2024 Red Drum Benchmark Stock Assessment and Peer Review Report indicates the northern stock of red drum (New Jersey through North Carolina) is not overfished and not experiencing overfishing, while the southern stock (South Carolina through the east coast of Florida) is overfished and experiencing overfishing.

The two stocks were assessed separately, using different methods. The southern stock was assessed using the Stock Synthesis (SS) assessment model. Stock status is based on the latest three-year (2019-2021 September-August fishing years) averages of population measures. The three-year average spawning potential ratio (SPR) is less than the 30% SPR threshold, indicating the stock is experiencing overfishing. Spawning potential ratio is a measure of spawning biomass expected under current fishing



mortality levels compared to spawning stock biomass expected if no fishing mortality were occurring. The three-year average female spawning stock biomass (SSB) was 8,737 metric tons (19.27 million pounds), less than the SSB threshold of 9,917 metric tons (21.87 million pounds), indicating the stock is overfished.



A robust, technically-sound SS model could not be developed for the northern stock, so the stock was assessed using a traffic light analysis (TLA). The TLA assigns a color (red, yellow or green) to categorize relative levels of metrics that reflect the condition of red drum adult abundance and fishery performance (i.e., fishing mortality). Although these metrics were not red in the last three years of the assessment, indicating the stock was not overfished nor experiencing overfishing, consistent yellow fishery performance metrics indicated increasing fishing mortality in recent years. Continued monitoring of the northern stock and the increasing trend in fishing mortality is recommended in future years through updates to the TLA.

Red drum fisheries are predominately recreational. Removals (harvest + dead discards) increased to relatively high levels at the end of the assessment time series for both stocks. In the northern stock, removals have increased to time series highs. In the southern stock, they have increased to levels similar to time series highs observed in the early 1980s.

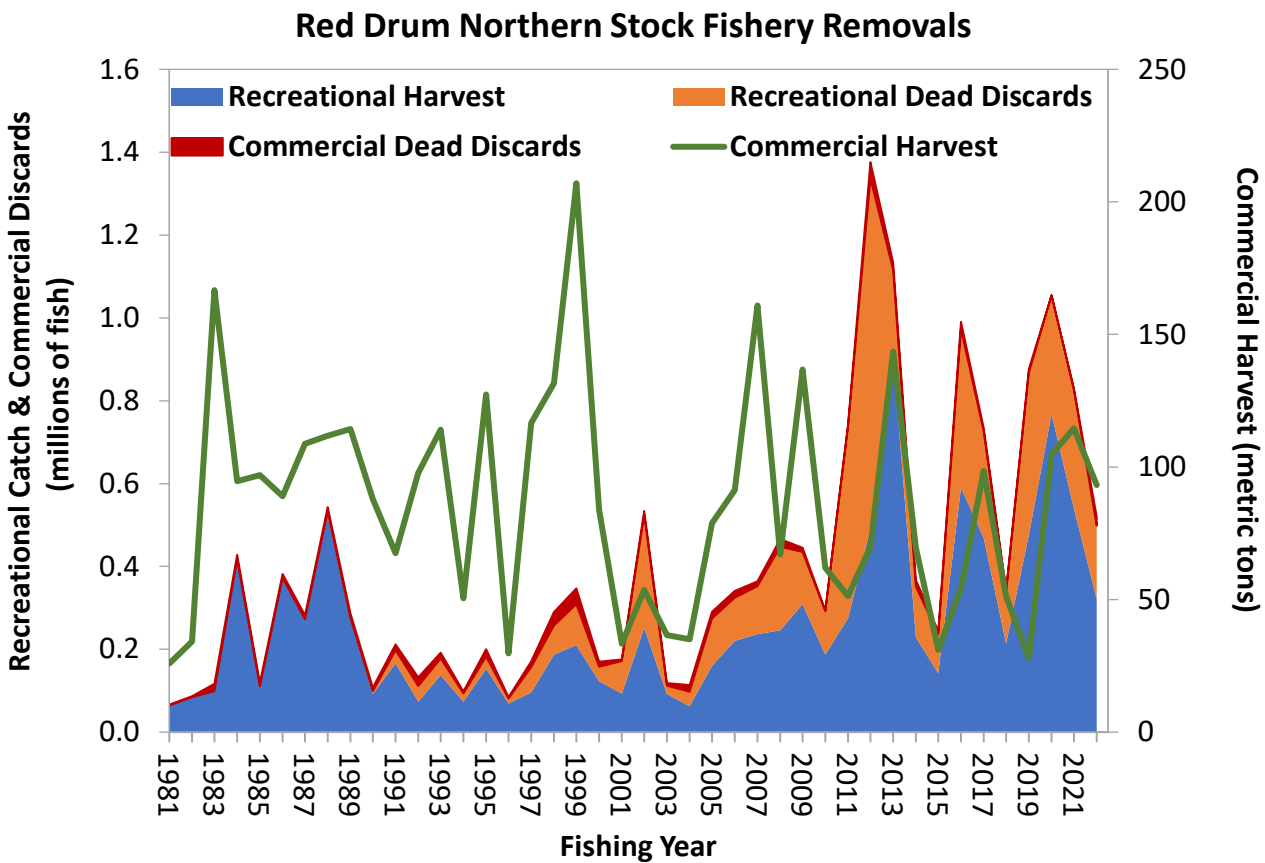
Commercial landings currently only occur in the northern stock, but are a small proportion of total removals and have fluctuated without trend.

The Commission's Sciaenids Management Board accepted the benchmark stock assessment and peer review reports for management use and tasked the Red Drum Technical Committee with additional analyses to evaluate possible paths forward for red drum management.

A more detailed description of the stock assessment results, as well as the Benchmark Stock Assessment and Peer Review Reports, will be available on the Commission website at <https://asmfc.org/species/red-drum> under Stock Assessment Reports.



For more information on the stock assessment, please contact Jeff Kipp, Senior Stock Assessment Scientist, at [jkipp@asmfc.org](mailto:jkipp@asmfc.org); and for more information on red drum management, please contact Tracey Bauer, Fishery Management Plan Coordinator, at [tbauer@asmfc.org](mailto:tbauer@asmfc.org).



###

PR24-31

**Meeting Summary**

In addition to considering the 2024 Red Drum Benchmark Stock Assessment and Peer Review Reports, the Sciaenids Management Board (Board) met to consider several items: discussion of the Risk and Uncertainty Tool inputs for red drum; update of the black drum indicators; and Fishery Management Plan Reviews and state compliance reports for black drum and spotted seatrout.

The Board received a progress update on the Commission’s Risk and Uncertainty Tool (Tool) for red drum, as previously introduced to the Board at its [October 3, 2024 meeting](#). Briefly, the Tool uses information on stock status, model uncertainty, management uncertainty, ecosystem considerations, and socioeconomic factors to recommend the probability of success that management actions should strive to achieve. The Board reviewed preliminary input values to the Tool as recommended by the Red Drum Technical Committee and Committee of Economics and Social Sciences, as well as a summary of preliminary weightings for all inputs from a survey completed by Board members. The Board will continue to discuss the Tool’s inputs and how they are weighted, in addition to inputs based on preliminary projections, for red drum at future meetings.

The Board received a presentation from the Chair of the Black Drum Technical Committee (TC) on the results of an update to the black drum indicators of abundance and stock and fishery characteristics developed during the 2023 benchmark stock assessment, as well as recommendations from the TC based on a prior request from the Board to reevaluate the frequency of future updates. This update incorporated one additional year of data (2023). The TC agreed that, generally, there were no concerning trends in the indicators, which continued to fall within their respective historical ranges. The TC recommended scheduling the next data update to the indicators in 2026, and moving the next black drum stock assessment from 2027 to 2028. The Board agreed with the TC's recommendations. For more information, please refer to the [TC memo](#) summarizing the results of the data update.

The Board reviewed and approved the 2023 Fishing Year FMP Reviews and state compliance reports for black drum and spotted seatrout. For spotted seatrout, *de minimis* status was approved for New Jersey and Delaware.

For more information, please contact Tracey Bauer, Fishery Management Plan Coordinator, at [Tbauer@asmfc.org](mailto:Tbauer@asmfc.org).

### ***Motions***

**Move to accept the 2024 Red Drum Benchmark Stock Assessment and Peer Review Report for management use.**

Motion made by Mr. Dyar and seconded by Mr. Geer. Motion approved by unanimous consent.

**Motion to request the Stock Assessment Subcommittee/Technical Committee to produce the static spawning potential ratio for a range of slot size limits (between 14" and 27") associated with bag limits ranging from 0 to 5 fish per person for: (a) the southern region and/or (b) SC, GA, FL individually.**

Motion made by Mr. Dyar and seconded by Mr. Woodward. Motion approved by unanimous consent

**Move to approve the Black Drum FMP Review and state compliance reports for the 2023 fishing year.**

Motion made by Mr. Woodward and seconded by Mr. Rhodes. Motion carries by unanimous consent.

**Move to approve the Spotted Seatrout FMP Review for the 2023 fishing year, state compliance reports, and *de minimis* status for New Jersey and Delaware.**

Motion made by Mr. Woodward and seconded by Mr. Cimino. Motion carries by unanimous consent.

### **LAW ENFORCEMENT COMMITTEE (OCTOBER 22 & 23, 2024)**

#### ***Meeting Summary***

The Law Enforcement Committee (LEC) conducted a hybrid meeting during the 82nd Annual meeting of the Atlantic States Marine Fisheries Commission (ASMFC) in Annapolis, Maryland. The

Committee welcomed LTC. Doug Daniels as the new representative from the Pennsylvania Fish and Boat Commission.

### **Species Issues**

***Atlantic Striped Bass*** – Staff updated the LEC on the status of the Recreational Release Mortality Working Group findings and recommendations from a series of meetings held over this past summer. Members of the LEC participated in the work group discussions and provided comments on the enforceability of “targeting” and gear provisions. Staff also provided an update on the stock status and the potential for management changes in 2025.

***Atlantic Cobia*** – Staff provided an update on the proposed regional recreational management measures considered under Addendum II of the Atlantic Cobia FMP.

***Spiny Dogfish*** – Staff presented the sturgeon bycatch reduction measures of Draft Addendum VII to the Spiny Dogfish FMP. The proposed management options under Section 3 were discussed by the LEC. The LEC recognized that not all jurisdictions have like permitting of this fishery and appreciate the Boards efforts to consider enforcement of this proposal. In consideration of the proposed options, the consensus of the LEC is to support Option 2.

The LEC will continue to monitor the development of this addendum and offer guidance where appropriate.

***Winter Flounder*** – Staff updated the LEC on the Board approval of the conservation equivalency proposal of a Consecutive Daily Trip Limit Pilot Program for the Commonwealth of Massachusetts. As presented, this proposal will allow for fishermen fishing Massachusetts state waters, north of Cape Cod, to take and possess a consecutive two-day trip limit of winter flounder, with certain program requirements. At the time of Board’s consideration of this proposal, the LEC offered shared experiences with similar programs utilized in other fisheries and supported this pilot program based on the commitment of close monitoring and enforcement by the state. MA DMF has committed to providing a review of the pilot program in its annual compliance report. To enhance enforceability, the LEC wishes to reinforce the use of VMS in this type of program.

### **Other Business**

***“Guidelines”*** – The LEC was updated on the ISFMP Policy Board approval of the *Guidelines for Resource Managers on the Enforceability of Fishery Management Measures* (May 2024). The sixth edition of this document was approved at the May 2024 ISFMP Policy Board meeting. Members were encouraged to share this document with their respective commissioners as well as fishery managers in their home state.

***Global Conservation Law Enforcement Network (GCLEN)*** – Members of the National Associations of Conservation Law Enforcement Chiefs (NACLEC) presented on the GCLEN. This is a new communication and information network that provides a platform for global collaboration of conservation law enforcement agencies. Users will have the ability to network and message with specific subject matter experts from participating countries.

**Case Study** – Members from the United States Department of Justice and NOAA Office for Law Enforcement presented on a case from “Operation One-Way Chandelier.” This investigation and prosecution were part of a multi-year investigation into fisheries fraud in New York. The investigation led to an indictment of one fisher, a wholesale fish dealer, and two of its managers for conspiracy to commit mail and wire fraud and obstruction in connection with a scheme to illegally overharvest at least 200,000 #’s of summer flounder and 20,000#’s of black sea bass. An estimated combined wholesale value of \$885,000. On July 11, 2024, the fisher, the last of the indicted individuals was sentenced to serve 30 months incarceration.

**On Demand Fishing** – The LEC discussed the topic of “on demand fishing” with the Chair of both the American Lobster Management Board and the New England Fishery Management Council NEFMC LEC. The purpose of the discussion was to highlight this topic and to ask the LEC to consider collaborating with the Council’s law enforcement advisors in future development of regulations related to on-demand trap gear.

**LEC Role and Expectation** – With membership turnover within the LEC over the past few years, the new Chair, Scott Pearce, asked for training on the Role and Expectations of the LEC membership. The LEC members were provided information on the ISFMP Charter, 2025 Action Plan and ASMFC resources. The travel guidelines of the Commission were also reviewed.

**Website** – The LEC was also briefed on the status of the ASMFC website upgrade and has provided relevant information and graphics to support the upgrade.

A closed session of our meeting was afforded to openly discuss new and emerging law enforcement issues.

Respective agencies were provided with time to highlight their agencies and offer current enforcement efforts. For more information, please contact Kurt Blanchard, Law Enforcement Committee Coordinator, at [kurt.blanchard@verizon.net](mailto:kurt.blanchard@verizon.net).

## **COASTAL PELAGICS MANAGEMENT BOARD (OCTOBER 22, 2024)**

### ***Meeting Summary***

The Coastal Pelagics Management Board met to receive an update on the Cobia Stock Assessment SEDAR 95; consider 2025-2026 cobia recreational management measures for the Northern Region; review a Cobia Technical Committee Report on the confidence interval approach for cobia recreational harvest evaluations; and receive an update on South Atlantic Fishery Management Council port meetings for king and Spanish mackerel.

A benchmark stock assessment for Atlantic migratory group cobia, SEDAR 95, is being conducted through the SouthEast Data, Assessment and Review (SEDAR) process. Assessment work began in March 2024 with an initial expected completion date of November 2025. However, the timeline has been delayed (likely by at least one year) due to staff availability for a lead assessment analyst at the NOAA Southeast Fisheries Science Center. The Board discussed the challenges of this delay, particularly regarding the next set of harvest specifications starting in 2027 with the current specifications expiring at the end of 2026. Additionally, this is a benchmark stock assessment

requiring more time for analysis and peer review to consider development of a new index of abundance and new modeling approaches, if needed. If this new stock assessment is not available to inform 2027 specifications, the Board would only have information from the previous stock assessment, which had a terminal year of 2017. The Board did acknowledge that the delayed timeline would align with the anticipated availability of revised MRIP data, so the new MRIP data could be incorporated into the stock assessment. The Board discussed whether assessment work could continue in some capacity before a lead assessment analyst from NOAA Fisheries is available, but the Board ultimately decided to wait for further updates from NOAA Fisheries and revisit this issue as needed over the next several months.

Cobia Addendum II established a new regional recreational allocation framework resulting in new regional harvest targets based on the current coastwide total recreational harvest quota in place through 2026. To determine 2025-2026 measures for each region, the average 2021-2023 recreational harvest for each region was compared against its regional harvest target. The Northern Region's (Rhode Island through Virginia) average harvest was above its target, requiring a 15.9% reduction in harvest. The Southern Region's (North Carolina through Georgia) average harvest was below its target, so states in the Southern Region will maintain status quo measures for 2025. The Cobia Technical Committee (TC) developed a suite of recreational management options for the Northern Region estimated to meet the required 15.9% reduction. Each option is comprised of three components: regionwide size limit, regionwide vessel limit, and a season for Maryland, Potomac River Fisheries Commission, and Virginia. Data are not available to calculate any reduction associated with implementing a season for Rhode Island through Delaware. The Board approved the TC's methodology for developing recreational options to meet the Northern Region reduction. States in the Northern Region will coordinate to select a regionwide size limit, regionwide vessel limit, and season for Maryland, PRFC, and Virginia. States will then submit implementation plans for Board consideration by January 1, 2025, and must implement the new measures by April 1, 2025. If States in the Northern Region cannot come to a consensus on which measures to implement, a virtual Board meeting will be scheduled to select measures.

The Board reviewed a Cobia TC report on the Addendum II confidence interval provision, which allows the Board to switch from the current rolling average approach using point estimates for harvest evaluations to a confidence interval approach using the 95% confidence intervals around the point estimate instead. The TC provided initial input on what the confidence interval approach might look like as applied to current data, and explored different confidence interval levels besides 95% (Note: the confidence interval level can only be changed via addendum). Overall, the TC noted that more time to consider this approach would be beneficial, including discussion by the Board of how the rolling average and confidence interval approaches would align with their management goals. The Board agreed that Board input is needed to inform further TC discussion, but the best way to gather that input is not clear at this point. Additionally, the confidence interval approach is one of several issues to consider simultaneously along with the stock assessment timeline and the challenge of setting future specifications and recreational management measures. One specific challenge the Board will have to address is how to consider 2027 regional recreational measures since there will only be one year of data available (2025 data) under the new measures being implemented in 2025. The Board will revisit these issues over the next several months as more updates on the stock assessment timeline are received and as the next specifications process approaches.

The South Atlantic Fishery Management Council is conducting a series of port meetings for king and Spanish mackerel in 2024 to gain a comprehensive understanding of those fisheries from stakeholders to inform management efforts. Port meetings have already taken place in North Carolina, New England states (virtual), New York, Georgia, South Carolina, and Florida. Port meetings in Virginia, Maryland, and New Jersey have been scheduled for November 18-21, 2024, and staff will distribute outreach materials to Board members in those states.

For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at [EFranke@asmfc.org](mailto:EFranke@asmfc.org).

### ***Motions***

**Move to approve the Cobia Technical Committee methodology for developing recreational management options to meet the northern region reduction. States in the northern region will select a set of measures for 2025-2026 and submit implementation plans for Board consideration by January 1, 2025. States in the northern region must implement the new measures by April, 1, 2025. If states in the northern region cannot come to a consensus on which measures to implement, a virtual Board meeting will be scheduled to select measures.**

Motion made by Mr. Geer and seconded by Mr. Cimino. Motion passes by consent with 3 abstentions (SC, GA, FL).

## **AMERICAN EEL MANAGEMENT BOARD (OCTOBER 22, 2024)**

### ***Meeting Summary***

The American Eel Management Board met to consider information on possible future actions under the Convention on International Trade in Endangered Species (CITES) that may impact American eel fisheries, and the Fishery Management Plan (FMP) Review for the 2023 Fishing Year. The Board received a presentation on several possible actions related to American eel that are being discussed within CITES committees: listing under Appendix II or Appendix III, and a resolution on American eel. Listing under CITES Appendix II would restrict international trade of American eel with permit and certificate requirements for export. Listing under Appendix III would require exporters to provide documentation proving legal acquisition of the product. A resolution would provide non-binding guidance to the parties on how to interpret the provisions of the Convention. The Board expressed concerns that listing American eel under Appendix II or III would be detrimental to American eel fisheries, especially if live eel exports are delayed by required certification processes. The Board agreed to send a letter to the US Fish and Wildlife Service opposing an Appendix II or III listing for American eel.

The Board also considered the FMP Review for the 2023 fishing year. As recommended by the Plan Review Team, the Board tasked the Committee on Economic and Social Sciences to conduct an analysis of domestic and international market demand for American eel as food and bait. The Board approved the FMP Review and state compliance reports for the 2023 fishing year, as well as *de minimis* status for New Hampshire, Massachusetts, Pennsylvania, the District of Columbia, and Georgia.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at [cstarks@asmfc.org](mailto:cstarks@asmfc.org).

### ***Motions***

**Move to approve the American Eel FMP Review for the 2023 fishing year, state compliance reports, and *de minimis* status for New Hampshire, Massachusetts, Pennsylvania, DC, and Georgia.**

Motion made by Ms. Patterson and seconded by Mr. Train. Motion passes by unanimous consent.

## **ATLANTIC MENHADEN MANAGEMENT BOARD (OCTOBER 22, 2024)**

### ***Meeting Summary***

The Atlantic Menhaden Management Board met to review an update from the Work Group on Precautionary Management in Chesapeake Bay, consider approval of the 2023 Fishery Management Plan (FMP) Review, receive a progress report on the ecological reference point (ERP) benchmark stock assessment, and elect a Vice Chair.

In August, the Board established a Work Group to gain additional information and evaluate options for further precautionary management in Chesapeake Bay. The Work Group met in September and October to discuss the Board task and establish a problem statement. In drafting a problem statement, the Work Group sought confirmation from the Board that their task is to develop potential future management measures to address the problem statement, but that it is the responsibility of the Board to evaluate the validity of the statement and decide if or when management action would be appropriate. The Work Group will continue to evaluate potential data sources and develop management solutions to provide a full report to the Board at the 2025 Spring Meeting.

The Board approved the FMP Review for the 2023 fishing year, as well *de minimis* requests from Pennsylvania, South Carolina, Georgia, and Florida. The coastwide total allowable catch (TAC) for the 2023 fishing year was 233,550 mt. According to state compliance reports, total catch in 2023 including directed and episodic event set aside (EESA) landings was approximately 166,844 mt, which is approximately 71% of the TAC and a 15% decrease from 2022. For the first time since the implementation of the incidental catch/small-scale fishery (IC/SSF) provision, there were no reported IC/SSF landings.

The Board received a progress report on the ERP benchmark stock assessment. The Stock Assessment Subcommittee and ERP Work Group will meet for a Methods Workshop in November 2024 to discuss natural mortality estimates and updates to the single-species model, as well as explore various modeling approaches to evaluate the health of the stock and inform the management of the species in an ecological context. The ERP benchmark stock assessment and single-species stock assessment update are both scheduled to be presented to the Board at the 2025 Annual Meeting. The Board also elected Joe Cimino as Vice Chair.

For more information, please contact James Boyle, Fishery Management Plan Coordinator at [jboyle@asmfc.org](mailto:jboyle@asmfc.org).

### ***Motions***

**Move to approve the Fishery Management Plan Review, state compliance reports, and *de minimis* requests for PA, SC, GA, and FL for Atlantic menhaden for the 2023 fishing year.**

Motion made by Mr. Grout and seconded by Mr. Gilmore. Motion approved by consent.

## **EXECUTIVE COMMITTEE (OCTOBER 23, 2024)**

### ***Meeting Summary***

The Executive Committee (Committee) met to discuss several issues, including review of the FY24 Audit, a Legislative Committee update and a future annual meeting locations update. The following action items resulted from the Committee's discussions:

- The FY24 Audit was reviewed by the Administrative Oversight Committee and forwarded to the Executive Committee with a recommendation for approval. The Committee approved the audit.
- Legislative Program Coordinator Alexander Law provided an update to the Executive Committee on the low level of productivity from Congress since his last update, future responsibilities they have for passage of appropriations bills and thanked the Commissioners for their engagement with him up on Capitol Hill.
- Mrs. Leach provided an update on future Annual Meeting locations. In October 2025, the Annual Meeting will be in Delaware; in 2026, Rhode Island; in 2027, South Carolina; in 2028, Massachusetts; in 2029, Pennsylvania and in 2030, Georgia.

For more information, please contact Laura Leach, Director of Finance & Administration, at [lleach@asmfc.org](mailto:lleach@asmfc.org) or 703.842.0740.

### ***Motions***

**Move to accept the FY24 Audit.**

Motion made by Mr. McKiernan on behalf of the Administrative Oversight Committee. Motion passes by unanimous consent.

## **BUSINESS SESSION OF THE COMMISSION (OCTOBER 23, 2024)**

### ***Meeting Summary***

The Business Session of the Commission met to review and consider approval of the 2025 Action Plan and re-elect the Commission Chair and Vice-Chair. The Commission approved the 2025 Action Plan, which guides the Commission's activities over the next year as they pertain to management, science, data collection, law enforcement, habitat conservation, outreach, and finance and administration. The 2025 Action Plan is available [here](#).

The Commission unanimously affirmed the appointment of Joseph Cimino (New Jersey Department of Environmental Protection) as ASMFC Chair, and Dan McKiernan (Massachusetts Division of Marine Fisheries) as Vice-Chair for another year of service.

For more information, please contact Robert Beal, Executive Director, at [rbeal@asmfc.org](mailto:rbeal@asmfc.org).



### ***Motions***

#### **Move to accept the 2025 Action Plan as presented today.**

Motion made by Mr. McKiernan on behalf of the Administrative Oversight Committee. Motion approved by consent.

#### **Move to re-nominate Joe Cimino as Chair**

Motion by Mr. Keliher on behalf of the Nominating Committee. Motion approved by consent.

#### **Move to re-nominate Dan McKiernan as Vice-chair**

Motion by Mr. Keliher on behalf of the Nominating Committee. Motion approved by consent.

### **SHAD AND RIVER HERRING MANAGEMENT BOARD (OCTOBER 23, 2024)**

#### ***Meeting Summary***

The Shad and River Herring Management Board met to consider updates to the river herring Sustainable Fishery Management Plans (SFMPs) for New Hampshire and Maine, including a proposal from New Hampshire to reopen their river herring fishery; and to consider updates to the American shad SFMPs for Massachusetts and Connecticut.

SFMPs for American shad and river herring are required for all states and jurisdictions that have a commercial fishery under Amendment 2 (river herring) and Amendment 3 (American shad) to the Shad and River Herring FMP. Plans are updated and reviewed by the Technical Committee every five years.

The river herring SFMP update from New Hampshire included updates to instantaneous mortality rates, standard error calculations for Visual Time Counts, and an added figure of a juvenile abundance index from the state's juvenile seine survey. Along with the updated SFMP, New Hampshire submitted a proposal to reopen the river herring fishery, which was closed in 2021 due to low spawning run counts in 2019 and 2020. With new passage estimates in the Exeter River, the Great Bay indicator Stock in New Hampshire has been above the fishery-independent target escapement level of 94,598 fish for the past four years. With the exception of the Cocheco River, the proposal requested to open the state fishery for the upcoming 2025 fishing season, which is one year earlier than the recommended five-year closure, as stated in the [Technical Guidance on the Implementation of Amendments 2 and 3 to the Shad and River Herring Fishery Management Plan](#). The proposal states that the reasons for the low spawning run counts in 2019 and 2020 were primarily driven by errors in counting, rather than true declines in river herring abundance. Specifically, New Hampshire notes that there were issues with quantifying river herring in both the Cocheco and Exeter Rivers. In the Cocheco River, equipment failure and fishway modifications led to a loss of efficiency and inaccurate electronic fish counting. In the Exeter River, the majority of river herring are utilizing restored spawning habitat between the former Great Dam and Pickpocket Dam and not accessing the habitat above Pickpocket Dam fishway, where the new electronic counting station was installed after the Great Dam removal. The Board approved the presented SFMP and proposal to reopen the fishery.

The updated Maine SFMP for river herring included the addition of five additional commercial fisheries: Sewall Pond, Wights Pond, Chemo Pond, Pennamaquan Lake, and Pushaw Lake. The plan

also includes updated fishery independent surveys; a recalculated 25th percentile metric; updated Z estimates from the 2024 River Herring Benchmark Stock Assessment; and an added age range requirement, all of which are to be used as management triggers. Of the five new commercial fisheries that were requested to be opened, Sewall and Wights Pond were provisional fisheries approved from 2019-2024, Chemo Pond and Pushaw Lake were added due to significant improvements as a result of restoration efforts, and Pennamaquan Lake previously supported a fishery prior to the moratorium in 2012. The Board approved the presented SFMP.

Massachusetts and Connecticut submitted updated SFMPs for American shad. In Massachusetts, the updated plan requested continued recreational harvest in the Merrimack and Connecticut Rivers under the previously approved sustainability metrics. The plan also includes the addition of a description of stocking efforts in the Taunton River. Over five million shad larvae have been stocked each year from 2022-2024 in collaboration with the U.S. Fish and Wildlife Service. The SFMP update from Connecticut requested continued commercial and recreational harvest on the Connecticut River, in conjunction with Massachusetts, under the previously approved sustainability metrics. The Board approved both SFMPs as presented.

For more information contact James Boyle, Fishery Management Plan Coordinator at [jboyle@asmfc.org](mailto:jboyle@asmfc.org).

### ***Motions***

**Move to approve the updated River Herring Sustainable Fishery Management Plan and proposal to reopen the fishery from New Hampshire, as presented today.**

Motion made by Ms. Patterson and seconded by Mr. McKiernan. Motion approved by unanimous consent.

**Move to approve the updated River Herring Sustainable Fishery Management Plan from Maine, as presented today.**

Motion made by Mr. Keliher and seconded by Mr. Reid. Motion passes by unanimous consent.

**Move to approve the updated Shad Sustainable Fishery Management Plans from Connecticut and Massachusetts, as presented today.**

Motion made by Mr. McKiernan and seconded by Ms. Patterson. Motion approved by unanimous consent.

### **HABITAT COMMITTEE (OCTOBER 23 & 24, 2024)**

#### ***Meeting Summary***

The Habitat Committee discussed priority topics and ongoing initiatives. The Committee reviewed content and format options for the 2024 edition of *Habitat Hotline Atlantic*, scheduled for release in December. The publication will feature an overview of ASMFC Habitat Committee's recent activities, including executive summaries of the Fish Habitats of Concern (FHOC) and Habitat Management Series (HMS): Acoustic Impacts documents, with a special focus on Atlantic Shell Recycling programs and state-by-state updates on recycling efforts.

The Committee also began developing the next issue of the HMS, focusing on best management practices and key elements of shell recycling initiatives along the Atlantic coast. To support this, a standardized questionnaire and survey tool for gathering information was introduced. A draft of the next HMS Shell Recycling issue is expected by May 2025 for review and approval at the ASMFC Spring Meeting. The Committee also announced new leadership roles, with Kate Wilke from The Nature Conservancy stepping into the role of Chair and Eric Schneider from Rhode Island Department of Environmental Management as Vice-Chair. Moving forward, the Committee aims to provide a thorough guidance document on Atlantic coastal shell recycling and continue expanding state-level contributions for the 2024 *Habitat Hotline*.

For more information, please contact Simen Kaalstad, Habitat Committee Coordinator, at [skaalstad@asmfc.org](mailto:skaalstad@asmfc.org).

### **ATLANTIC STRIPED BASS MANAGEMENT BOARD (OCTOBER 23, 2024)**

#### ***Press Release***

#### **Atlantic Striped Bass Stock Assessment Update Finds Resource Remains Overfished with a Less Than 50% Chance of Rebuilding by 2029 Board to Meet in December to Consider Changing Measures for 2025 to Increase Probability of Rebuilding the Stock**

Annapolis, MD – The Commission’s Atlantic Striped Bass Management Board reviewed the results of the 2024 Atlantic Striped Bass Stock Assessment Update, which indicates the resource is not experiencing overfishing but remains overfished relative to the updated biological reference points. Female spawning stock biomass (SSB) in 2023 was estimated at 191 million pounds, which is below the SSB threshold of 197 million pounds and below the SSB target of 247 million pounds. Total fishing mortality in 2023 was estimated at 0.18, which is below the fishing mortality threshold of 0.21 and above the fishing mortality target of 0.17. The 2024 Assessment Update included data through 2023 and used the same model from the approved peer-reviewed 2018 Benchmark Stock Assessment. The model structure was the same as the 2022 Stock Assessment Update, which accounted for the period of low recruitment the stock is experiencing and for new management changes starting in 2020.

The Board continued to express concerns about low recruitment and the lack of strong year-classes to support the stock and the fishery. Six of the last seven year-classes since 2015 have been below average, with only the 2018 year-class being above average. The 2018 year-class is starting to grow into the slot limit for the ocean recreational fishery and will become more available to ocean harvest in 2025.

The 2024 Assessment Update also included short-term projections to determine the probability of SSB being at or above the SSB target by 2029, which is the stock rebuilding deadline. The model structure for projections from 2024-forward was modified to explicitly account for the narrower slot limits implemented in 2023 and 2024. A range of projection scenarios were considered to explore two primary sources of uncertainty for the rebuilding trajectory through 2029: the level of

fishery removals for the current, in-progress 2024 fishing year and the fishing mortality rate from 2025 through 2029.

The Board agreed with the Technical Committee and Stock Assessment Subcommittee that the most likely projection scenario is lower removals in 2024 compared to 2022 and 2023, followed by an increase in

fishing mortality in 2025, and a subsequent decrease and stabilization of fishing mortality from 2026 through 2029. A decrease in removals for 2024 is projected based on preliminary low 2024 catch data, likely due to the strong 2015 year-class growing out of the current recreational ocean slot limit and the implementation of Addendum II measures to reduce fishing mortality in 2024. An increase in 2025 fishing mortality would correspond to the 2018 year-class entering the current recreational ocean slot limit, and the subsequent decrease and stabilization from 2026 through 2029 would align with the 2018 year-class growing out of the slot limit and the lack of strong year-classes behind it. In this scenario, the probability of rebuilding by 2029 is less than 50%.

Based on these projections, the Board will hold a special Board meeting in December 2024 to consider Board action to change 2025 management measures to reduce fishing mortality and increase the probability of rebuilding to at least 50%. Under Addendum II to Amendment 7, the Board can change management measures through Board action, instead of developing an addendum, if the stock assessment indicates a less than 50% probability of the stock rebuilding by 2029. Ahead of the December meeting, the Board tasked the Technical Committee with updating the projections based on additional 2024 catch data and developing recreational size limit and seasonal closure management options for consideration.

A subsequent press release will provide details on the meeting date and format (in-person or virtual), and the anticipated timeline for the availability of meeting materials and the public input process (which may differ from the standard public comment timelines to allow for the compilation and summary of public comment in advance of the meeting).

The 2024 Atlantic Striped Bass Stock Assessment Update will be available at <https://asmfc.org/species/atlantic-stripped-bass> under stock assessment reports early next week. For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at [efranke@asmfc.org](mailto:efranke@asmfc.org) or 703.842.0740.

###

PR24-32

## ***Motions***

### **Main Motion**

**Move to schedule a special Striped Bass Management Board meeting in December 2024 to consider Board Action in response to the 2024 Stock Assessment Update. The Board will consider action to revise the 2025 recreational seasons and or size limits and 2025 commercial quotas to achieve a 50% probability of rebuilding by 2029 under the “low 2024 removals with F increase in 2025 only” projection.**

Motion made by Ms. Meserve and seconded by Mr. Gary.

#### **Motion to Substitute**

**Move to substitute to initiate an addendum to address reducing total removals (harvest and discard mortality/recreational and commercial) in the coastwide striped bass fishery using the technical committee's most likely projection scenario (F2024=Low Removals, F Increases in 2025 Only and Returns to 2024 Low Levels) and a 50% probability of achieving the spawning stock biomass (SSB) target level by 2029. The intent of this addendum is to provide the Board with coastwide and regional alternatives for the recreational and commercial fishery for implementation on January 1, 2026.**

Motion made by Mr. Luisi and seconded by Mr. Clark. Motion fails (6 in favor, 9 opposed, 1 abstention).

#### **Main Motion**

**Move to schedule a special Striped Bass Management Board meeting in December 2024 to consider Board Action in response to the 2024 Stock Assessment Update. The Board will consider action to revise the 2025 recreational seasons and or size limits and 2025 commercial quotas to achieve a 50% probability of rebuilding by 2029 under the "low 2024 removals with F increase in 2025 only" projection.**

Motion made by Ms. Meserve and seconded by Mr. Gary.

#### **Motion to Substitute**

**Move to substitute to schedule a special Striped Bass Management Board meeting in December 2024 to consider Board Action in response to the 2024 Stock Assessment Update. The Board MAY consider action to revise the 2025 recreational seasons and/or size limits and 2026 commercial measures via board action. The Board could also consider recreational or commercial measures with an addendum for 2026 and beyond to achieve a 50% probability of rebuilding by 2029 under the low 2024 removals with F increase in 2025 only projection.**

Motion made by Mr. Geer and seconded by Mr. Clark. Motion fails (7 in favor, 7 opposed, 2 abstentions).

#### **Main Motion**

**Move to schedule a special Striped Bass Management Board meeting in December 2024 to consider Board Action in response to the 2024 Stock Assessment Update. The Board will consider action to revise the 2025 recreational seasons and or size limits and 2025 commercial quotas to achieve a 50% probability of rebuilding by 2029 under the "low 2024 removals with F increase in 2025 only" projection.**

Motion made by Ms. Meserve and seconded by Mr. Gary.

#### **Motion to Amend**

**Move to amend to change "commercial quotas" to "commercial measures."**

Motion made by Mr. Clark seconded by Mr. Sikorski. Motion fails for lack of majority (8 in favor, 8 opposed).

#### **Main Motion**

**Move to schedule a special Striped Bass Management Board meeting in December 2024 to consider Board Action in response to the 2024 Stock Assessment Update. The Board will consider action to revise the 2025 recreational seasons and or size limits and 2025 commercial quotas to**

**achieve a 50% probability of rebuilding by 2029 under the “low 2024 removals with F increase in 2025 only” projection.**

Motion made by Ms. Meserve and seconded by Mr. Gary. Motion passes (14 in favor, 1 opposed, 1 null).

### **SPINY DOGFISH MANAGEMENT BOARD (OCTOBER 24, 2024)**

#### ***Press Release***

#### **Spiny Dogfish Board Approves Draft Addendum VII for Public Comment to Consider Action to Reduce Atlantic Sturgeon Bycatch *Board Revises 2024/2025 Fishing Year Commercial Quota to 10.25 Million Pounds***

Annapolis, MD – The Commission’s Spiny Dogfish Management Board approved Draft Addendum VII to the Interstate Fishery Management Plan for Spiny Dogfish for public comment. The Draft Addendum considers potential measures to maintain consistency with the federal Fishery Management Plan in response to the [proposed rule](#) to implement Spiny Dogfish Framework Adjustment 6.

The Mid-Atlantic and New England Fishery Management Councils developed Spiny Dogfish Framework Adjustment 6 in response to a 2021 Biological Opinion and 2022 Action Plan that called for reducing bycatch of Atlantic sturgeon in spiny dogfish gillnet fisheries. The coastwide Atlantic sturgeon population is made up of five distinct population segments, all of which are listed as threatened or endangered under the Endangered Species Act, and Atlantic sturgeon harvest has been under a coastwide moratorium in federal and state waters since 1998. The Commission’s Fishery Management Plan for Atlantic sturgeon maintains the moratorium through at least 2038, and while [the 2024 stock assessment update](#) showed signs of improvement, the stock remains depleted coastwide.

The Board initiated Draft Addendum VII in August 2024 after the Councils recommended measures to NOAA Fisheries to prohibit overnight soaks for federal spiny dogfish permit holders on gillnets with 5”-10” mesh in November and May for a certain area of state and federal waters off of New Jersey, as well as for gillnets of 5.25”-10” mesh in November through March in specified areas off of Maryland and Virginia. The options in the Draft Addendum aim to establish equivalent overnight soak restrictions for spiny dogfish harvesters in state waters that do not possess a federal spiny dogfish permit.

The Draft Addendum will be posted to the website next week at <http://www.asmfc.org/about-us/public-input>. A subsequent press release will provide details on the public hearing schedule and how to submit written comments. The Board will meet to review submitted comments and consider final action on the addendum in February at the Commission’s Winter Meeting.

The Board also revised the commercial quota for the 2024/2025 fishing from 11,331,747 to 10,249,260 pounds to be consistent with the federal quota. For more information, please contact James Boyle, Fishery Management Plan Coordinator, at [jboyle@asmfc.org](mailto:jboyle@asmfc.org).

## ***Motions***

### **Move to approve Draft Addendum VII for Public Comment, as amended today.**

Motion made by Mr. Luisi and seconded by Mr. Clark. Motion accepted by unanimous consent.

### **Move to amend the spiny dogfish commercial quota to 10,249,260 pounds for the 2024/2025 fishing year.**

Motion made by Mr. Luisi and seconded by Ms. Meserve. Motion accepted without opposition.

## **INTERSTATE FISHERIES MANAGEMENT PROGRAM (ISFMP) POLICY BOARD & MID-ATLANTIC FISHERY MANAGEMENT COUNCIL (OCTOBER 24, 2024)**

### ***Meeting Summary***

The ISFMP Policy Board met to receive a report from the Executive Committee (see Executive Committee meeting summary); a progress report on the Northeast Trawl Advisory Panel (NTAP) work on an industry-based survey (IBS); review committee reports from the Law Enforcement, Habitat Committee and Atlantic Coastal Fish Habitat Partnership Steering Committee (see meeting summaries of all 3 groups); consider a letter request from the American Lobster Management Board; receive a report from Bureau of Ocean and Energy Management (BOEM) on fish kills in the wind energy area off of Virginia; and consider the Recreational Measures Setting Process Draft Addenda/Framework for public comment with the Mid-Atlantic Fishery Management Council (Council).

### **Northeast Trawl Advisory Panel Report**

NTAP has made progress since the last update to the Commission in May. Its meetings have been focused on the IBS. The IBS survey is not part of the contingency plan for the R/V Bigelow, instead it will be a new data source that will be able to reach areas the R/V Bigelow cannot. The R/V Bigelow contingency plan should be out within the month and will be presented by NOAA Fisheries. The IBS is still under development and had not been funded. The Senate budget had funding language but the House budget did not. Survey work would not start until a new budget year that is not part of a continuing resolution. There are three long term objectives for the IBS: (1) improve resource assessments by providing indices of abundance complementary to the bottom trawl survey, (2) sample areas that cannot be sampled by the bottom trawl survey, and (3) add resiliency to the survey data stream. The pilot survey period last two years. Phase one will begin spring 2025 and include a five-day survey to focus on standardizing procedures. It is estimated this phase will cost around \$300,000. The F/V Darana R will be used for the pilot and will occur in and around the wind energy area off of Virginia. The funding is expected to come from the Northeast Fisheries Science Center. The operation will be focused on the fishing versus the biosampling component. A draft operating procedures manual is expected by spring 2025. Phases two and three will begin in the fall of 2025 at an estimated cost of approximately \$3 million. These phases will be focusing on vessel requirements, operational feasibility of day and night sampling, and maneuvering wind areas. These phases will expand on what is learned during phase one, use multiple vessels, increase the special and temporal footprint, and test the survey design that will be drafted. If funding is acquired and the pilot is successful, a new survey would begin in 2027.



## **Lobster Letter**

At the recommendation of the American Lobster Management Board, the Policy Board agreed to send a letter to Canada Division of Fisheries and Oceans to encourage the continued collaboration between Canada and US on lobster science, particularly as the US is working on the lobster benchmark stock assessment.

## **BOEM Report**

Brian Hooker with BOEM provided a presentation on recent fish kills around the wind energy areas off of Virginia. The incidents began in May 2024 and mostly consist of Atlantic croaker but also include spot. BOEM has robust information of pile-driving impacts to fish in areas that are close to turbine foundations. Therefore, it is anticipated there could be fish injury or mortality events associated with construction work and is included in construction permits. The fish kills were reported by staff observing the construction work for impacts to protected species and marine mammals. Thirty-nine observations at 24 foundation locations have occurred with an average of 450 dead fish per observations. Some of the observations occurred when construction was not occurring. Double bubble curtains are put in place up to a few days before construction to mitigate the amount of sound that transfers during the piling. Fish kill observations were seen near the pile, outside the bubble curtain and between the two. There is not a definitive determination of the cause of the fish death, some fish have damaged air bladders but other fish have broken necks and vertebrae. BOEM's working hypothesis is that a combination of the piling and bubble curtains is impacting the fish. BOEM is working on potential protocols that can be undertaken do to minimize these fish kills. These observations are within the mortality amounts seen in typical fisheries bycatch.

## **Joint Meeting of the Policy Board and Council: Recreational Measures Setting Process Draft Addenda/Framework**

The Policy Board was then joined by the Council for a joint meeting to review the range of options presented in the Recreational Measures Setting Process Draft Addenda/Framework. The draft addenda/framework consider changes to the process used by the Commission and the Council to set recreational management measures (bag, size, and season limits) for summer flounder, scup, black sea bass, and bluefish. The option that is ultimately selected by the Policy Board and Council is intended replace the currently used Percent Change Approach implemented through the Harvest Control Rule Framework/Addenda, which will sunset at the end of 2025. Key differences between the five options in the draft addenda include the information considered when setting measures and the circumstances under which measures would change.

The Policy Board approved the draft addenda for public comment, with public hearings to take place in the coming months. The Commission will distribute a press release on the draft addendum's availability and public hearing schedule once the hearing details have been finalized.

For more information, please contact Toni Kerns, Fisheries Policy Director, at [tkerns@asmfc.org](mailto:tkerns@asmfc.org).

## **Motions Board**

**Move to approve Draft Addendum XXXVI to the Summer Flounder, Scup, and Black Sea Bass FMP and Draft Addendum III to the Bluefish FMP for public comment as modified today.**

## **Council**

**Move to approve the range of options in the Recreational Measures Setting Process Framework/Addenda as modified today.**

Motions made by Mr. Gilmore and seconded by Mr. Grist. Motions approved by unanimous consent.

## **SUMMER FLOUNDER, SCUP AND BLACK SEA BASS MANAGEMENT BOARD & MAFMC (OCTOBER 24, 2024)**

### ***Press Release***

### **ASMFC and MAFMC Approve Changes to Summer Flounder Commercial Mesh Size Exemptions**

Annapolis, MD – The Atlantic States Marine Fisheries Commission’s Summer Flounder, Scup, and Black Sea Bass Management Board (Board) and the Mid-Atlantic Fishery Management Council (Council) have jointly approved modifications to two exemptions from the summer flounder commercial minimum mesh size requirements. The Board adopted these changes through Addendum XXXV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and the Council recommended identical measures through a framework action which will be submitted to the National Marine Fisheries Service for review and implementation.

Current regulations for the summer flounder trawl fishery require a minimum mesh size of 5.5-inch diamond mesh or 6.0-inch square mesh to retain more than 200 pounds of summer flounder from November through April, or 100 pounds of summer flounder from May through October. The Small Mesh Exemption Program provides an exemption from these requirements for authorized vessels fishing in a designated area from November 1 through April 30. This exemption is designed to allow vessels to retain some bycatch of summer flounder while operating in other small-mesh fisheries. Through this action, the Board and Council agreed to expand the exemption area by moving the boundary of the northern portion of the area approximately five miles west, then connecting the western boundary to the southern scup Gear Restricted Area. While this has the appearance of notably increasing the size of the exemption area, a large portion of the area overlaps with the Frank R. Lautenberg deep sea coral zone, where bottom tending gear is already prohibited. The intent of this change is to increase economic opportunities for industry while continuing to protect the summer flounder stock and prevent regulatory discards.

The Board and Council also voted to implement a tiered monitoring approach for the Small Mesh Exemption Program. Current regulations allow the Greater Atlantic Regional Fisheries Office Regional Administrator to terminate the program for the remainder of the season if vessels fishing under the exemption are discarding on average more than 10%, by weight, of their entire catch of summer flounder per trip. Under the new tiered monitoring approach, the discard trigger will be increased to 25%, and once the trigger is reached, a more detailed review of discards will be conducted to determine whether the exemption should be rescinded. The intent of this review is to allow for a more comprehensive consideration of the drivers of, and appropriate response to, discards.

Finally, the Board and Council approved a revised definition of the term “flynet” as it relates to the flynet exemption from the summer flounder commercial minimum mesh size requirements. The revised definition encompasses similar high-rise net types which have very large mesh in the wings, with mesh size decreasing through the body of the net. These nets are not designed to catch flatfish and generally catch small amounts of summer flounder.

Addendum XXXV, including the map showing the approved boundaries, will be posted at <https://asmfc.org/species/summer-flounder> under Management Plans and FMP Reviews once the map is finalized. Updates on the Council’s framework will be posted at <https://www.mafmc.org/actions/summer-flounder-commercial-mesh-exemptions>.

For more information, please contact either Chelsea Tuohy, ASMFC Fishery Management Plan Coordinator at [ctuohy@asmfc.org](mailto:ctuohy@asmfc.org) or Kiley Dancy, Mid-Atlantic Fishery Management Council, at [kdancy@mafmc.org](mailto:kdancy@mafmc.org).

###

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## ***Motions***

### **Board and Council**

**Move to adopt in Section 3.1, Option B Expanded Small Mesh Exemption Program Exemption Area, in Section 3.2, Option C Tiered Discard Monitoring Approach, and in Section 3.3, Option B Modified Flynet Definition.**

Board motion made by Mr. Reid and seconded by Mr. Gilmore. Motion approved by unanimous consent.

Council motion made by Mr. Gilmore and seconded by Mr. Cimino. Motion approved by unanimous consent.

### **Board**

**Move to approve Addendum XXXV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The effective date of any FMP modifications would be consistent with the effective date published in the final rule in the Federal Register or November 1, 2025 whichever is sooner.**

Motion made by Mr. Reid and seconded by Mr. Cimino. Motion approved by consent with one abstention. Roll Call: in favor - NC, VA, PRFC, DE, MD, NJ, NY, CT, MA; abstention – NOAA.

### **Council**

**Move to submit the Summer Flounder Commercial Mesh Size Exemptions Framework with preferred alternatives as identified today to NMFS.**

Motion made by Mr. Cimino and seconded by Mr. Gilmore. Motion approved by consent with one abstention (NOAA).



*Interstate Fisheries Management Update*  
*ASMFC 82<sup>nd</sup> Annual Meeting: Oct 21-24*

*Marine Fisheries Advisory Commission*  
*October 29, 2024*

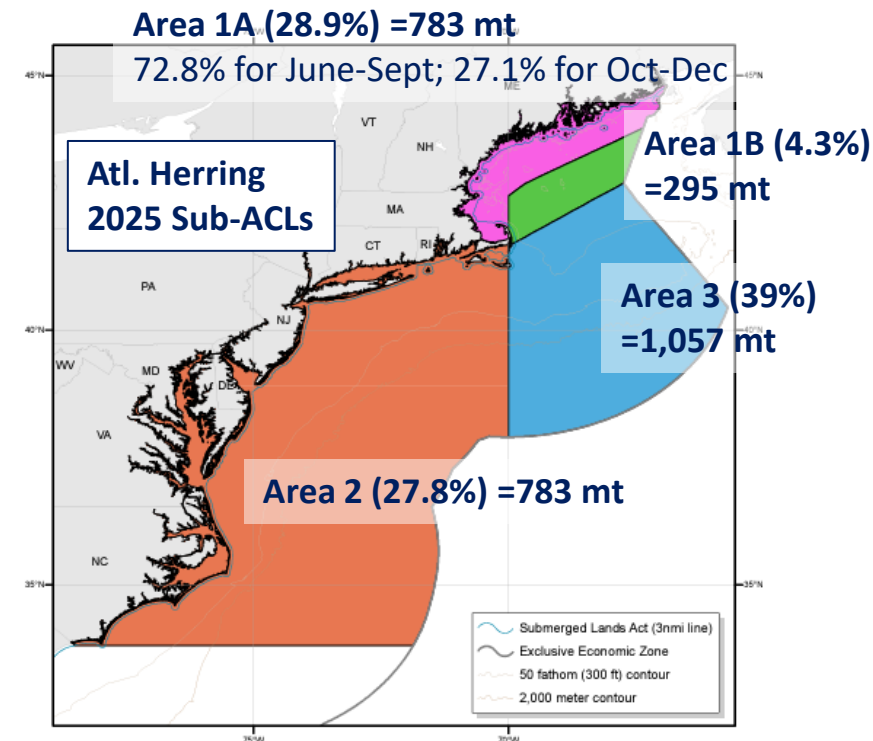
Massachusetts Division  
of Marine Fisheries





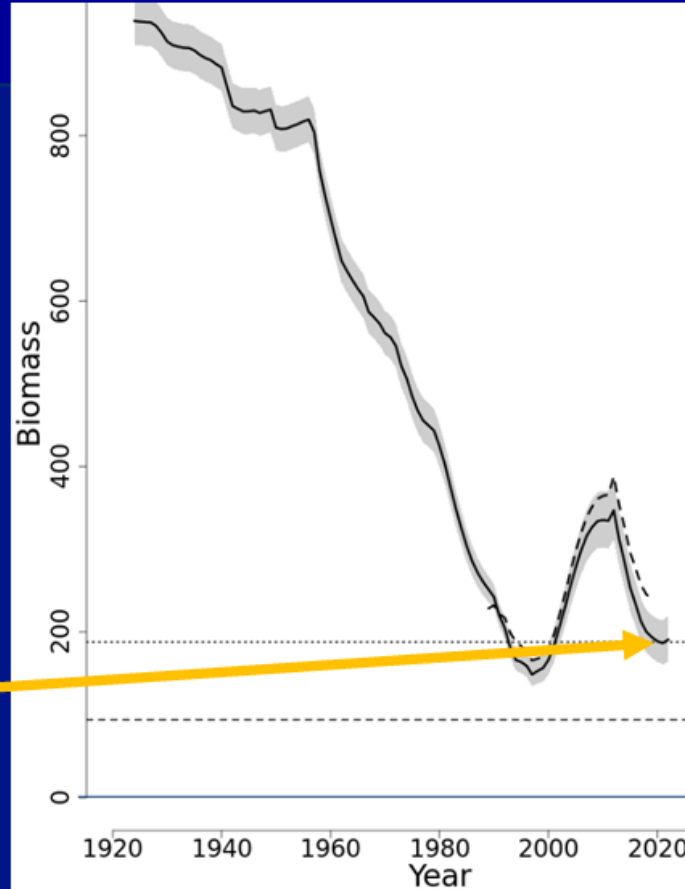
# Final Actions

- **Lobster Addendum 31** approved to delay Add. 27 biological measures implementation schedule to July 1, 2025
  - Allow Canada more time to consider implementing complementary management measures.
- **Atlantic Herring 2025-2027 Specifications** approved to complement NEFMC, establish Area 1A seasonal allocations
  - 2025 ACL lowest ever: 2,710 mt; increase to 6,854 mt for FYs 25-26
  - Status quo sub-ACL allocations and Area 1A seasonal allocation
- **Spiny Dogfish FY2024 Quota** revised to account for FY23 ACL overage
  - From 11.33 mlb to 10.25 mlb (1.08 mlb discard-driven overage)
  - FY25 quota TBD; MAFMC returned specs to SSC in October with instruction for ABC=OFL, under suspension of the Council Risk Policy
- **Shad & River Herring SFMPs** re-approved, including MA's shad SFMP allowing limited recreational harvest in Merrimack and Connecticut Rivers.

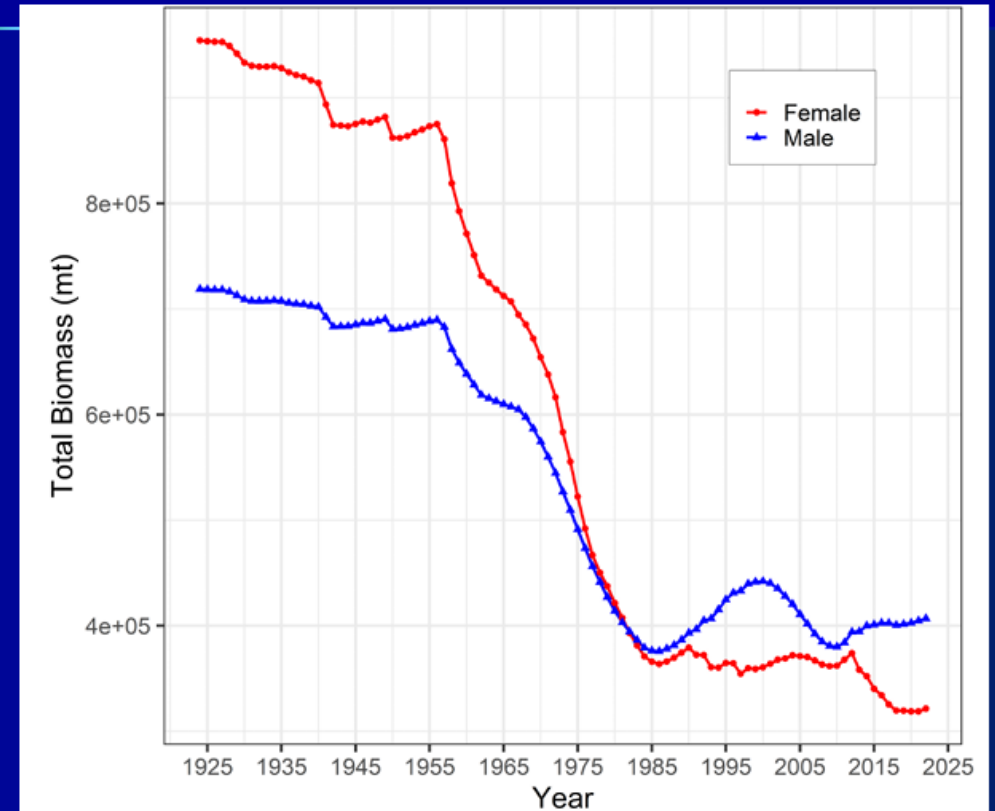


# Spiny dogfish assessment overview

- Spawning Output in 2022 was estimated to be:
  - 191 million pups

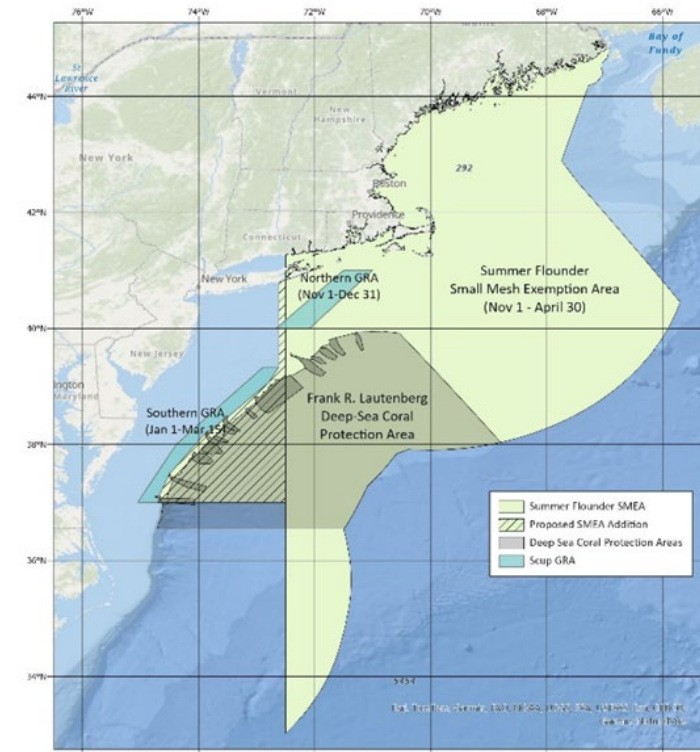


## Total Biomass



# Final Actions

- **Summer Flounder Commercial Mesh Exemptions Framework/ Addendum** approved to expand the Small Mesh Exemption Program area, modernize the SMEP evaluation method, and broaden the Flynet Exemption gear definition.
  - These exemptions allow more than the bycatch allowance with trawl mesh below the minimum. Intent is to reduce fluke discards in a spatio-temporal area with mostly large fluke and with a category of trawl gear (off-bottom) with minimal fluke catch. Both monitored annually with observer data.
  - Implementation: effective date of federal rule or November 1, 2025 (whichever sooner).



Vessels fishing with an ~~an two-seam~~ otter trawl flynet are exempt from the summer flounder minimum mesh size requirements. The regulatory definition of a fly net is an ~~an two-seam~~ otter trawl with the following configuration:

- The net has large mesh in the wings that measures 8" ~~to 64"~~ or greater.
- The first body (belly) section of the net has 35 or more meshes that are at least 280 inches of mesh behind the sweep where the mesh size is at least 8".
- The mesh decreases in size throughout the body of the net toward the codend. ~~to 2 inches (5 cm) or smaller towards the terminus of the net.~~



# Forthcoming Draft Addenda for Public Comment

- **Summer Flounder, Scup, Black Sea Bass, and Bluefish Recreational Measure Setting Process Draft Addenda/Framework**
  - Options to consider approach to how recreational measures are set
  - Intent is to better incorporate rec catch uncertainty and variability, provide more stability, better reflect stock status
  - Comment Period: Nov-Feb, final action in April 2025.
- **Spiny Dogfish Draft Addendum on Sturgeon Bycatch Reduction**
  - Options to prohibit overnight soaks by gillnet of certain mesh sizes in two spatio-temporal bycatch hotspot areas off NJ and MD/VA, complementary to federal action
  - Comment period: Nov-Jan, final action in February 2025

The current “Percent Change Approach”

Future RHL vs Estimated Harvest	Spawning stock biomass compared to target level ( $SSB/SSB_{MSY}$ )	Change in Expected Harvest
Future 2-year average RHL is <b>greater than</b> the upper bound of the harvest estimate CI (harvest expected to be lower than the RHL)	<b>Very high</b> (greater than 150% of target)	<b>Liberalization</b> percent equal to difference between harvest estimate and 2-year avg. RHL, not to exceed 40%
	<b>High</b> (at least the target, but no higher than 150% of target)	<b>Liberalization</b> percent equal to difference between harvest estimate and 2-year avg. RHL, not to exceed 20%
	<b>Low</b> (below target stock size)	<b>Liberalization:</b> 10%
Future 2-year average RHL is <b>within</b> harvest estimate CI (harvest expected to be close to the RHL)	<b>Very high</b> (greater than 150% of target)	<b>Liberalization:</b> 10%
	<b>High</b> (at least the target, but no higher than 150% of target)	<b>No liberalization or reduction:</b> 0%
	<b>Low</b> (below target stock size)	<b>Reduction:</b> 10%
Future 2-year average RHL is <b>less than</b> the lower bound of the harvest estimate CI (harvest is expected to exceed the RHL)	<b>Very high</b> (greater than 150% of target)	<b>Reduction:</b> 10%
	<b>High</b> (at least the target, but no higher than 150% of target)	<b>Reduction</b> percent equal to difference between harvest estimate and 2-year avg. RHL, not to exceed 20%
	<b>Low</b> (below target stock size)	<b>Reduction</b> percent equal to difference between harvest estimate and 2-year avg. RHL, not to exceed 40%

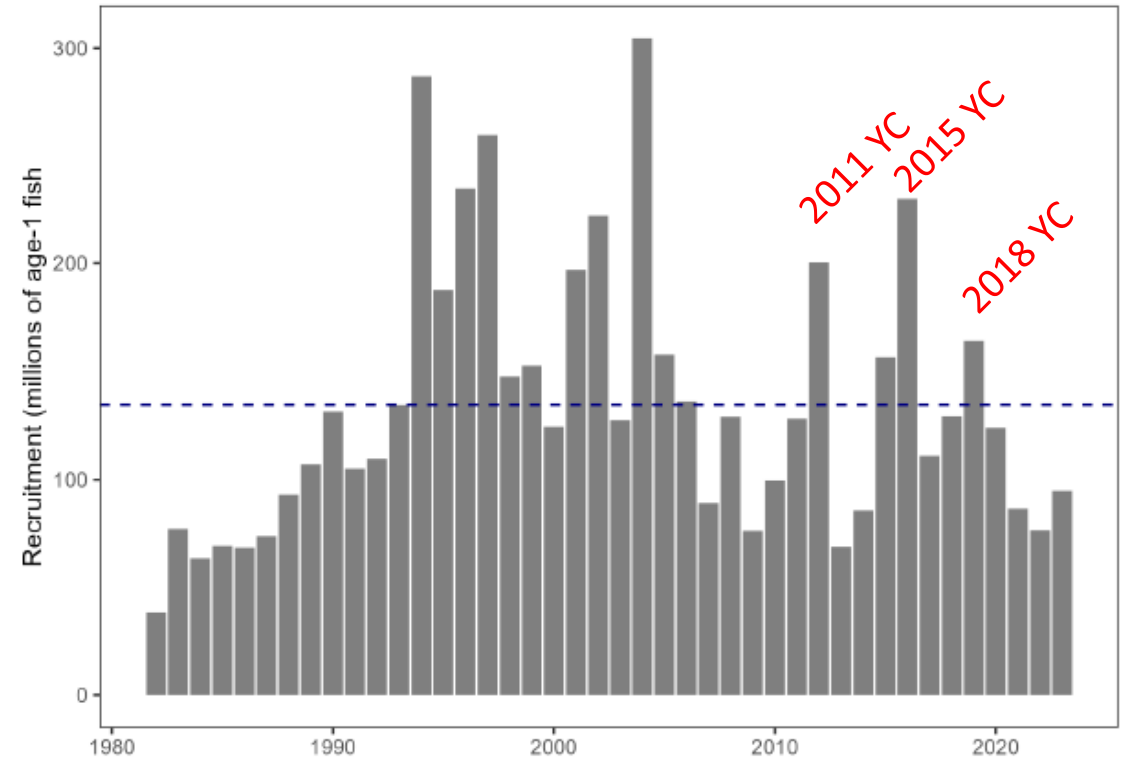
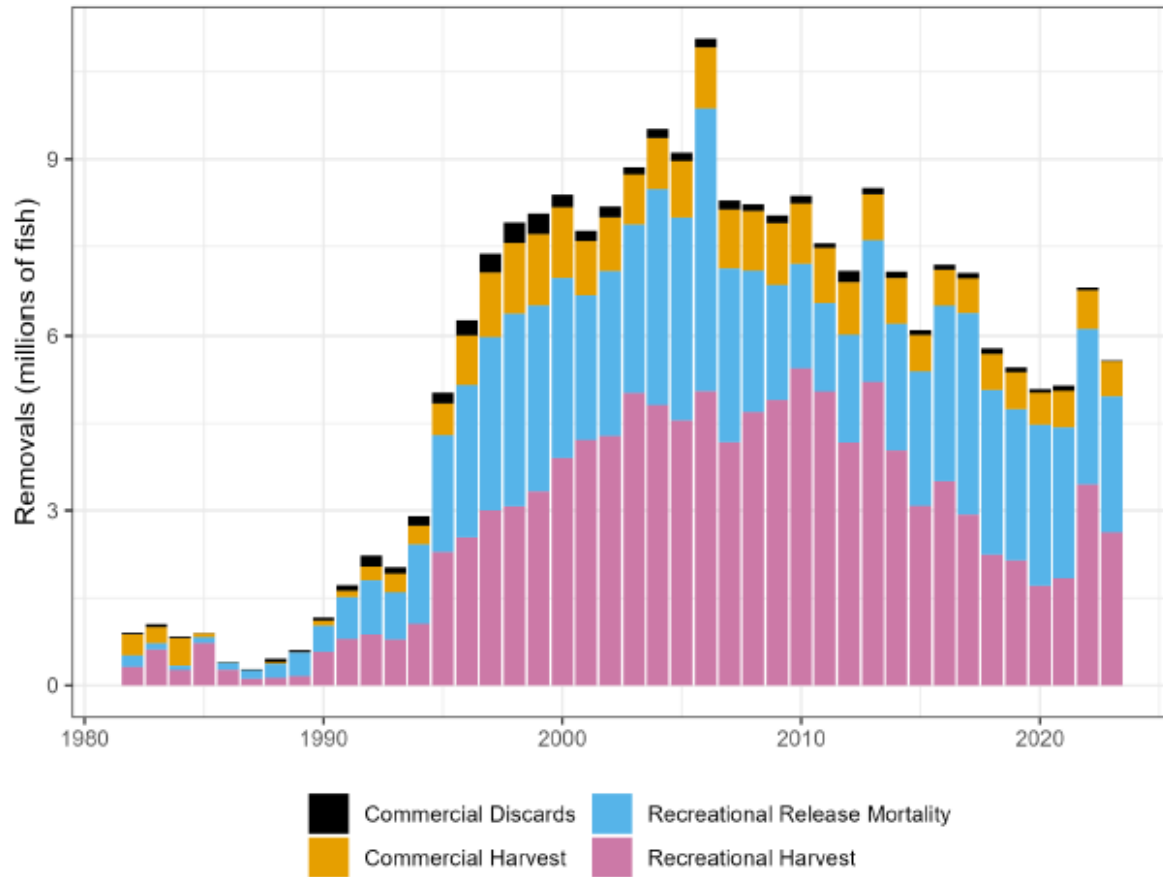
# *Striped Bass Stock Assessment & Board Response*

In summary:

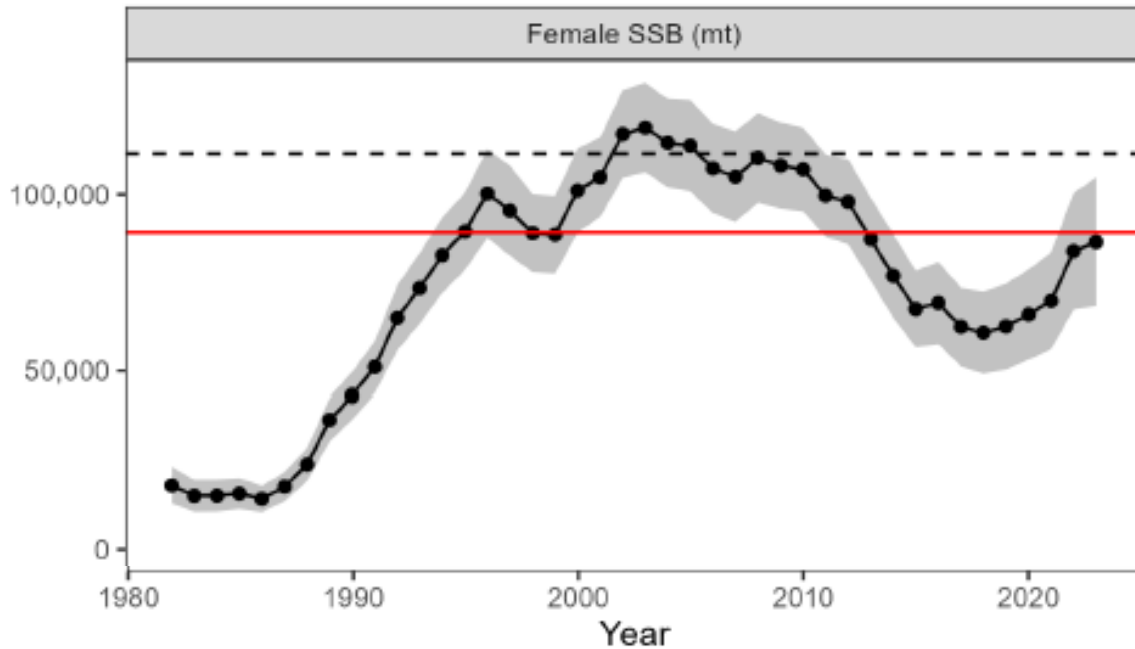
- In 2023, stock remained overfished (SSB 3% below threshold) and was not experiencing overfishing (F between target & threshold). Overfishing was occurring in 2022.
- A management trigger was tripped, requiring F to be reduced to the target, but Addendum II likely already accomplished this in 2024.
- “Most likely scenario” projection for 2024-2029 indicates a 43% chance of stock rebuilding by 2029.
- Under Addendum II provision, Board may respond by Board Action when assessment indicates a less than 50% chance of meeting the rebuilding deadline.
- Board voted to schedule a special Board meeting in December 2024 to consider Board Action to revise 2025 recreational seasons or size limits and 2025 commercial quotas to achieve a 50% probability of rebuilding under the “most likely scenario” projection.
- Board identified tasks (option development) for the Technical Committee to complete in advance of the December meeting.



# Striped Bass Stock Assessment & Board Response



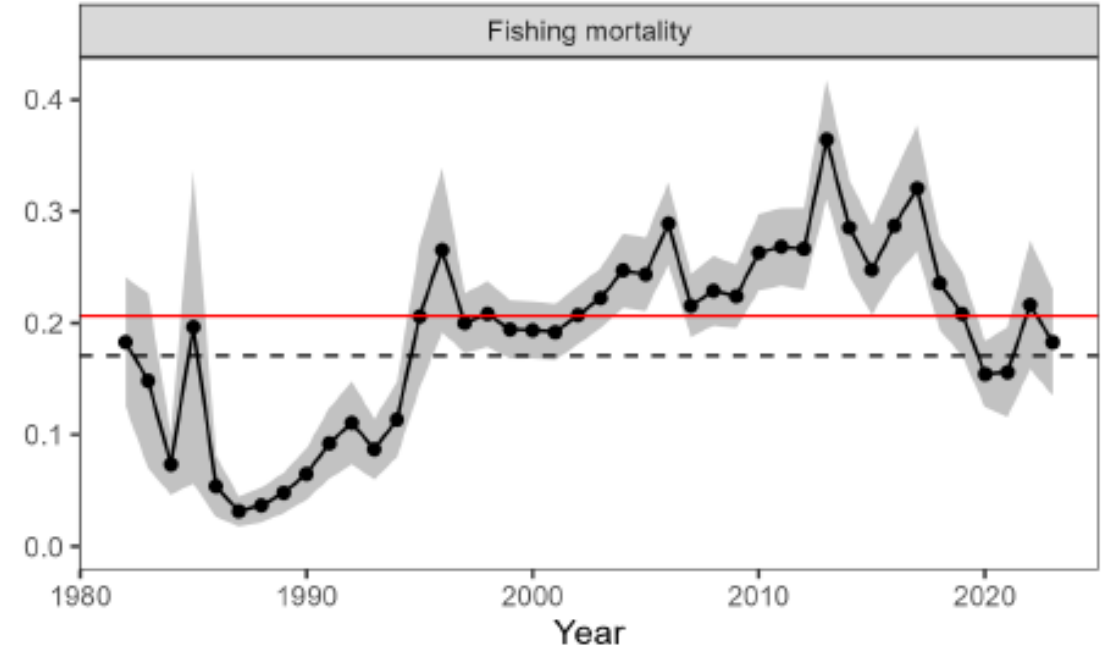
# Striped Bass Stock Assessment & Board Response



SSB target = 111,892 mt  
SSB threshold = 89,513 mt  
SSB 2023 = 86,536 mt

Reference Point

-- Target  
— Threshold



F target = 0.17  
F threshold = 0.21  
F 2023 = 0.18

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# Striped Bass Stock Assessment & Board Response

Year	Low 2024 Removals Scenario							
	F=2023 Increase		F=2022 Increase		F Increase in 2025 Only		F=F <sub>2024</sub>	
	F	Probability of being above the SSB target	F	Probability of being above the SSB target	F	Probability of being above the SSB target	F	Probability of being above the SSB target
2024	0.13	0%	0.13	0%	0.13	0%	0.13	0%
2025	0.15	2%	0.18	2%	0.15	2%	0.13	2%
2026	0.15	9%	0.18	5%	0.13	9%	0.13	12%
2027	0.15	16%	0.18	6%	0.13	24%	0.13	30%
2028	0.15	19%	0.18	5%	0.13	36%	0.13	42%
2029	0.15	19%	0.18	3%	0.13	43%	0.13	50%

Technical Committee considers this to be “most likely scenario”

- Slight increase in F in 2025 as above-average 2018 year class enters the slot limit, then return to prior level.
- About a 15% reduction in 2025 needed to avoid that increase.

Reference Point

— SSB Target  
-- SSB Threshold

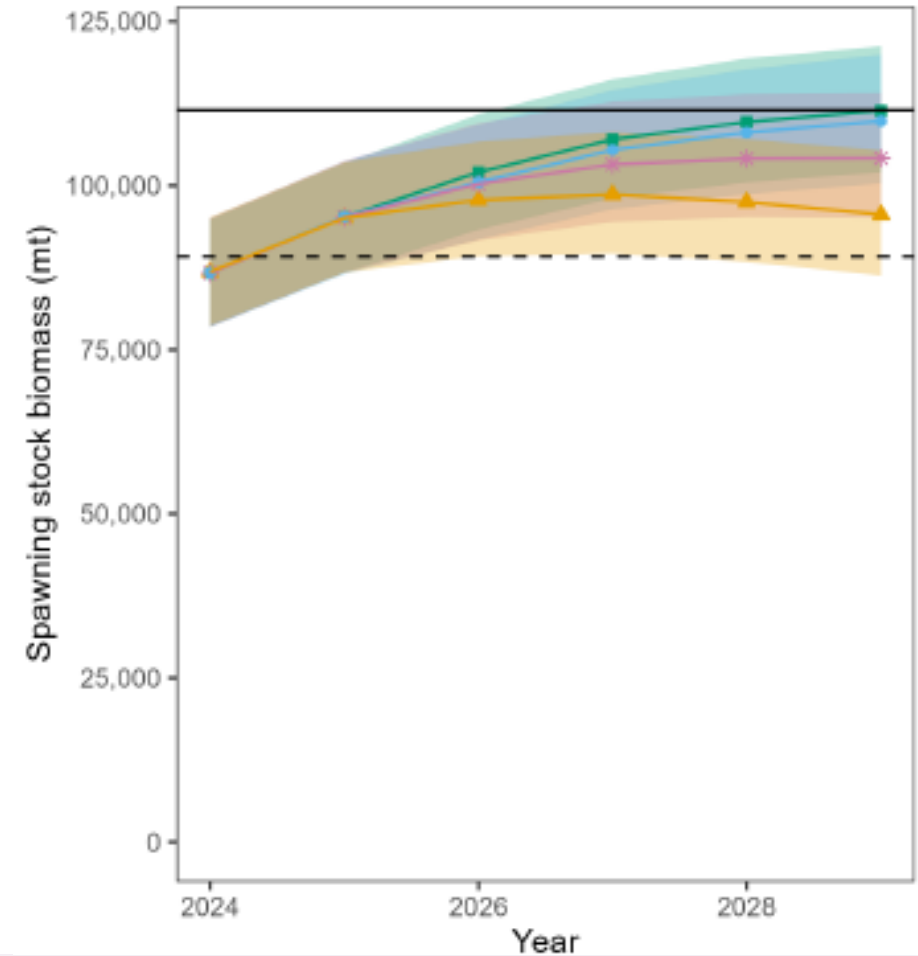
Run

F=F2024, Low 2024 Removals

F Increases in 2025 only

F=F2025, 2023 Increase

F=F2025, 2022 Increase



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# Striped Bass Stock Assessment & Board Response

## Board Tasking to Technical Committee (priority tasks; *if time permits.*)

1. Update the “low 2024 removals with F increase in 2025 only” projection with realized 2024 Wave 4 MRIP data, and determine the reduction in removals needed in 2025 to achieve a 50% probability of being above the SSB target in 2029. *For comparison only (not option development), identify the reduction in removals needed in 2025 to achieve a 60% probability of being above the SSB target in 2029.*
2. Develop a range of Ocean and Chesapeake Bay recreational no-harvest seasonal closure options at the regional level to achieve the reduction. *Include the equivalent no-targeting closure length for each option.*
3. *Develop an ocean slot limit option below the current 28” minimum.*
4. *For comparison only (not option development), conduct an alternative “low 2024 removals with F increase in 2025 only” projection where age-1 recruitment is sampled from 2020-2024 only, and determine the reduction in removals needed in 2025 to achieve a 50% probability of being above the SSB target in 2029.*

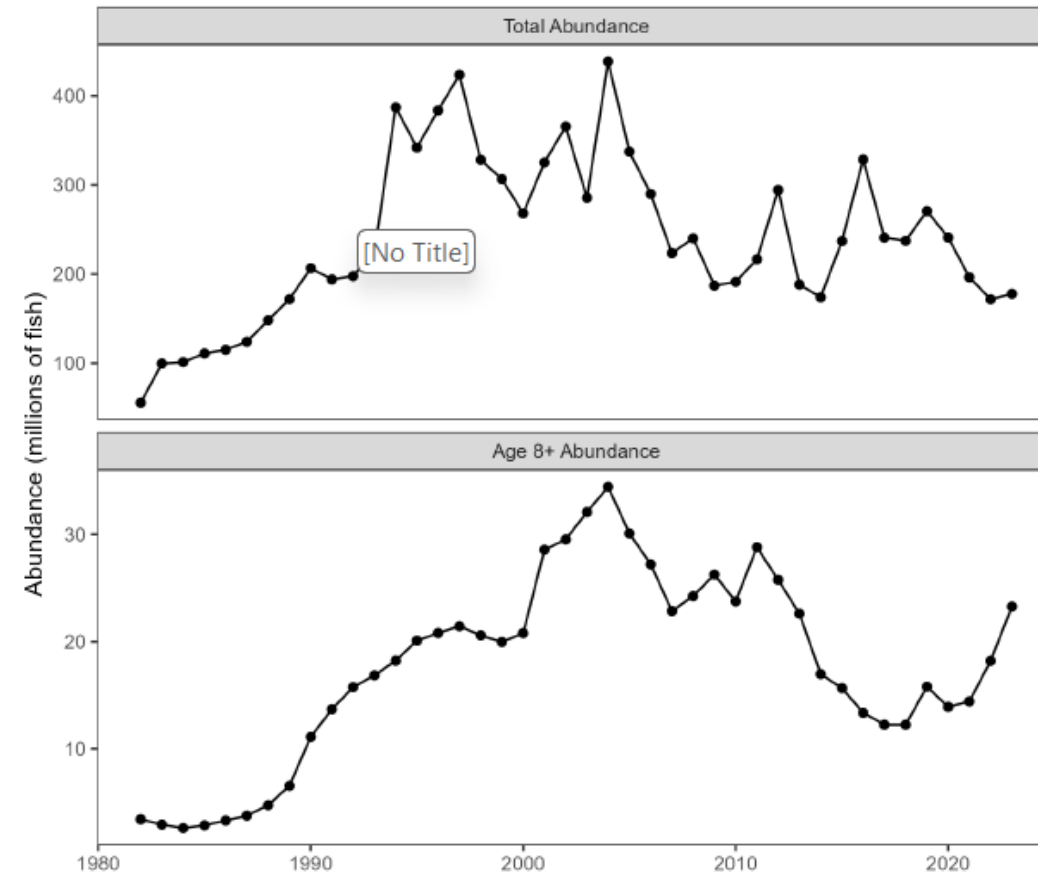


*Questions?*





# *Striped Bass Stock Assessment & Board Response*



# Ongoing Discussion Items

- **American Lobster:** Addendum 28's requirement for 24/7 vessel tracking
- **American Eel:** Board to send letter opposing CITES listing under Appendix II or III which would hamper exports
- **Atlantic Menhaden:** Board workgroup interim report on possible precautionary measures in Chesapeake Bay to address piscivorous and avian predator needs.
- **ExCom/Policy Board:** criteria for “declaring interest” in an FMP, voting by *de minimis* states, meeting conduct during emergencies.



# Striped Bass

- Interim report from Board workgroup on recreational release mortality tasks

- 1) review existing no-targeting closures;
- 2) review studies to evaluate efficacy of potential gear modifications;
- 3) identify sensitivity runs to evaluate reducing release mortality rate vs reducing the number of releases;
- 4) consider mechanisms to scope for public input on RRM in advance of October, such as with a survey.

**3 tasks assigned to TC to help gauge if can achieve a reduction (if needed) through gear modifications or seasonal closures.**

**Continued development of survey for review at October meeting**

- Update on 2024 Stock Assessment & Request for Board Input on Measures Development
  - How to apply measures across rec/com sectors (equal/proportional/only recreational)
  - Recreational measures to consider (modified slot limit, separate for-hire)
  - Request for longer-term projections



# 2025 “Mid-Atlantic” Species Specifications

- Summer Flounder: previously adopted 2025 specs maintained
- Scup: previously adopted 2025 specs updated to correct for slight error in projection, discards estimates also updated
- Bluefish: previously adopted 2025 specs maintained

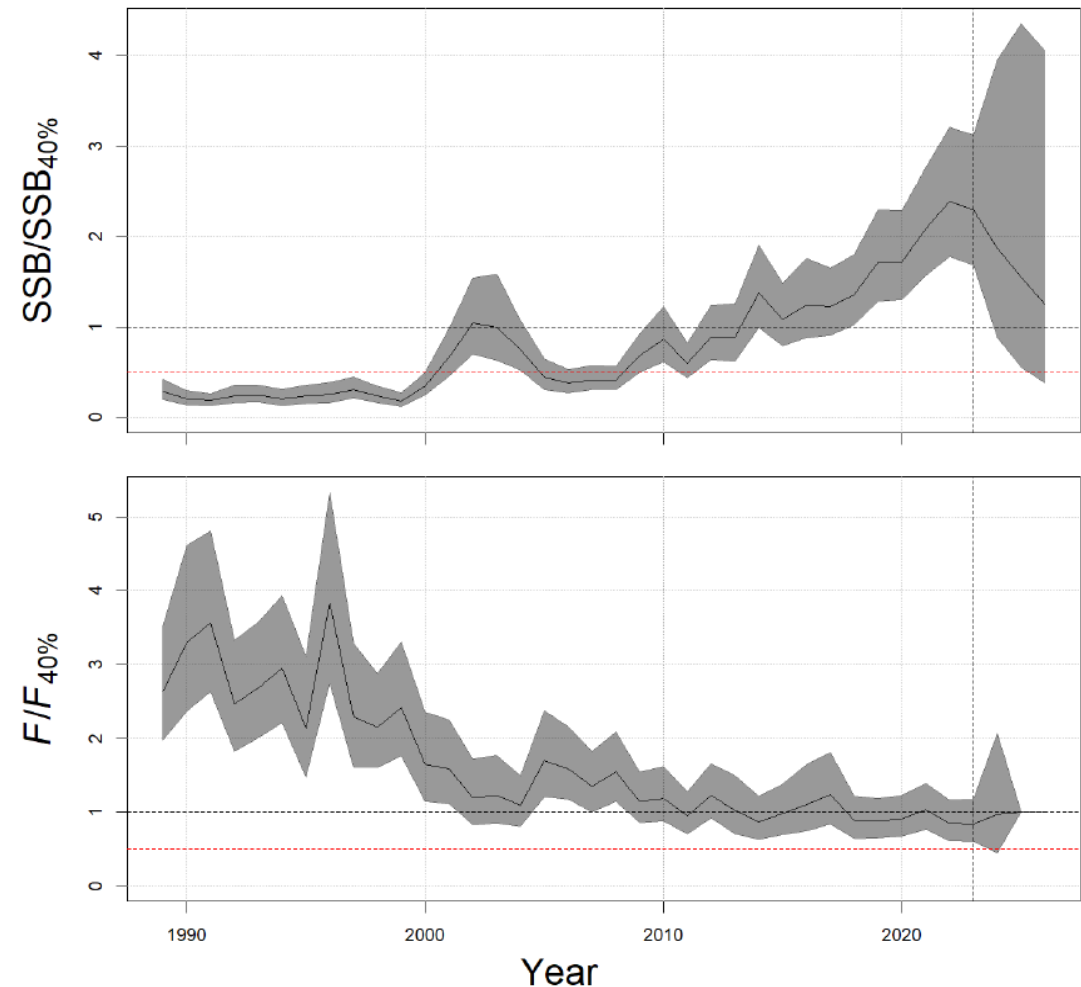
	Summer Flounder		Scup		Bluefish	
	Com Quota	RHL	Com Quota	RHL	Com Quota	RHL
2024	8.79 mlb	6.35 mlb	21.15 mlb	13.18 mlb	2.42	11.96
2025	8.79 mlb	6.35 mlb	<del>18.80 mlb (-11%)</del> 19.54 mlb (-7.6%)	<del>11.84 mlb (-10%)</del> 12.31 mlb (-6.6%)	3.03 (+25%)	15.70 (+31%)
MA Impacts	Status quo quota of 599,507 lb	TBD*	+7.6% to all quotas	TBD*	+33% b/c phased in reallocations: 262,473 lb	No change: 5-fish for-hire & 3 fish pr/sh mode

\* Percent Change Approach to setting recreational measures to follow: RHL compared to projected harvest (with CI) under status quo measures, plus biomass consideration.



# Black Sea Bass

- One-year specifications set for 2024; 2024 Management Track Assessment to inform 2025.
- 2024 MTA is an update of 2023 Research Track Assessment: Multi-WHAM
- Not overfishing:  $F_{2023}$  at 77% threshold. Not overfished:  $SSB_{2023}$  at 219% target.
- But projected decline in SSB causes 20% decline in OFL for 2025.
  - Lower survival of recent strong year classes
  - Fishing at  $F_{MSY}$  expected to drive stock to  $SSB_{MSY}$
- MAFMC required to follow SSC-recommended ABC; ASMFC not.
- North:south biomass distribution in 2023 = 52% to 48% (change from 85% to 15%); relevant to the 25% of the state allocations based on split.



# Black Sea Bass

	Com Quota	RHL	MA Com Impacts	MA Rec Impacts
2024	6.00 mlb	6.27 mlb	n/a	n/a
<b>ASMFC Status Quo Specs from 16.66-mlb ABC</b>	6.00 mlb	6.27 mlb	-15%, from 926K lb to 787K lb*	TBD (Use % Change Approach)
<b>MAFMC Specs from SSC-recommended 13.37-mlb ABC</b>	4.78 mlb	4.46 mlb	-32%, from 926K lb to 631K lb*	TBD (Use % Change Approach)

- Disparate specifications create challenges
  - Mis-aligned state and federal commercial quota closures
  - Waiving federal coastwide recreational rules in favor of state-specific measures
- ***State/Federal disconnect AM.*** If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur to Federal permit holders.

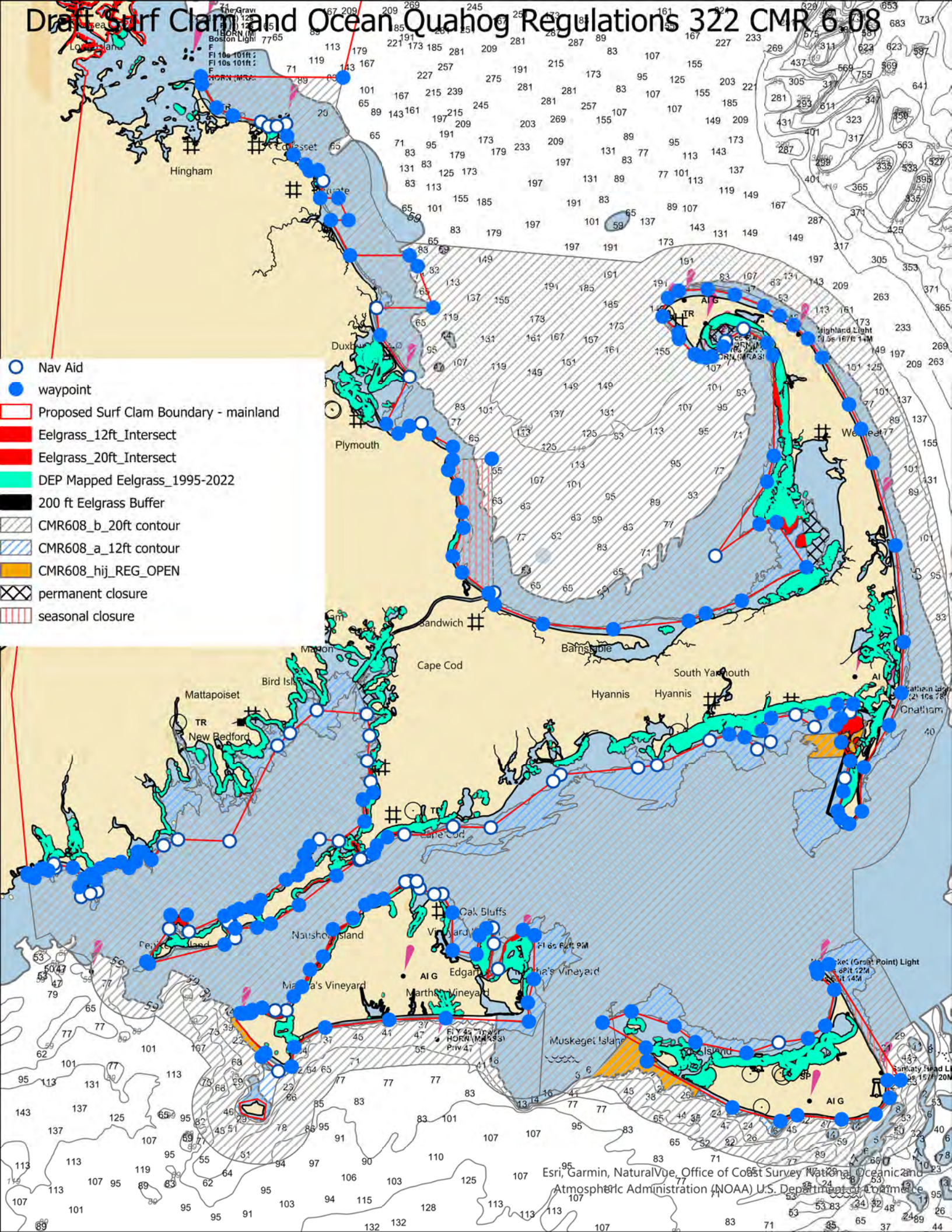
\* Prelim. calculation using 52:48 regional biomass split.

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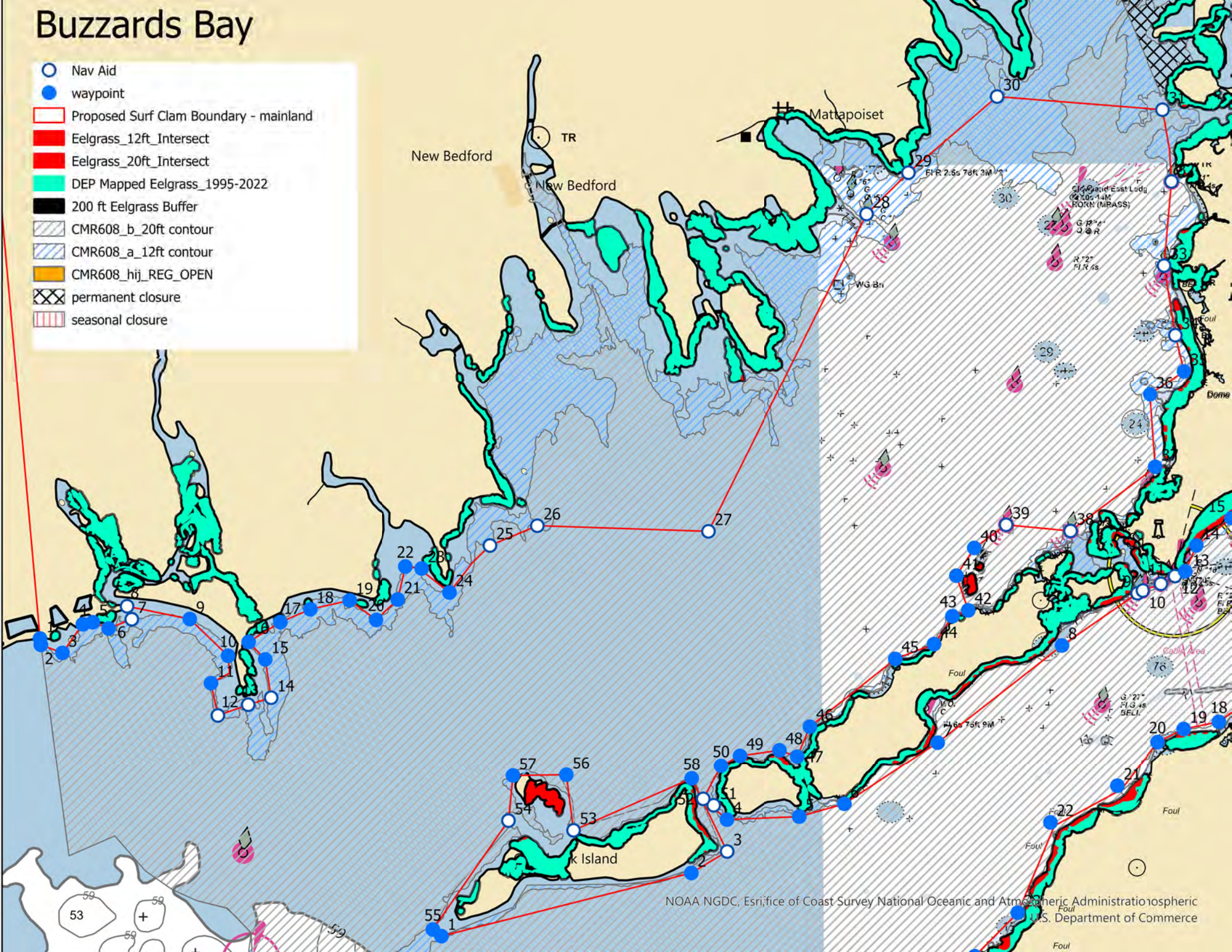
# Draft Surf Clam and Ocean Quahog Regulations 322 CMR 6.08





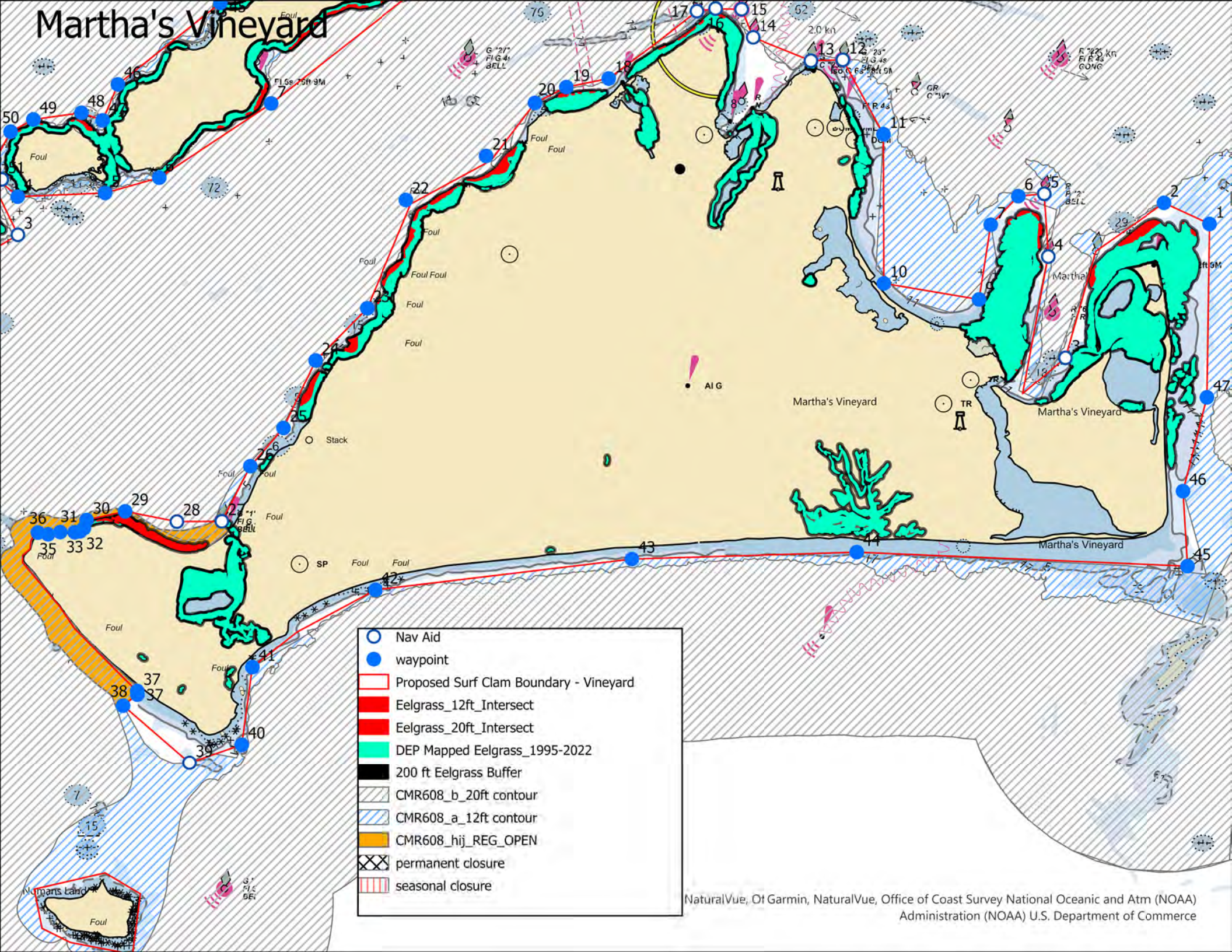
# Buzzards Bay

- Nav Aid
- waypoint
- Proposed Surf Clam Boundary - mainland
- Eelgrass\_12ft\_Intersect
- Eelgrass\_20ft\_Intersect
- DEP Mapped Eelgrass\_1995-2022
- 200 ft Eelgrass Buffer
- CMR608\_b\_20ft contour
- CMR608\_a\_12ft contour
- CMR608\_hij\_REG\_OPEN
- permanent closure
- seasonal closure



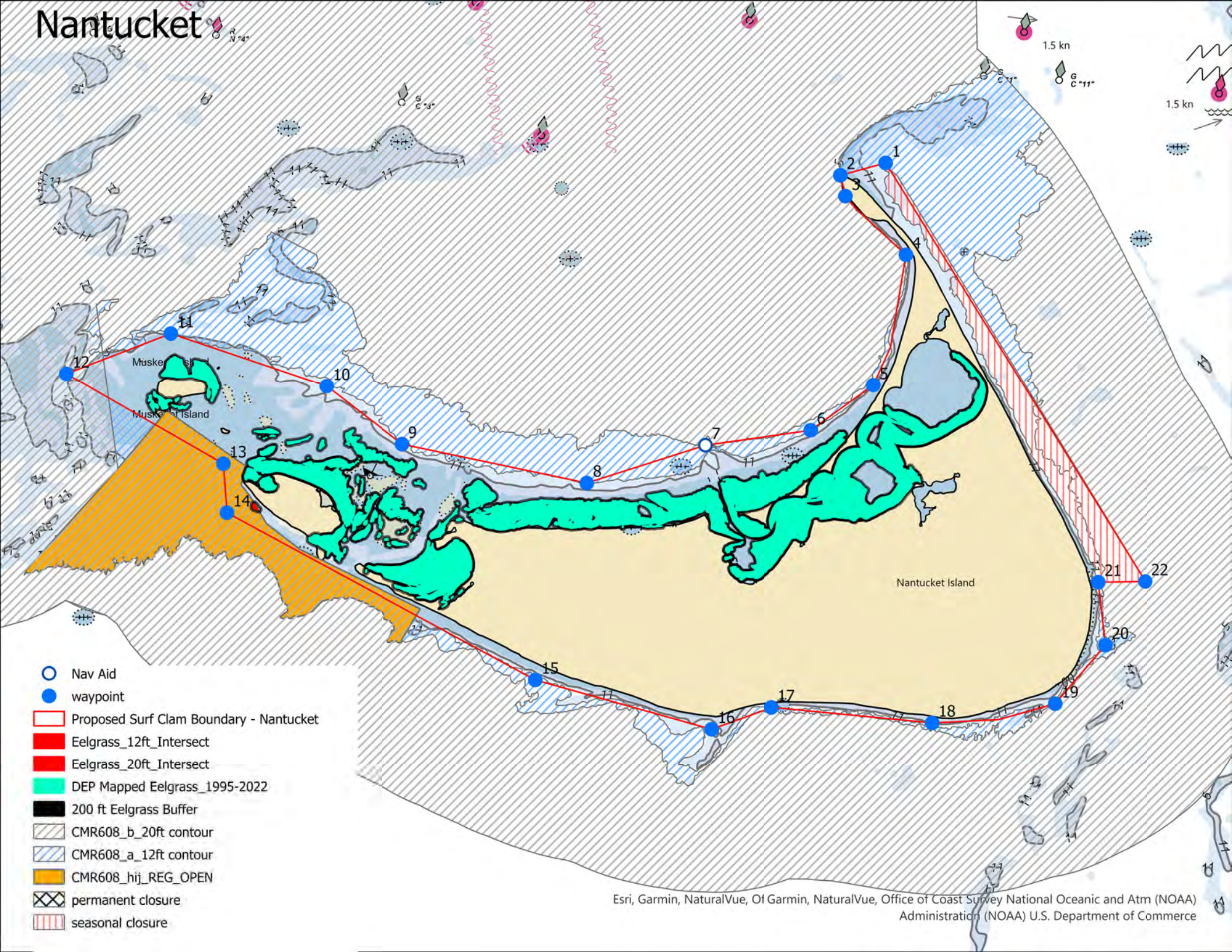


# Martha's Vineyard





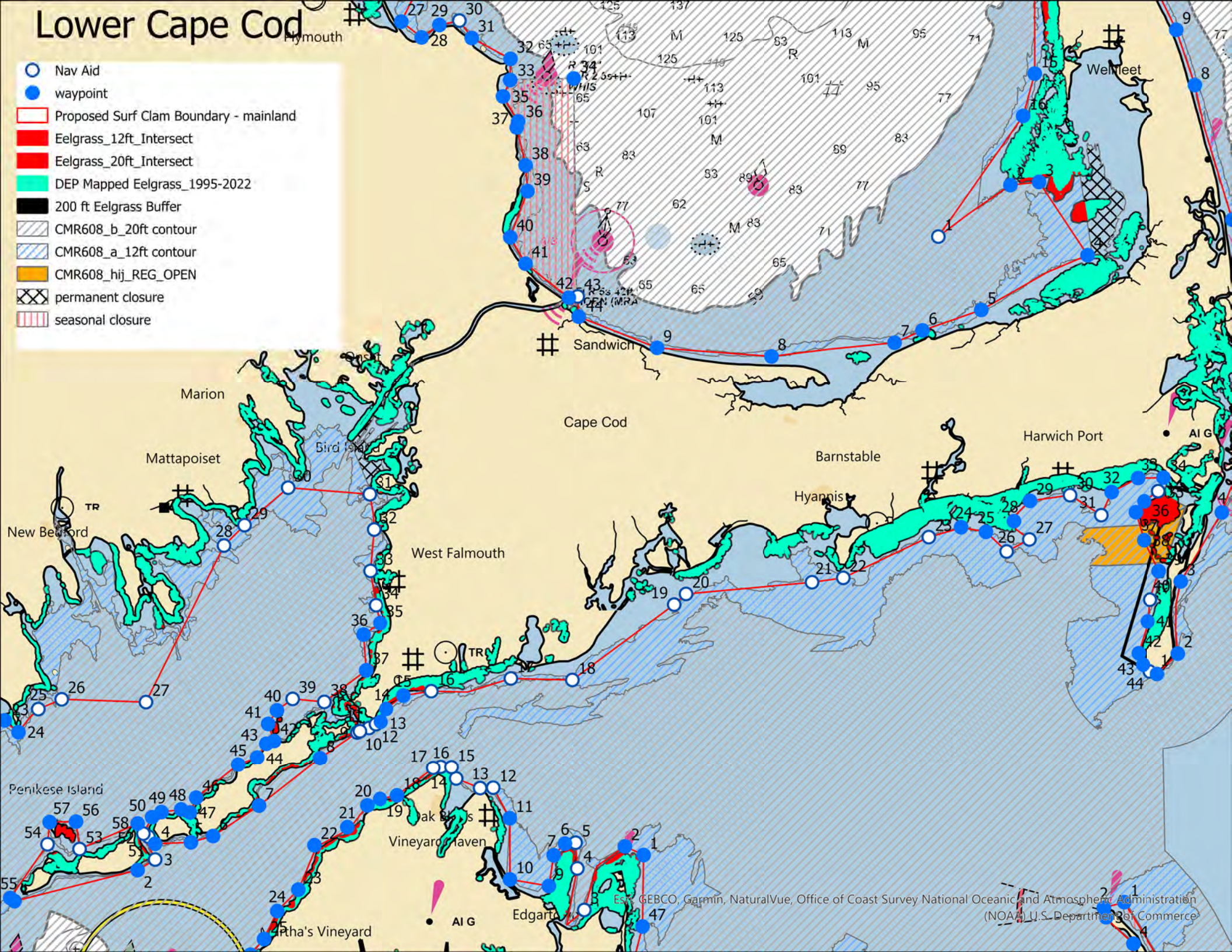
# Nantucket





# Lower Cape Cod

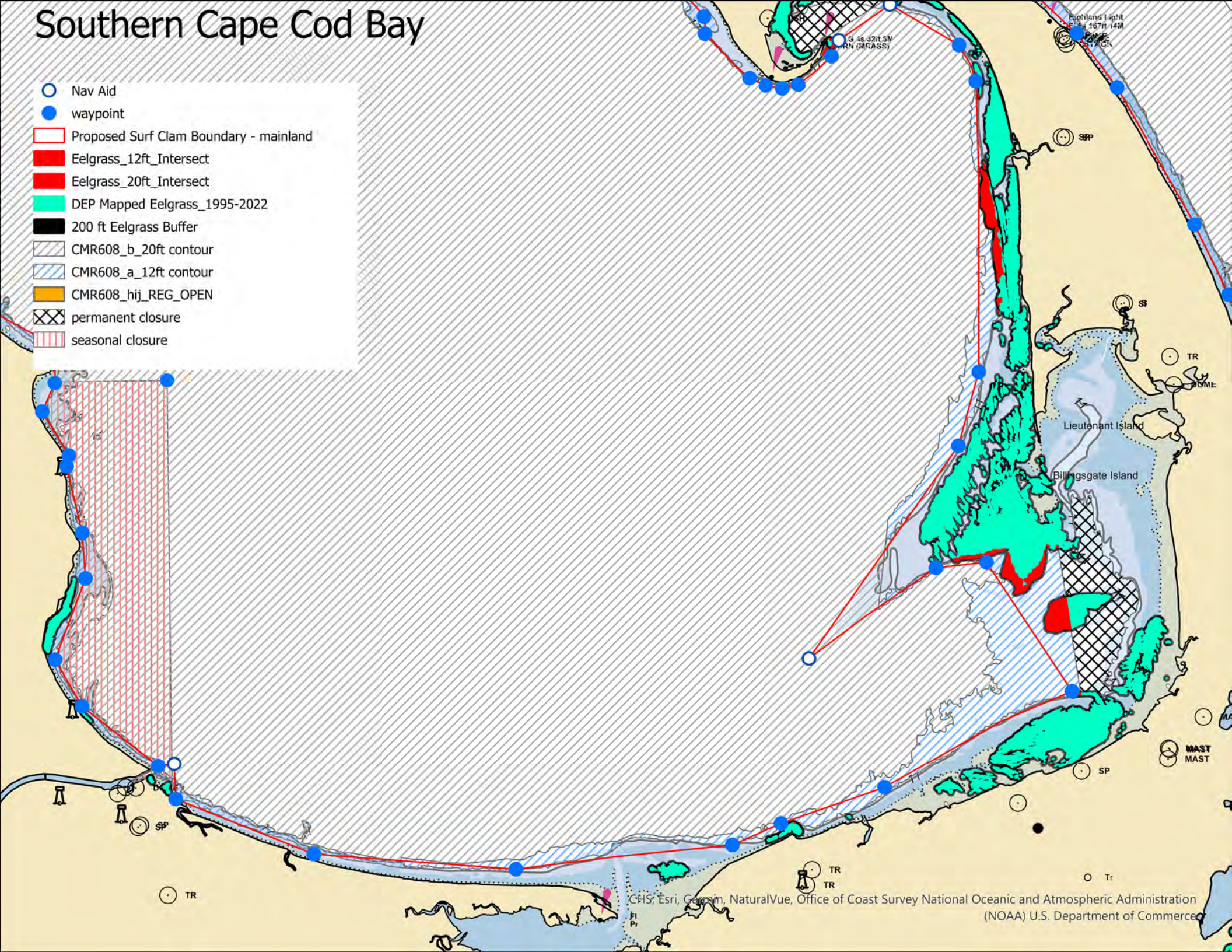
- Nav Aid
- waypoint
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- CMR608\_a\_12ft contour
- CMR608\_hij\_REG\_OPEN
- permanent closure
- seasonal closure





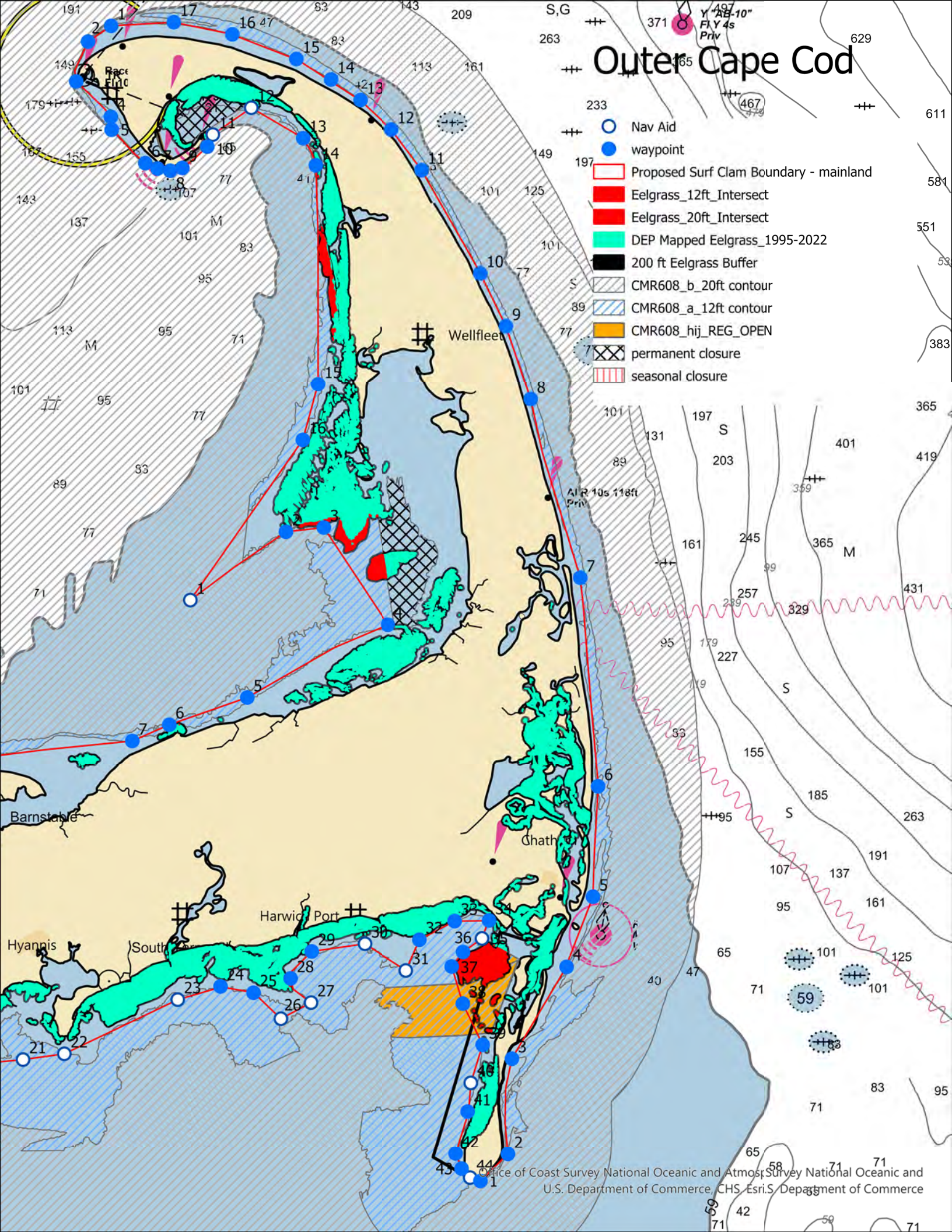
# Southern Cape Cod Bay

- Nav Aid
- waypoint
- ▭ Proposed Surf Clam Boundary - mainland
- ▭ Eelgrass\_12ft\_Intersect
- ▭ Eelgrass\_20ft\_Intersect
- ▭ DEP Mapped Eelgrass\_1995-2022
- ▭ 200 ft Eelgrass Buffer
- ▭ CMR608\_b\_20ft contour
- ▭ CMR608\_a\_12ft contour
- ▭ CMR608\_hij\_REG\_OPEN
- ▭ permanent closure
- ▭ seasonal closure



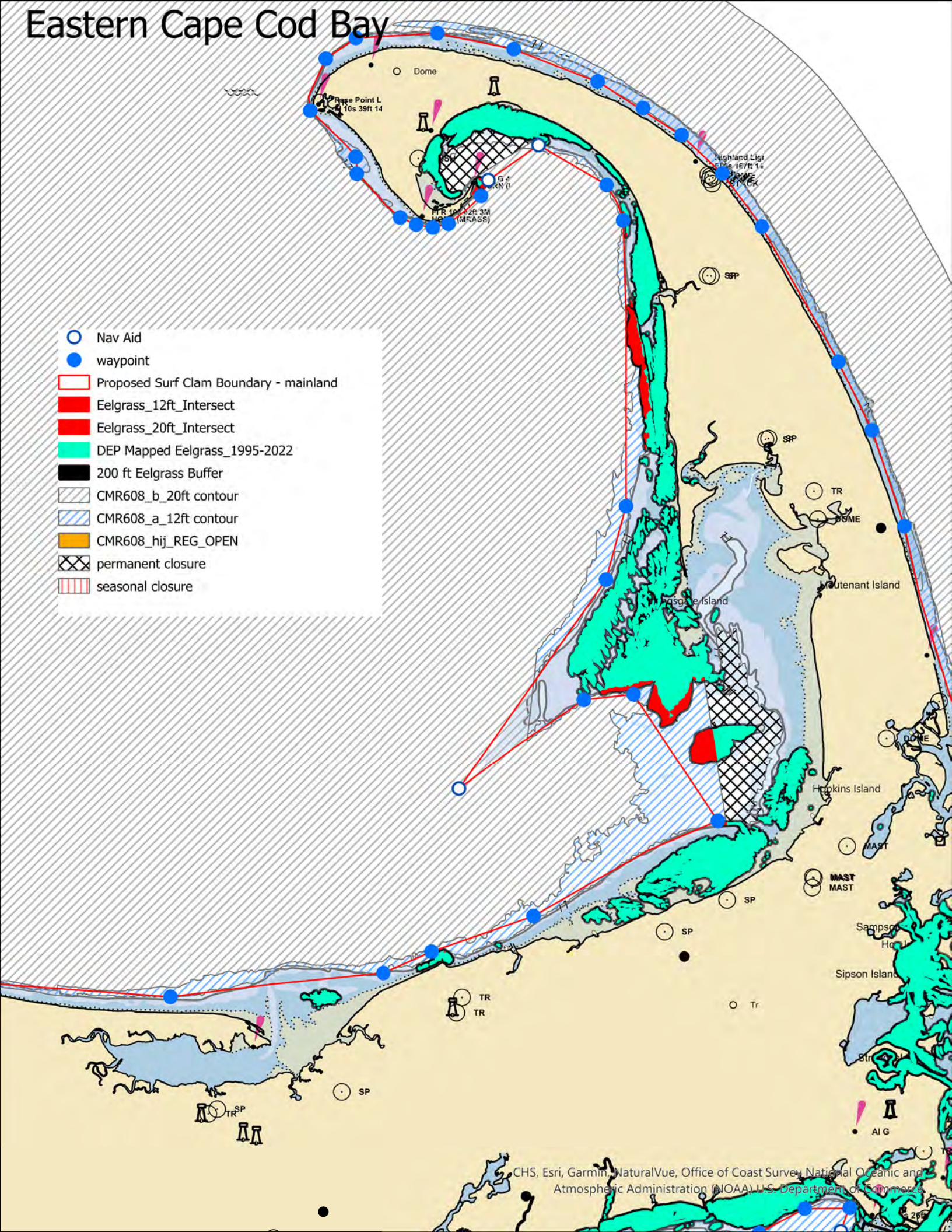


# Outer Cape Cod



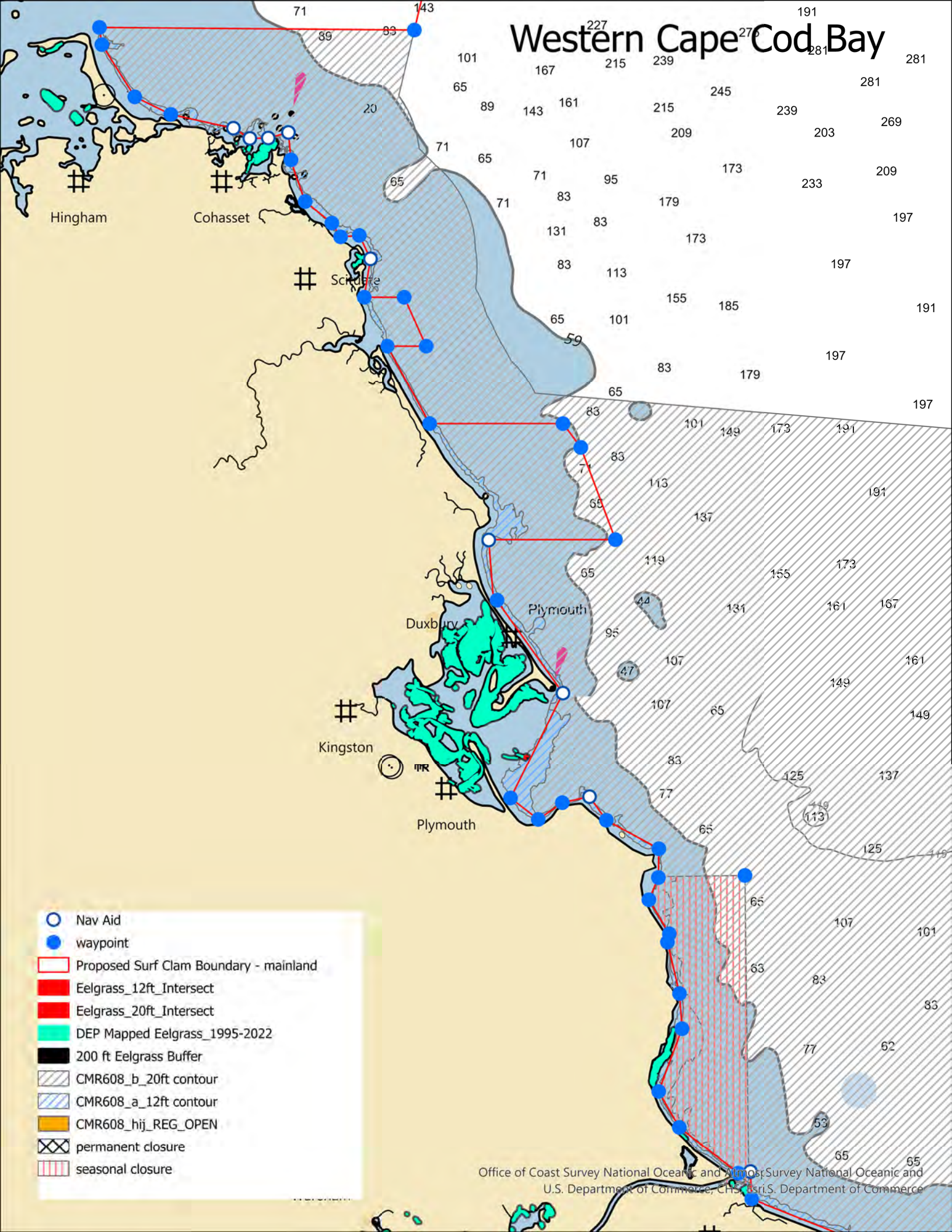


# Eastern Cape Cod Bay





# Western Cape Cod Bay

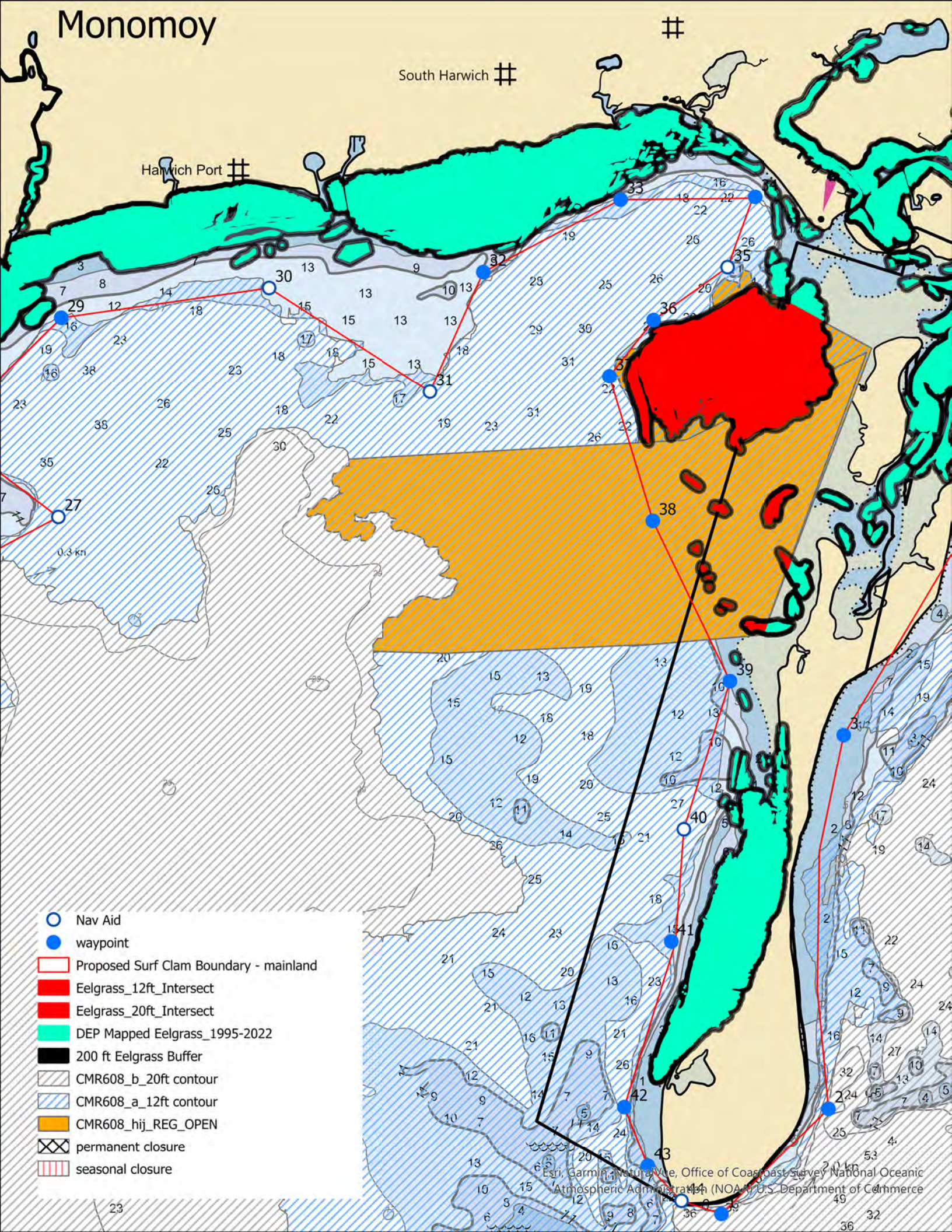




# Monomoy

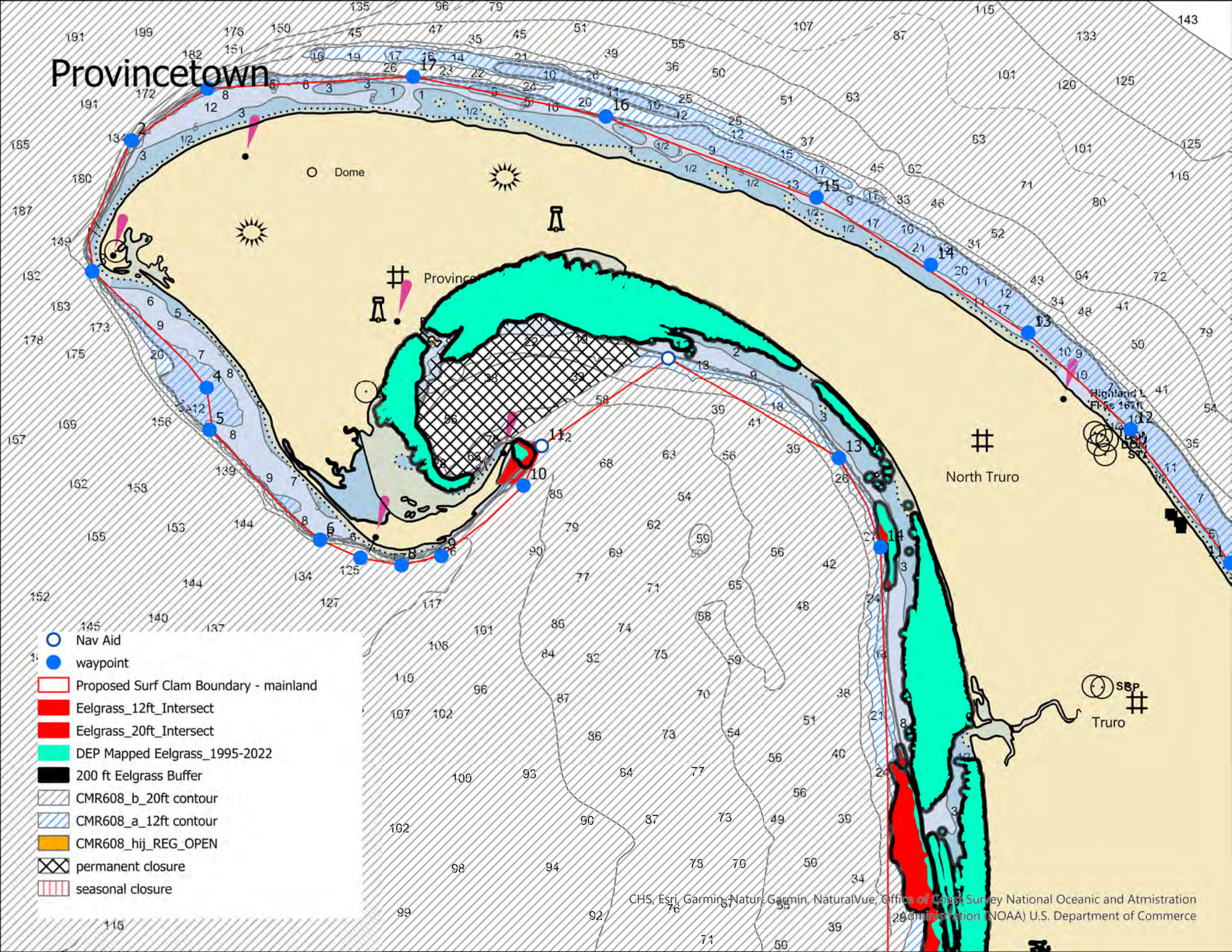
South Harwich

Harwich Port





# Provincetown



- Nav Aid
- waypoint
- Proposed Surf Clam Boundary - mainland
- Eelgrass\_12ft\_Intersect
- Eelgrass\_20ft\_Intersect
- DEP Mapped Eelgrass\_1995-2022
- 200 ft Eelgrass Buffer
- ▨ CMR608\_b\_20ft contour
- ▨ CMR608\_a\_12ft contour
- ▨ CMR608\_hij\_REG\_OPEN
- ▨ permanent closure
- ▨ seasonal closure



Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
Buzzards Bay	1	-71.12046	41.49715	waypoint
Buzzards Bay	2	-71.12013	41.4952	waypoint
Buzzards Bay	3	-71.11132	41.49268	waypoint
Buzzards Bay	4	-71.10291	41.50147	waypoint
Buzzards Bay	5	-71.09882	41.50208	waypoint
Buzzards Bay	6	-71.09237	41.50013	waypoint
Buzzards Bay	7	-71.08288	41.50295	Nav Aid
Buzzards Bay	8	-71.08473	41.50695	Nav Aid
Buzzards Bay	9	-71.05908	41.50291	waypoint
Buzzards Bay	10	-71.04346	41.49153	waypoint
Buzzards Bay	11	-71.05055	41.48315	waypoint
Buzzards Bay	12	-71.04778	41.47317	Nav Aid
Buzzards Bay	13	-71.03537	41.47644	Nav Aid
Buzzards Bay	14	-71.02595	41.47857	Nav Aid
Buzzards Bay	15	-71.02827	41.49036	waypoint
Buzzards Bay	16	-71.03502	41.49576	waypoint
Buzzards Bay	17	-71.02203	41.5018	waypoint
Buzzards Bay	18	-71.0097	41.50573	waypoint
Buzzards Bay	19	-70.99358	41.5084	waypoint
Buzzards Bay	20	-70.98267	41.50234	waypoint
Buzzards Bay	21	-70.97361	41.50857	waypoint
Buzzards Bay	22	-70.97044	41.5187	waypoint
Buzzards Bay	23	-70.96375	41.51806	waypoint
Buzzards Bay	24	-70.95238	41.51062	waypoint
Buzzards Bay	25	-70.93568	41.52501	Nav Aid
Buzzards Bay	26	-70.91622	41.53102	Nav Aid
Buzzards Bay	27	-70.84612	41.5289	Nav Aid
Buzzards Bay	28	-70.78005	41.62642	Nav Aid
Buzzards Bay	29	-70.76278	41.63903	Nav Aid
Buzzards Bay	30	-70.72614	41.66222	Nav Aid
Buzzards Bay	31	-70.65812	41.65768	Nav Aid
Buzzards Bay	32	-70.65471	41.63556	Nav Aid
Buzzards Bay	33	-70.65811	41.60969	Nav Aid
Buzzards Bay	34	-70.65375	41.5882	Nav Aid
Buzzards Bay	35	-70.65033	41.57703	waypoint
Buzzards Bay	36	-70.66443	41.56993	waypoint
Buzzards Bay	37	-70.66257	41.54757	waypoint
Buzzards Bay	38	-70.69767	41.52806	Nav Aid
Buzzards Bay	39	-70.724	41.53014	Nav Aid
Buzzards Bay	40	-70.73713	41.5231	waypoint
Buzzards Bay	41	-70.74457	41.51461	waypoint
Buzzards Bay	42	-70.73982	41.50389	waypoint
Buzzards Bay	43	-70.7463	41.50217	waypoint
Buzzards Bay	44	-70.75394	41.4936	waypoint
Buzzards Bay	45	-70.76984	41.48914	waypoint
Buzzards Bay	46	-70.80499	41.46849	waypoint
Buzzards Bay	47	-70.81026	41.45929	waypoint
Buzzards Bay	48	-70.81752	41.46129	waypoint
Buzzards Bay	49	-70.83389	41.45967	waypoint
Buzzards Bay	50	-70.84169	41.45658	waypoint
Buzzards Bay	51	-70.84484	41.44437	Nav Aid
Buzzards Bay	52	-70.84909	41.44637	Nav Aid
Buzzards Bay	53	-70.90226	41.43698	Nav Aid
Buzzards Bay	54	-70.92886	41.44011	Nav Aid
Buzzards Bay	55	-70.9601	41.40675	waypoint
Buzzards Bay	56	-70.90505	41.45411	waypoint
Buzzards Bay	57	-70.9269	41.45398	waypoint
Buzzards Bay	58	-70.85375	41.45271	waypoint

Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
MV	1	-70.4331	41.42981	waypoint
MV	2	-70.44855	41.43536	waypoint
MV	3	-70.48287	41.39595	Nav Aid
MV	4	-70.48833	41.42195	Nav Aid
MV	5	-70.48945	41.43806	Nav Aid
MV	6	-70.49828	41.43754	waypoint
MV	7	-70.50775	41.4303	waypoint
MV	9	-70.51204	41.41116	waypoint
MV	10	-70.54434	41.41557	waypoint
MV	11	-70.54393	41.45382	waypoint
MV	12	-70.55744	41.473	Nav Aid
MV	13	-70.56831	41.47285	Nav Aid
MV	14	-70.58809	41.47901	Nav Aid
MV	15	-70.59191	41.48627	Nav Aid
MV	16	-70.60081	41.48651	Nav Aid
MV	17	-70.60716	41.48589	Nav Aid
MV	18	-70.6375	41.46884	waypoint
MV	19	-70.65193	41.46674	waypoint
MV	20	-70.66271	41.46278	waypoint
MV	21	-70.67952	41.4493	waypoint
MV	22	-70.70702	41.43822	waypoint
MV	23	-70.7207	41.41055	waypoint
MV	24	-70.73843	41.39727	waypoint
MV	25	-70.74958	41.37988	waypoint
MV	26	-70.76099	41.37015	waypoint
MV	27	-70.77084	41.35609	Nav Aid
MV	28	-70.78615	41.35612	Nav Aid
MV	29	-70.80373	41.35886	waypoint
MV	30	-70.81685	41.35672	waypoint
MV	31	-70.81779	41.35463	waypoint
MV	32	-70.81913	41.35381	waypoint
MV	33	-70.8209	41.35361	waypoint
MV	34	-70.82587	41.35367	waypoint
MV	35	-70.83002	41.35313	waypoint
MV	36	-70.83345	41.35361	waypoint
MV	37	-70.8001	41.31277	waypoint
MV	37	-70.80006	41.31186	waypoint
MV	38	-70.80496	41.30906	waypoint
MV	39	-70.78254	41.29421	Nav Aid
MV	40	-70.76469	41.29876	waypoint
MV	41	-70.76089	41.31864	waypoint
MV	42	-70.71875	41.33816	waypoint
MV	43	-70.63124	41.34543	waypoint
MV	44	-70.55458	41.34658	waypoint
MV	45	-70.44206	41.34201	waypoint
MV	46	-70.44326	41.36125	waypoint
MV	47	-70.43474	41.38521	waypoint

Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
Nantucket	1	-70.03438	41.39588	waypoint
Nantucket	2	-70.05137	41.3926	waypoint
Nantucket	3	-70.04963	41.38672	waypoint
Nantucket	4	-70.02738	41.36988	waypoint
Nantucket	5	-70.04041	41.33322	waypoint
Nantucket	6	-70.06406	41.32072	waypoint
Nantucket	7	-70.1037	41.31701	Nav Aid
Nantucket	8	-70.14831	41.30689	waypoint
Nantucket	9	-70.21717	41.31865	waypoint
Nantucket	10	-70.24519	41.33541	waypoint
Nantucket	11	-70.30323	41.35093	waypoint
Nantucket	12	-70.34254	41.33996	waypoint
Nantucket	13	-70.28427	41.31388	waypoint
Nantucket	14	-70.28317	41.30005	waypoint
Nantucket	15	-70.16872	41.25161	waypoint
Nantucket	16	-70.10317	41.23691	waypoint
Nantucket	17	-70.08054	41.24279	waypoint
Nantucket	18	-70.02061	41.23766	waypoint
Nantucket	19	-69.97463	41.24245	waypoint
Nantucket	20	-69.9555	41.25872	waypoint
Nantucket	21	-69.95776	41.27648	waypoint
Nantucket	22	-69.94012	41.27644	waypoint

Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
Lower CC	1	-70.9566	41.40471	waypoint
Lower CC	2	-70.85416	41.4236	waypoint
Lower CC	3	-70.83948	41.43012	Nav Aid
Lower CC	4	-70.83944	41.43993	waypoint
Lower CC	5	-70.80963	41.44067	waypoint
Lower CC	6	-70.79117	41.44449	waypoint
Lower CC	7	-70.7528	41.46326	waypoint
Lower CC	8	-70.70161	41.49282	waypoint
Lower CC	9	-70.67051	41.50867	Nav Aid
Lower CC	10	-70.6683	41.50951	Nav Aid
Lower CC	11	-70.66068	41.5115	Nav Aid
Lower CC	12	-70.65487	41.51385	Nav Aid
Lower CC	13	-70.65063	41.51532	waypoint
Lower CC	14	-70.64601	41.52322	waypoint
Lower CC	15	-70.63148	41.53152	waypoint
Lower CC	16	-70.60806	41.53411	Nav Aid
Lower CC	17	-70.54175	41.54152	Nav Aid
Lower CC	18	-70.49059	41.54012	Nav Aid
Lower CC	19	-70.40503	41.58651	Nav Aid
Lower CC	20	-70.39504	41.59304	Nav Aid
Lower CC	21	-70.28947	41.59929	Nav Aid
Lower CC	22	-70.26347	41.60174	Nav Aid
Lower CC	23	-70.19175	41.62642	Nav Aid
Lower CC	24	-70.16481	41.63231	waypoint
Lower CC	25	-70.14413	41.62914	waypoint
Lower CC	26	-70.12722	41.61666	Nav Aid
Lower CC	27	-70.10812	41.624	Nav Aid
Lower CC	28	-70.12069	41.63556	waypoint
Lower CC	29	-70.10712	41.64809	waypoint
Lower CC	30	-70.07361	41.65128	Nav Aid
Lower CC	31	-70.04793	41.63839	Nav Aid
Lower CC	32	-70.03902	41.65275	waypoint
Lower CC	33	-70.01674	41.66121	waypoint
Lower CC	34	-69.99509	41.66125	waypoint
Lower CC	35	-69.99971	41.65283	Nav Aid
Lower CC	36	-70.01175	41.64661	waypoint
Lower CC	37	-70.01903	41.6399	waypoint
Lower CC	38	-70.01244	41.62231	waypoint
Lower CC	39	-70.00049	41.60281	waypoint
Lower CC	40	-70.00833	41.585	Nav Aid
Lower CC	41	-70.01066	41.5715	waypoint
Lower CC	42	-70.01868	41.55167	waypoint
Lower CC	43	-70.01507	41.54447	waypoint
Lower CC	44	-70.00977	41.54016	Nav Aid



Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
Southern CCB	1	-70.17995	41.81464	Nav Aid
Southern CCB	2	-70.11911	41.84612	waypoint
Southern CCB	3	-70.09515	41.84782	waypoint
Southern CCB	4	-70.05564	41.80152	waypoint
Southern CCB	5	-70.1451	41.76834	waypoint
Southern CCB	6	-70.19442	41.75611	waypoint
Southern CCB	7	-70.21783	41.7487	waypoint
Southern CCB	8	-70.32059	41.74123	waypoint
Southern CCB	9	-70.41652	41.74751	waypoint

Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
Outer CC	1	-70.00339	41.5385	waypoint
Outer CC	2	-69.98581	41.55101	waypoint
Outer CC	3	-69.9823	41.59607	waypoint
Outer CC	4	-69.9469	41.63875	waypoint
Outer CC	5	-69.92953	41.67152	waypoint
Outer CC	6	-69.92506	41.7234	waypoint
Outer CC	7	-69.93382	41.82208	waypoint
Outer CC	8	-69.96304	41.90669	waypoint
Outer CC	9	-69.97781	41.94146	waypoint
Outer CC	10	-69.99344	41.96656	waypoint
Outer CC	11	-70.02933	42.01567	waypoint
Outer CC	12	-70.04817	42.03506	waypoint
Outer CC	13	-70.06747	42.04919	waypoint
Outer CC	14	-70.08588	42.05912	waypoint
Outer CC	15	-70.10763	42.06903	waypoint
Outer CC	16	-70.14792	42.08112	waypoint
Outer CC	17	-70.18478	42.08726	waypoint

Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
Eastern CCB	1	-70.22443	42.08601	waypoint
Eastern CCB	2	-70.23919	42.07874	waypoint
Eastern CCB	3	-70.24709	42.06007	waypoint
Eastern CCB	4	-70.22547	42.04316	waypoint
Eastern CCB	5	-70.22504	42.03708	waypoint
Eastern CCB	6	-70.20414	42.02108	waypoint
Eastern CCB	7	-70.19644	42.01844	waypoint
Eastern CCB	8	-70.18846	42.01731	waypoint
Eastern CCB	9	-70.18081	42.01854	waypoint
Eastern CCB	10	-70.16484	42.02842	waypoint
Eastern CCB	11	-70.16122	42.03404	Nav Aid
Eastern CCB	12	-70.13667	42.04639	Nav Aid
Eastern CCB	13	-70.10413	42.03166	waypoint
Eastern CCB	14	-70.09643	42.01877	waypoint
Eastern CCB	15	-70.09731	41.91559	waypoint
Eastern CCB	16	-70.10752	41.88928	waypoint

Region	RegionPoint_ID	Longitude (DD)	Latitude (DD)	Point type
Western CCB	1	-70.6821	42.30776	waypoint
Western CCB	2	-70.87769	42.31019	waypoint
Western CCB	3	-70.87626	42.30225	waypoint
Western CCB	4	-70.85609	42.27813	waypoint
Western CCB	5	-70.83385	42.26989	waypoint
Western CCB	6	-70.79514	42.2633	Nav Aid
Western CCB	7	-70.785	42.25856	Nav Aid
Western CCB	8	-70.77363	42.25866	Nav Aid
Western CCB	9	-70.76105	42.26116	Nav Aid
Western CCB	10	-70.75968	42.2485	waypoint
Western CCB	11	-70.75108	42.22928	waypoint
Western CCB	12	-70.73468	42.21928	waypoint
Western CCB	13	-70.72935	42.21289	waypoint
Western CCB	14	-70.7177	42.21348	waypoint
Western CCB	15	-70.71098	42.20266	Nav Aid
Western CCB	16	-70.71508	42.185	waypoint
Western CCB	17	-70.69	42.18483	waypoint
Western CCB	18	-70.67664	42.1622	waypoint
Western CCB	19	-70.70078	42.16236	waypoint
Western CCB	20	-70.67494	42.12632	waypoint
Western CCB	21	-70.59253	42.12569	waypoint
Western CCB	22	-70.58167	42.11462	waypoint
Western CCB	23	-70.56091	42.07201	waypoint
Western CCB	24	-70.63921	42.07247	Nav Aid
Western CCB	25	-70.63443	42.04473	waypoint
Western CCB	26	-70.5944	42.00163	Nav Aid
Western CCB	27	-70.6273	41.9534	waypoint
Western CCB	28	-70.6104	41.9434	waypoint
Western CCB	29	-70.59541	41.951	waypoint
Western CCB	30	-70.57864	41.95363	Nav Aid
Western CCB	31	-70.56845	41.9427	waypoint
Western CCB	32	-70.53624	41.92933	waypoint
Western CCB	33	-70.53675	41.9161	waypoint
Western CCB	34	-70.48339	41.91661	waypoint
Western CCB	35	-70.5428	41.90591	waypoint
Western CCB	36	-70.53039	41.89021	waypoint
Western CCB	37	-70.53159	41.8864	waypoint
Western CCB	38	-70.52456	41.86269	waypoint
Western CCB	39	-70.52323	41.84652	waypoint
Western CCB	40	-70.53808	41.81783	waypoint
Western CCB	41	-70.5256	41.80117	waypoint
Western CCB	42	-70.48973	41.77958	waypoint
Western CCB	43	-70.48222	41.78025	Nav Aid
Western CCB	44	-70.48164	41.76764	waypoint





September 18, 2024

Shannon Bettridge  
Division Chief  
Marine Mammal and Sea Turtle Conservation Division  
NOAA Fisheries, Office of Protected Resources  
1315 East-West Highway  
Silver Spring, MD 20910

Re: CZM Federal Consistency Review of the NOAA Proposed Rule to Amend  
the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Dr. Bettridge:

On June 18, 2024, the Massachusetts Office of Coastal Zone Management (CZM) received your federal consistency certification determination for the proposed amendments to the existing North Atlantic right whale (NARW) vessel speed rule (“proposed rule”) to further reduce the likelihood of mortalities and serious injuries to endangered NARW from vessel strikes. The submission contained a description of the proposed rule, and a regional consistency determination for federally approved state Coastal Zone Management Act (CZMA) programs for coastal states bordering the Atlantic Ocean, including Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. Specific to Massachusetts, the proposed rule would implement a Seasonal Speed Zone (SSZ) from November 1 – May 30, which would require most vessels greater than 35 feet (ft) in length to travel less than 10-knots within a majority of Massachusetts coastal waters, including Nantucket and Vineyard Sounds (the Sounds). The regional consistency determination included a section describing how the proposed amendments are consistent with the applicable enforceable policies contained in the potentially affected states’ respective federally approved CZMA programs. This determination is submitted pursuant to the federal consistency regulation 15 Code of Federal Regulations (CFR) Part 930 Subpart C Section 930.31. Pursuant to the Coastal Zone Management Act of 1972, as amended, federal activities located within or outside the Massachusetts Coastal Zone that may have reasonably foreseeable effects on coastal resources or coastal uses must, to the maximum extent practicable, be implemented in a manner consistent with the enforceable policies of the Massachusetts Coastal Management Program. Based on a determination of insufficient information and inconsistency with the enforceable CZM Ports and Harbors Policy #4, CZM objects to the proposed rule.

The Commonwealth of Massachusetts recognizes the importance of protecting the endangered NARW and the role that vessel speed limits have in reducing vessel strikes to marine mammals. Massachusetts has been a leader in implementing dynamic and seasonal speed limits and was the first to require vessels <65 ft to comply with speed restrictions. Massachusetts also implements regulations to reduce entanglement risks to NARW and other whales by imposing seasonal and dynamic closures to fixed gear fishing and mandating the use of buoy lines designed to break in the



event of entanglement. Massachusetts has also prioritized monitoring of NARW with aerial surveys and forthcoming acoustic monitoring equipment. The Commonwealth continues to support the current seasonal and dynamic speed limits in federal waters, and supports efforts to keep the speed limits updated as whale distributions shift and new data become available.

On August 9, 2024, a meeting was held between CZM, NOAA, and the Massachusetts Division of Marine Fisheries (DMF) to discuss the proposed rule. In that meeting, CZM and DMF requested that NOAA share the NARW sightings data provided by the North Atlantic Right Whale Consortium (“Consortium”) used to inform the formation of the proposed rule. In a letter dated August 12, 2024, CZM requested an extension in the federal consistency review period for the proposed rule to September 3, 2024, to allow CZM and DMF additional time to evaluate the provided sightings data. On August 14, 2024, NOAA granted the extension request. On August 19, 2024, NOAA provided the requested data to CZM. On August 23, 2024, CZM submitted an additional data request to the Consortium for data from 2000-2023 (or most current), and for a greater spatial extent, which included all of Massachusetts state waters. On August 26, 2024, the Consortium provided the requested data to CZM. To allow time to evaluate the data provided by the Consortium and continue the review of the proposed rule, CZM requested an additional extension from NOAA to October 8, 2024. On August 30, 2024, NOAA granted an extension to the federal consistency review period to September 18, 2024.

## **Public Participation**

Pursuant to 15 CFR §930.2, on July 24, 2024, CZM published a public notice of the federal consistency review of the proposed rule in the *Environmental Monitor*, the Massachusetts Environmental Policy Act Office’s bi-weekly publication. During the comment period, which closed on August 14, 2024, CZM received five comment letters opposing the proposed rule's implementation. CZM received one additional comment letter opposing the proposed rule on August 20, 2024, which was considered in CZM’s review. Copies of the comment letters received by CZM are attached to this letter for reference and the paragraphs below provide summaries of the comments received.

Of the six total comment letters received by CZM, two letters were submitted by ferry service companies that transport passengers and goods between mainland Massachusetts and the islands of Nantucket and Martha’s Vineyard. Both letters indicate a safety concern regarding the operation of ferries at the proposed 10-knot speed limit, as well as the significant economic burden and impact on the well-being of Massachusetts residents and businesses that would result from the implementation of the proposed rule. Specifically, the Hy-Line Cruises company, which provides year-round high-speed ferry services to Nantucket, notes that approximately 20,000 school-age athletes, as well as passengers attending medical appointments and critical work crews, are transported to and from mainland Massachusetts and Nantucket during the time period proposed for the SSZ (November 1 – May 30). The proposed rule would eliminate the operation of the high-speed ferry service for a total of seven months. Coupled with the Dynamic Speed Zones (DSZ) during the months of June – October, in which a NARW sighting within the SSZ would result in the implementation of the 10-knot speed rule for a minimum of 10 days, the companies state that the proposed rule would effectively put Hy-Line Cruises and other similar companies out of business. For Hy-Line Cruises specifically, this would result in the loss of 350 jobs, 150 of which are full-time, year-round positions.

Additionally, CZM received comments from the town of Nantucket, the Nantucket Planning and Economic Development Commission (NP&EDC), and New England Development opposing

the proposed rule. In its letter, the town of Nantucket asserts that the proposed rule is arbitrary and capricious given the lack of data on the effectiveness of speed rule restrictions resulting in fewer NARW vessel strikes. The town notes that NOAA's acknowledgement in the NOAA Technical Memorandum NMFS-SEFSC-757 associated with the proposed rule amendment states, "it is not possible to confirm a direct causal link" (page 2) between the decline in observed NARW mortality and speed reduction efforts. The town also references the significant impact the proposed rule will have on its residents' economy and livelihoods due to reduction of ferry services that support the town. The elimination of fast ferry services and the 30% reduction in daily total trips to the island of Nantucket by the standard speed Nantucket Steamship Authority ferry would significantly impact the transportation of goods, groceries, fuel, building materials, gasoline, and essential workforce personnel. The town explicitly notes disruption in the transportation of public safety personnel, medical personnel, and patients and residents traveling for medical appointments and treatments that rely upon the ferry service. In addition, the town Police Chief, Fire Chief, and the Director of Public Works all note the impact the proposed rule would have on public safety, critical operations, and development. Specifically, the proposed rule would disrupt and possibly eliminate routine and emergency safety operations, endangering public safety and health. The NP&EDC described similar concerns and additionally note that the economically disadvantaged and underserved residents of the island and those traveling to the island would be those most affected. Both the town and NP&EDC reference an analysis in production by the Donahue Institute at the University of Massachusetts Amherst that shows a preliminary result of \$187.8 million in lost economic activity in Nantucket if the proposed rule were enacted. New England Development, which owns multiple hospitality venues and the Nantucket Boat Basin in the town of Nantucket, comments that the proposed rule, specifically the impact the proposed rule would have on the ferry services to and from the island, would drastically affect the economy of the town and the residents and businesses that support Nantucket.

The American Pilots' Association (APA) provided comments to CZM opposing the proposed rule citing safety concerns and unsafe working conditions that the proposed rule may create. Specifically, the APA states that pilot boat operators must have the discretion to adjust speed and direction at any given time to optimize safety during transfer operations. Pilots must rely on the maintenance of a safe and sufficient speed to navigate large ocean vessels through areas of cross currents, heavy winds, and two-way vessel traffic in the proposed SSZs. The APA expresses concern that the proposed rule only increases the difficulty of navigating large ocean vessels, increasing the danger faced by pilots during their typical operations. The APA also notes that the proposed rule would result in an economic impact on pilots operating in the SSZs as a result of the costs necessary to comply with the proposed rule.

In addition to the comment letters received by CZM during the federal consistency review, CZM and DMF engaged in additional outreach efforts to stakeholders that may be impacted by the proposed rule. DMF contacted the Stellwagen Bank Charter Boat Association (SBCBA), whose membership includes the for-hire fleet, recreational anglers, and commercial fishermen that fish the state and federal waters of the northeast United States. The SBCBA provided CZM and DMF with a comment letter from SBCBA submitted to NOAA fisheries, dated October 28, 2022, in response to the proposed rule. The letter is attached for reference. In its letter, SBCBA notes that the proposed rule would result in the elimination of the for-hire fishing industry that transits Massachusetts state waters to access Stellwagen Bank and Coxes Ledge. DMF also sent a survey to potentially affected for-hire operators in an attempt to assess the monetary value lost as a result of the proposed rule. Of the 106 owners who were contacted regarding the survey, DMF received responses from 19 owners. These 19 survey respondents reported a total of \$1,085,250 in potential annual monetary value lost

due to the proposed rule. Applying the calculation methods used by the Woods Hole Oceanographic Institution for calculating economic impacts from offshore wind development and for correcting for survey response rates, the total economic impacts could exceed \$10,000,000 annually for the fishing and associated industries in Massachusetts. Beyond the economic impact, DMF estimates that over 50,000 fishing days could be impacted for recreational anglers who book for-hire trips.

On July 19, 2024, a group of State Representatives and Senators submitted a letter to NOAA regarding the proposed rule. This letter outlined many of the concerns the letters submitted to CZM raised, including the imposed economic hardship, safety and medical concerns, and transportation impacts resulting from the proposed rule.

### **Objection Based on Determination of Insufficient Information**

Pursuant to 15 CFR §930.43(b), CZM issues this objection to the proposed rule based upon a finding that NOAA has failed to supply sufficient information to support the implementation of the proposed rule and the claim that the proposed rule is consistent with the enforceable policies of CZM. In accordance with 15 CFR §930.39, for a federal agency activity that requires federal consistency review, “the consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement.” The data and information provided by NOAA in its consistency determination for the proposed rule is not comprehensive nor sufficient to determine if the proposed rule is consistent with CZM enforceable policies to the maximum extent practicable. The data and information provided and the concerns CZM has with it are outlined in the following three sections on NOAA’s risk modelling, additional data and information informing the rule, and the economic impacts the rule will have.

### **Vessel Strike Mortality Risk Model**

Given the available NARW survey data, it appears that the Sounds are neither a migratory corridor nor a feeding ground for the NARW. Inclusion of the Sounds in the proposed Atlantic SSZ is based on vessel strike mortality risk modeling that is limited by shortcomings of whale density model inputs. NOAA utilized the vessel strike mortality model developed by Garrison et al. (2022) as part of the analysis to evaluate the spatial and temporal distribution of vessel strike mortality risk for the NARW. The model uses a range of components including encounter risk, parameters of whale behavior (including the probabilities of successfully avoiding a vessel and of being present near the surface), probability of mortality when a strike occurs as a function of vessel speed, survey-based whale density estimates, and vessel distribution. The data used for the NARW distribution layer in the vessel strike risk model had zero NARW sightings in the areas of Nantucket Sound and Vineyard Sound from 2003-2020, despite the presence of survey coverage in those areas (Roberts et al. 2024). Since the surveys data contains zero sightings in the Sounds, the abundance values for NARW in these areas of the whale density maps appear to be an artifact of the predictive model, likely based on similar environmental variables in adjacent grid cells that do have whale sightings. The effect of this “spillover” effect on whale distribution is seen in the outputs of the vessel strike risk model, which overlays whale density with vessel traffic and artificially amplifies the risk in the Sounds.

Furthermore, since the vessel density input to the mortality risk model is AIS data, and AIS is only required on vessels 65 ft or greater, the model does not accurately represent risk for 35 ft-65 ft vessels. The expected risk reduction achieved with the proposed rule is made more uncertain by the



lack of complete data on the smaller vessels that will now be subject to the rule. By including the Sounds in the proposed rule, NOAA appears to have weighted heavily the incomplete data on the presence of vessel traffic with minimal and insufficiently robust NARW distribution data in these areas to determine risk.

### **Nantucket and Vineyard Wind Sound Right Whale Sightings and Acoustic Detections**

According to the Draft Environmental Assessment, NOAA supplemented the vessel strike mortality risk model outputs with additional opportunistic sightings, acoustic detections of right whale presence, and additional information on future activities that might impact vessel traffic, including proposed and leased wind energy sites and U.S. Coast Guard proposed vessel safety fairways to identify areas of highest risk.

To both CZM and DMF's knowledge, no NARW vessel strikes have been documented in either Vineyard or Nantucket Sounds, despite the relatively high volume of vessel traffic in these areas. While there have been occasional opportunistic sightings of NARWs in the Sounds, no aggregations have been observed there, and only one sighting of a live NARW in the Sounds has occurred since 2015. Many of the sightings are uncertain and were made by non-experts. CZM, in partnership with DMF, analyzed the NARW sightings data provided by the Consortium. The data provided for the Sounds show 26 sighting events from 2000-2023 with a total of 58 potential NARWs sighted. All the sightings were documented as opportunistic, with 25 of the 26 reports provided by non-experienced marine mammal observers. The data are coded for the reliability of the observer's judgment about the identity of the species observed, which includes Unsure/Possible, Probable, and Sure/Definite. Of the 26 opportunistic sighting events, 50% ( $n=13$ ) were Sure/Definite sightings, 35% ( $n=9$ ) were Probable, and 15% ( $n=4$ ) were Unsure/Possible. Unsure/Possible sightings are not confirmed as NARW sightings and should not be used in analyses. Of the opportunistic sightings in the Sounds from 2000-2023, 42% ( $n=11$ ) occurred in April. The month with the second most sightings was July with 5 sightings (20%). Around 69% of total sightings occurred in the Sounds during the proposed November – May seasonal management time period. The data show that only a single sighting of a live NARW has occurred since 2015, which was coded as Probable.

In addition to the data provided by the Consortium, three deployments of bottom-mounted acoustic monitoring moorings have occurred to date in Nantucket Sound. These deployments occurred from November – July 2010 and 2011 for a total of 277 days of operation. During that time, only a single day in mid-January 2011 had a possible, but not confirmed, acoustic detection of a NARW, indicating that on 99.9% of the listening days, no NARW were detected within the detection range of the hydrophones, which is approximately 5 nautical miles.

### **Economic Analysis**

The data and information provided by NOAA that analyzes the economic impact of the proposed rule are not comprehensive nor sufficient to evaluate the proposed rule for consistency with CZM's enforceable policies. In the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis conducted by NOAA for the proposed rule, for the preferred alternative, alternative 5, Table A-12 of the report provides "The total estimated costs by affected vessels in active SSZs and DSZs by service type under Alternative 5" (Office of Protected Resources, 2022). The values documented for impacts to commercial fishing, passenger vessels, pilot vessels, and recreational vessels when combining vessels  $\geq 35$  ft and  $< 65$  ft, and vessels  $\geq 65$  ft in length are \$502,168, \$11,849,124,

\$3,178,259, and \$1,188,668 respectively, which represent the total estimated costs for affected vessels across the entire Atlantic Coast. Given the estimates provided by affected stakeholders in comment letters to CZM, and DMF's estimates based on survey data collected for for-hire fishing vessels, the values provided by NOAA significantly underestimate the economic burden of the proposed rule on Massachusetts Coastal Zone uses. Furthermore, the estimated costs provided by NOAA do not take into account the economic impact the proposed rule will have on the economies of coastal communities that rely on the ferry services transiting the Vineyard and Nantucket Sounds that supply transport of goods, services, and passengers. Based on this evaluation, the economic impact of the proposed rule as described by NOAA is neither comprehensive nor sufficient to evaluate the proposed rule for consistency with CZM enforceable policies.

### **Objection Based on Determination of Adverse Coastal Effects as Inconsistent with Policies**

Pursuant to 15 CFR §930.43(a), CZM issues this objection to the proposed rule based upon a finding that the proposed rule is inconsistent with specific enforceable policies of CZM. As stated above, the estimated costs of the preferred alternative of the proposed rule significantly underestimate the economic burden the proposed rule will have on Massachusetts coastal communities and coastal zone uses. If implemented, the proposed rule would adversely affect and significantly disrupt the Massachusetts for-hire fishing industry, the ferry service industry, and the coastal communities that rely on these services, including for public safety purposes. In order to be consistent with Ports and Harbors Policy #4 of the Massachusetts Coastal Management program, which is implemented in accordance with the Public Waterfront Act, M.G.L. c. 91 and the regulations at 310 CMR 9.00, CZM must find that projects "shall not significantly disrupt any water-dependent use in operation ... Additionally, the rules hold that no proposed project may displace any water-dependent use that has occurred on the site within five years prior to the date of license application." Although the proposed rule will not be required to obtain a Chapter 91 license in accordance with the regulations at 310 CMR 9.00, pursuant to 15 CFR §930.39(e), "Even when Federal agencies are not required to obtain State permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program." Due to the adverse effects the proposed rule will have on water-dependent uses in the Massachusetts Coastal Zone, including the displacement of water-dependent uses such as the for-hire fishing industry and the ferry service industry, CZM cannot find the proposed rule consistent with the enforceable Ports and Harbors Policy #4.

### **Proposed Alternative Measures**

Pursuant to 15 CFR §930.43(a)(1), CZM offers the following alternatives, which if adopted by NOAA, would allow the proposed rule to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the Massachusetts Coastal Management program.

Given the significant adverse effects the proposed rule will have on water-dependent uses in the Massachusetts Coastal Zone, specifically within Vineyard and Nantucket Sounds, one alternative would be to exclude the Sounds from the SSZ implemented by the proposed rule.

In the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis conducted by NOAA for the proposed rule, NOAA identified five regulatory alternatives. Alternative 2 would restrict the speed of most vessels  $\geq 35$  ft and  $< 65$  ft in length to 10 knots or less within current Seasonal Management Areas (SMAs), while Alternative 4 would combine Alternative 2 with a new

mandatory DSZ framework. Specifically, Alternative 4 establishes that “Under the new DSZ framework, mandatory speed reduction zones would be triggered when certain levels of right whale detections occur outside of active SMAs and there is a greater than 50% likelihood the whales will remain within the designated DSZ while effective. Speed restrictions within designated DSZs would apply to the same vessels subject to speed restriction within SMAs.”

The Commonwealth of Massachusetts recognizes the importance of protecting the endangered NARW and has implemented measures to protect the species while they transit Massachusetts state waters. Beginning in 2018, DMF has implemented seasonal speed limits of 10 knots for March and April in Cape Cod Bay, and Massachusetts was the first state in the nation to require vessels <65 ft to comply with speed restrictions. Massachusetts supports efforts to keep speed rules current, including changing the speed rule zones and times of year when changes are based on new data or shifting NARW distributions, applying the current speed limits to 35 ft-65 ft vessels with appropriate safety exceptions, and making the DSZ mandatory by placing speed limits where and when NARW are active. Additionally, DMF, as part of a broader regional monitoring network with NOAA and other coastal states bordering the Atlantic Ocean, will be implementing a passive acoustic monitoring program for NARW in 2024. As part of this program, a year-round archival buoy will be installed in Nantucket Sound to monitor for NARW detections. The Commonwealth of Massachusetts also recognizes the potential to expand monitoring efforts to the utilization of real-time buoy deployment to dynamically manage for NARW.

## **Required Statement**

As stated above, CZM affirms again its objection to the proposed rule because (1) NOAA has failed to supply sufficient information to support the implementation of the proposed rule and the claim that the proposed rule is consistent with the enforceable policies of the Massachusetts Coastal Management program; and (2) the proposed rule is inconsistent with specific enforceable policies of CZM, namely the enforceable Ports and Harbors Policy #4. With this letter, CZM has exercised its right to ensure that concurrence may not be interpreted by detailing an objection to the proposed rule. Therefore, should the matter be interpreted and treated as an objection, the following statement shall apply:

Pursuant to 15 CFR §930.43(d), if resolution has not been reached at the end of the 90-day period, NOAA should consider using the dispute resolution mechanisms outlined in 15 CFR §930.44 and postpone the final action until the problems have been resolved. NOAA shall not proceed with the proposed rule over CZM’s objection unless NOAA has concluded that under the “consistent to the maximum extent practicable” standard described in section 930.32 consistency with the enforceable policies of the Massachusetts Coastal Management program is prohibited by existing law applicable to NOAA and NOAA has clearly described, in writing, to the CZM the legal impediments to full consistency or NOAA has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the CZM agency objects. In accordance with 15 CFR §930.44, either NOAA or CZM may request the Secretarial mediation or the Office of Ocean and Coastal Resource Management mediation services provided for in subpart G of 15 CFR §930.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Brizius', is positioned above the printed name.

Alison Brizius  
Director, Office of Coastal  
Zone Management

Cc: Tyler Soleau, MA CZM  
Sean Duffey, MA CZM  
Dan McKiernan, MA DMF  
David Kaiser, NOAA OCM  
Kerry Kehoe, NOAA OCM  
Kate Swails, NOAA OCM  
Caroline Good, NOAA Fisheries  
Deborah Ben-David, NOAA  
Jeffrey Payne, NOAA



## References

Garrison, L.P., Adams, J., Patterson, E.M., and Good, C.P. 2022. Assessing the risk of vessel strike mortality in North Atlantic right whales along the U.S East Coast. NOAA Technical Memorandum NOAA NMFS-SEFSC-757: 42 p.

Office of Protected Resources, National Marine Fisheries Service. 2022. Draft regulatory impact review and initial regulatory flexibility analysis for amendments to the North Atlantic right whale vessel strike reduction rule. National Oceanic and Atmospheric Administration: 61 p.

Office of Protected Resources, National Marine Fisheries Service. 2022. Draft Environmental Assessment for amendments to the North Atlantic right whale vessel strike reduction rule. National Oceanic and Atmospheric Administration: 80 p.

Roberts J.J., Yack T.M., Fujioka E., Halpin P.N., Baumgartner M.F., Boisseau O., Chavez-Rosales S., Cole T.V.N., Cotter M.P., Davis G.E., DiGiovanni Jr. R.A., Ganley L.C., Garrison L.P., Good C.P., Gowan T.A., Jackson K.A., Kenney R.D., Khan C.B., Knowlton A.R., Kraus S.D., Lockhart G.G., Lomac-MacNair K.S., Mayo C.A., McKenna B.E., McLellan W.A., Nowacek D.P., O'Brien O., Pabst D.A., Palka D.L., Patterson E.M., Pendleton D.E., Quintana-Rizzo E., Record N.R., Redfern J.V., Rickard M.E., White M., Whitt A.D., Zoidis A.M. (2024). North Atlantic right whale density surface model for the U.S. Atlantic evaluated with passive acoustic monitoring. *Marine Ecology Progress Series* 732: 167-192. doi: 10.3354/meps14547

Nantucket and Martha's Vineyard Ferries  
Hyannisport Harbor Cruises  
Cape Cod Canal Cruises  
Deep-Sea Fishing  
Cape Cod Custom Tours  
Nantucket Island Tours



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August 1, 2024

Mr. Sean Duffey  
Project Review Coordinator  
Massachusetts Office of Coastal Zone Management

Re: Hy-Line Cruises' Comments to Proposed Changes to the North Atlantic Right Whale  
Vessel Strike Regulations

Good afternoon.

My name is Philip Scudder and I, along with my brother Murray, are the Managing Partners of Hy-Line Cruises.

Hy-Line Cruises is a privately owned, passenger only, ferry company located at 22 Channel Point Road in Hyannis, Massachusetts. We provide year-round, high-speed ferry service to the Island of Nantucket and seasonal, (May thru October), high-speed ferry service to Martha's Vineyard Island. We began our ferry operations in 1971 with traditional ferries operating seasonally. In 1996, we introduced high-speed technology to our Nantucket service and expanded to a year-round operation. We have continued that year-round service, uninterrupted, for the past 28 years. We transport the majority of passengers who travel to the Islands from Hyannis, carrying more than 900,000 passengers per year.

Hy-Line understands and supports the desire to protect the North Atlantic Right Whale population from ship strike, however, this must be accomplished through reasonable regulation, taking into consideration the wellbeing of the residents and businesses that will be impacted by these changes. In our area, those would be the communities on the islands of Nantucket and Martha's Vineyard. Consideration should also be given to the ferry operators who are mandated or licensed to transport passengers and goods to the Islands.

ADMINISTRATION  
22 Channel Point Road, Hyannis, MA 02601  
phone (508) 775-7185  
fax (508) 778-5966  
[www.hylinecruises.com](http://www.hylinecruises.com)

MARKETING  
phone (508) 790-7280

GROUP SALES<sup>1</sup>  
phone (508) 778-2688





To that end, Hy-Line Cruises, respectfully, requests: **The exemption of Nantucket and Vineyard sounds from the expanded Right Whale Strike Regulations being proposed by the National Oceanic and Atmospheric Administration (NOAA).**

1. THE WATERS OF THE SOUNDS

The existing, and now proposed expanded regulations, exempt other specific bodies of water in this area. Those being Long Island Sound, Narraganset Bay, and Buzzards Bay. We believe the reasons that qualify these waters for an exemption should also apply to Nantucket and Vineyard sounds.

The Sounds are shallow, warm bodies of water when compared to the surrounding seaward waters south and east of the Islands and those in Cape Cod Bay. They do not provide the desired habitat for Right Whales to congregate and forage. This probably explains why a Right Whale sighting is extremely rare and a ship strike has never been documented in these waters.

Hy-Line makes over 4,600 crossings of Nantucket Sound each year, and in its more than 50 years of operating ferries in these waters and making over 100,000 crossings, there has never been a Right Whale strike by a Hy-Line ferry nor has there been even a report of a sighting of a Right Whale by a Hy-Line Captain or crew member. Additionally, to our knowledge, there has never been a Right Whale strike or sighting by any other ferry operating in Nantucket Sound during this same time.

It's also important to note that since the inception of the existing regulations, there has never been a temporary Dynamic Management Area (DMA) declared in Nantucket Sound even during the November thru May timeframe now being proposed for a Seasonal Mandatory Speed Zone, which would be the most probable time for this to occur. This again, points to the fact that Right Whales simply do not frequent Nantucket Sound.





## 2. PROPOSED NEW SPEED RESTRICTIONS WILL HAVE A DEVASTATING IMPACT

Hy-Line's introduction of year-round, high-speed ferry service to Nantucket in 1996 was the beginning of a steady transformation in the quality-of-life for families living on the Island. There is no bridge or tunnel connecting Nantucket to the mainland. For decades island residents had to arrange their travel around a 2–3-hour ferry ride, in each direction, to reach the mainland. Consequently, many didn't leave the Island unless it was absolutely necessary. Technology changed that. Because the trip to the mainland is now only 1 hour in each direction aboard high-speed ferries, islanders can travel off-island at their convenience. They have become part of the wider mainland community. School and youth athletic programs can compete more fully statewide. And other off-island programs for dance, music, gymnastics, and more, which had never been a practical option for islanders, are now available for island families to access. During the 7 months being proposed for the Seasonal Mandatory Speed Zone, (Nov. 1 - May 31), Hy-Line carries more than 20,000 school age athletes between Nantucket and Hyannis. Having a year-round, high-speed ferry service allows for convenient, timely, travel for medical appointments. And it is now possible for work crews to travel from the mainland to Nantucket daily to help meet the infrastructure and project demands of the public sector, utility companies, and community businesses on the Island.

The expanded regulation being proposed to create a Seasonal Mandatory Speed Zone, (Nov. 1 – May 31), will totally eliminate Hy-Line's passenger ferry service for seven months. Our ferries were designed and built to operate at speeds between 25 – 35 knots. It is not economically feasible nor is it safe to operate these ferries at 10 knots in open waters.

Also, under the new regulations, during the remaining 5 months, (June 1 – Oct. 31), when high-speed travel would be allowed to resume, Dynamic Speed Zones can be created in Nantucket Sound, each lasting a minimum of 10 days, if implemented. This would have a huge negative effect on the traveling public and the economic viability of Hy-Line Cruises because of the high volume of travel during this time of year. We carry 65% of our total passengers during these 5 months. More than half of those travel in July and August alone, when we make as many as 36 daily departures to, from, and between the islands and carry up to and above 5,000 passengers per day.





Astonishingly, as currently proposed, a Right Whale sighting in Cape Cod Bay would impose the speed restriction in Nantucket Sound even though there is the land mass of Cape Cod separating those two bodies of water.

Couple this with the proposed, new Seasonal Mandatory Speed Zone, and Hy-Line Cruises would very likely be put out of business. It would mean the loss of approximately 350 jobs, 150 of which are full-time, year-round. To quantify the adverse effect on the economy, a full economic impact study should be written before any of these proposed changes are adopted. We see the negative economic impact on the islands of Nantucket, Martha's Vineyard and surrounding ports would easily be in the hundreds of millions of dollars.

### 3. GENERAL INFORMATION ABOUT THE ISLAND FERRY SYSTEM

Ferry service between the mainland of Cape Cod and the islands of Nantucket and Martha's Vineyard is mandated by Massachusetts state law through the Enabling Act which was created in 1960 and amended in 1974. The Act was further enhanced through licensing which has created a unique, public/private, ferry transportation system that ensures island residents access to the goods, services, and necessities of life required for the 21<sup>st</sup> century. And now, over 80% of all passengers traveling between Hyannis and Nantucket use the high-speed option.

This "unique in the country" public/private ferry transportation system is comprised of two ferry companies – the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, a public entity, and the privately held, Hy-Line Cruises.

The Steamship Authority (SSA) is, by its enabling statute, "the lifeline" to both Nantucket and Martha's Vineyard, carrying passengers, automobiles, trucks, and freight, year-round.

Hy-Line Cruises, as the year-round provider of high-speed passenger service to Nantucket, is now considered by many on that Island as, "the second lifeline".





#### 4. NEGATIVE IMPACT ON A FEDERAL HIGHWAY ADMINISTRATION PROGRAM

Hy-Line Cruises and the Steamship Authority are part of the Federal Highway Administration's National Transit Database Program (NTD).

This program works through the Cape Cod Regional Transit Authority to provide important commuter travel data that is compiled to document intermodal connectivity along federal highways and across the maritime highway of Nantucket Sound. The program requires commuter connections between the mainland ports on Cape Cod with the islands of Nantucket and Martha's Vineyard.

If the proposed NOAA regulations are implemented, the ferries will lose the ability to provide commuter connections to and from the islands on an uninterrupted basis which will result in the loss of millions of dollars in federal grant revenue being used to improve intermodal transportation on the mainland of Cape Cod and the Islands.

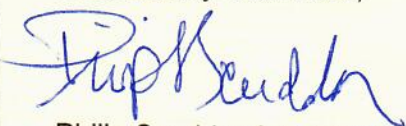
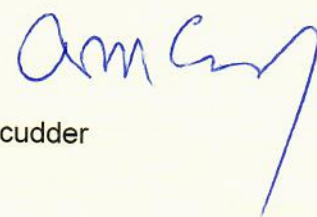
#### IN CONCLUSION:

For all the reasons stated above, Hy-Line believes that the waters of Nantucket Sound and Vineyard Sound should be exempt from NOAA's proposed Seasonal Mandatory Speed Zone (Nov. 1 – May 31) and from any Dynamic Speed Zone (June 1 – Oct. 31).

Hy-Line Cruises will cooperate with NOAA to deploy and utilize any technology on our vessels that is currently available or may become available in the future, to assist in tracking the location of Right Whales and protecting the North Atlantic Right Whale species.

Thank you for your consideration.

Respectfully Submitted,

   
Philip Scudder & R. Murray Scudder  
Managing Partners  
HY-LINE CRUISES

**From:** [charterwhitecap \(null\)](#)  
**To:** [Duffey, Sean \(EEA\)](#)  
**Subject:** 10 mph  
**Date:** Friday, August 2, 2024 10:32:05 AM

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**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Sean, Captain Brad White here from White Cap Charters from scituate ,

My thoughts are opposing the proposed 10 mile an hour ban as proposed because I do not believe it'll solve any issues at hand, it will negatively and deeply impact our struggling charter

business and I believe it to be government overreach into solutions that Won't necessarily work.

Thank you

Brad White

White Cap charters LLC, Marshfield, Massachusetts



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August 14, 2024

**George X. Pucci**  
[gpucci@k-plaw.com](mailto:gpucci@k-plaw.com)

**BY ELECTRONIC MAIL ONLY** ([sean.duffey@mass.gov](mailto:sean.duffey@mass.gov))

Mr. Sean Duffey  
Massachusetts Office of Coastal Zone Management  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: Town of Nantucket – Comments on the Coastal Zone Management Act Consistency  
Determination for the Proposed Amendment to the North Atlantic Right Whale Vessel Strike  
Reduction Rule

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Dear Mr. Duffey:

This firm represents the Town of Nantucket, Massachusetts (Town). Please accept this letter as the Town's written comments on the Office of Coastal Zone Management's Consistency Determination pursuant to the Coastal Zone Management Act for the National Marine Fisheries Service (NMFS), the National Oceanic and Atmospheric Administration (NOAA), and the Department of Commerce (Commerce)'s Proposed Rule entitled "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule."<sup>1</sup> See 16 USC § 1451 et seq.

At the outset, the Town emphasizes that the protection of the endangered North Atlantic Right Whale is of critical importance and it commends all efforts to do so. That said, rules aimed at protecting the species must be rooted in science, sound analysis, and decision-making with a rational basis. Given that there are other potential strategies to better detect and reduce vessel strikes that do not impact the Town's economy and Massachusetts coastal waters and uses on such a large scale, those impacts should be analyzed in further detail before adoption of the rule. In the alternative, an exemption for Nantucket Sound must be included in the proposed rule.

As currently drafted, the rule does not carve out an exception for Nantucket Sound, as it does for nearby waters in Buzzards Bay, Long Island, and Narragansett Bay. Considering the existing documentation (or lack thereof) of vessel strikes or observances of the North Atlantic Right Whale in Nantucket Sound, the proposal is arbitrary and capricious and inconsistent with law. As such, the Town strongly opposes the proposed rule without an exemption for Nantucket Sound and urges the Massachusetts Office of Coastal Zone Management to deem it inconsistent with coastal uses and resources in Massachusetts, as set forth in detail below.

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<sup>1</sup> NMFS, NOAA, Commerce, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 50 C.F.R. Part 224, available at <https://www.federalregister.gov/documents/2022/08/01/2022-16211/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule/>.



Mr. Sean Duffey  
August 14, 2024  
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## **I. BACKGROUND**

NOAA states that the North Atlantic Right Whale (*eubalaena glacialis*) is at increased risk of mortality or serious injury due to vessel strikes because they spend a lot of time at or close to the water surfaces and are difficult to see due to their dark color and lack of dorsal fin.<sup>2</sup> In 2008, NMFS/NOAA first established a rule aimed at the species' protection by establishing a seasonal 10-knot speed limit on certain vessels along the U.S. East Coast, in an attempt to reduce the likelihood of mortalities and injuries from vessel strikes. Since its adoption in 2008, there have been calls to expand and incorporate emerging technologies to map and detect the whale species that could be used more accurately to protect them, instead of reducing vessel speeds, increasing the safety risks for maritime transportation, and disrupting economies all along the coast where such vessel speed reductions have not been causally demonstrated to protect the species.

Indeed, in 2020, NOAA analyzed the impact of the existing speed reduction rule to "evaluate how effective it is at reducing the incidence of right whale mortality and serious injury due to vessel strikes and where it could be improved."<sup>3</sup> Although certain incidents have been reduced, NOAA ultimately concluded that it was "not possible to determine a direct causal link" between speed reduction efforts for vessels and protection of the right whale.<sup>4</sup> In proposing the 2022 amendment, NOAA itself expressly stated that "it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events following implementation of the [2008] speed rule."<sup>5</sup>

Due to the lack of causation between the rule and its intended effect, the use of alternate technologies should be explored further, so as to maintain consistency with Massachusetts coastal uses and resources. In or around 2008, NOAA stated that it was "committed to identifying and developing technological advances proven effective in reducing ship strikes," though none had existed at the time, including conducting technology reviews and to "engage the maritime industry and the scientific community to research progress in developing technological, efficient, and effective methods to address the threat of ship strikes."<sup>6</sup> For example, Canada has invested in developing technology such as underwater microphones, acoustic technology, and imaging to forecast and detect right whales more effectively in real-time, so as to alert vessels to the presence of whales and prevent collisions.<sup>7</sup> Rather than analyze and invest in this more effective technology, however, NMFS and NOAA have proposed a rule which would significantly hinder the livelihoods and economics of the Town, the coastal waters and resources of the island and the mainland, and in Nantucket Sound and beyond.

Given that there is no established causation between reduction in certain vessel speeds and right whale protection, let alone a determination of how expanding the rule to include vessels from 35-65 feet in length will further reduce the risk of vessel strikes, the Town submits that the proposal is arbitrary and capricious and

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<sup>2</sup> NOAA, Right Whale Migration in an Urban Ocean, available at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>.

<sup>3</sup> NOAA, North Atlantic Right Whale Speed Rule Assessment, at 1-2 (June 2020), available at [https://www.fisheries.noaa.gov/s3/2021-01/FINAL\\_NARW\\_Vessel\\_Speed\\_Rule\\_Report\\_Jun\\_2020.pdf](https://www.fisheries.noaa.gov/s3/2021-01/FINAL_NARW_Vessel_Speed_Rule_Report_Jun_2020.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> NMFS, NOAA, Commerce, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 50 CFR Part 224, available at <https://www.federalregister.gov/documents/2022/08/01/2022-16211/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule/>.

<sup>6</sup> NMFS, NOAA, Commerce Final Rule, October 10, 2008, available online at <https://www.federalregister.gov/documents/2008/10/10/E8-24177/endangered-fish-and-wildlife-final-rule-to-implement-speed-restrictions-to-reduce-the-threat-of-ship>.

<sup>7</sup> Fisheries and Oceans Canada, available online at <https://www.dfo-mpo.gc.ca/species-especes/mammals-mammiferes/cetacean-cetaces/protecting-protection/index-eng.html>.

Mr. Sean Duffey  
August 14, 2024  
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inconsistent with law. In Nantucket Sound, requiring speed reduction for vessels that are 35-65 feet includes the high-speed ferry services to and from the island, which will be unable to travel from November 1 through May 30 of the year. The Nantucket Steamship Authority, which is legislatively created through St. 1960, c. 701, as amended, to provide for the “transportation of persons and necessities of life for the islands of Nantucket ...” will be unable to provide its services during seven months of the year. See Exhibit A, Letter from the Steamship Authority, attached hereto. These high-speed ferry providers who travel to and from the island numerous times per day have stated that there have been no documented right whale sightings (let alone ferry vessel collisions) in the Nantucket Sound, for 25 years. Ex. A. The commercial fishers concur and have never seen right whales in their frequent travels in Nantucket Sound.

The potential impact on coastal uses and resources, including the direct and secondary economic effects, is further detailed below.

## **II. LEGAL STANDARD**

Section 307 of the Coastal Zone Management Act of 1972 (the “Act”) gives states a strong voice in federal agency decision-making when a proposed rule concerns activities that may affect a state’s coastal uses or resources. See 16 U.S.C. §§ 1451-1464. To that end, when a federal action will have reasonably foreseeable effects on coastal uses or resources, it must be deemed to be consistent with the enforceable policies of a state’s coastal management plan to be approved. See 16 U.S.C. § 1456(c)(1)(A).

The phrase “any coastal use or resource” means “any land or water use or natural resource of the coastal zone.” 15 C.F.R. § 930.11(b). Coastal uses or resources “include, *but are not limited to*, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects.” *Id.* An “Effect on coastal use or resource” is defined as “any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity or federal license or permit activity.” 15 C.F.R. § 930.11(g). Effects may impact coastal use; may be direct or secondary; and may result from the incremental impact of past, current, or future action. 15 C.F.R. § 930.11(g).

Here, as set forth below, the proposed rule and its results will have an impermissible effect on the coastal uses and resources in Nantucket Harbor, Nantucket Sound, the Town and County of Nantucket, and along the coastal waters of Massachusetts. Specifically, it will have direct and secondary impacts on public access and transportation to and from the island (including ferry services for residents to obtain medical access, public safety, tourism, schools, housing, food, and fuel, among others), the economy, fishing and recreation, development, scenic and aesthetic enjoyment, and hazard management in the Town and County of Nantucket. Among other impacts and inconsistencies, the Office of Coastal Zone Management should deem the project impermissibly inconsistent with Massachusetts law and policies and oppose it, or else request an exemption for Nantucket Sound.

## **III. THE PROPOSED AMENDMENT IS INCONSISTENT WITH COASTAL USES AND RESOURCES IN AND AROUND NANTUCKET SOUND.**

Based on the numerous impacts to coastal uses and resources outlined by various industries in the letters and exhibits attached hereto, as well as will be supplemented with a final report from UMass Amherst’s

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Donahue Institute, the proposed rule plainly would be inconsistent with and have an impermissible effect on coastal uses and resources of the Town and County of Nantucket, by and through the Nantucket Sound and its connection to the mainland.

***A. Public Access to the Island Will be Impacted, Where the High-Speed Ferry Service Would Be Terminated for the Majority of the Year.***

The proposed expansion to include vessels from 35 to 65 feet will prohibit the Nantucket Steamship Authority, as the only lawful transporter of the island's essential food, medicine, and fuel, from travelling to and from the island from November 1 through May 30 of every year. Ex. A. The restriction would eliminate the fast ferry service to the island altogether and would cut the total trips per day by 30%, which is one of the only means by which groceries, goods, fuel, building materials, gasoline, and the essential workforce can travel to and from the island. It would also impact medical care, food access, essential workforce commuting, and increase the already-existent housing crisis on the island.

As preliminary findings from the UMass Amherst's Donahue Institute Report suggest:

- According to the U.S. Decennial Census, there are 1,245 people who live off island and work in Nantucket. Given their daily commute would be six hours with the vessel speed restriction, we assume they would no longer come. And with local home prices being what they are, we also assume they would not move to the island. Losing these workers for seven months results in \$187.8 million of lost economic activity in Nantucket. Tax revenue impacts are \$25 million, including nearly \$18 million in federal, \$4 million state, and \$3 million local.
- During the seven months in question from November through May, off island residents spend approximately \$41 million in Nantucket. A significant portion of that is attributable to commuters and day trippers and is at risk.
- Using data from IMPLAN, it is estimated that \$337 million of goods move back and forth between the mainland and Nantucket during the November through May period. Given that a third of freight capacity will be lost, that puts \$112 million of goods at risk.

Notably, These preliminary findings do not yet include any visitation changes during these months, which would include fewer people coming to the island for Thanksgiving, the Christmas Stroll, April's Daffodil Festival, and Figawi Race weekend, some of the island's main visitation events.

The Nantucket Planning and Economic Development Commission, Conservation Commission of Nantucket, and Town and County of Nantucket have similarly detailed potential economic impacts in letters which are attached hereto as Exhibit B. Likewise, the Nantucket Island Chamber of Commerce has detailed the impacts to the island in a letter attached hereto as Exhibit C.

***B. Medical Services and Education Would Be Disrupted.***

The proposed rule also would disrupt critical access to medical care for island residents, including the ability of hospital patients and residents to seek medical care on the mainland and back. See Exhibit D, Letter

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from Mass General Brigham. Specifically, during the months of November through May, the hospital relies on weekly, bi-weekly, and monthly visits from physicians in 28 critical subspecialties such as Cardiology and Oncology to provide care for island residents. Id. Without high-speed ferry service, and with the additional complication of slower and reduced car ferries, these visits could be terminated and residents would either have to make their way off island or defer critical care. Id. The same is true for behavioral health needs, as there are no behavioral health facilities on Nantucket, so patients must be sent to a mainland facility. Id. Critical medicines and (perishable) pharmaceutical supplies also would be halted. Id.

Further, the rule would impact the Nantucket Public Schools, as it would make it impossible to hire teachers and staff that can afford to live on Nantucket, and would in particular impact the students with special needs who are subject to contracts with staff who commute to the island from the mainland and who would be unable to do so. See Exhibit E, Letter from Nantucket Public Schools. Student athletes could not compete and food programs for low-income students would be disrupted as well. Id.

### ***C. Public Safety, Critical Operations, Environmental, and Development Impacts.***

The Nantucket Police Chief, Fire Chief, and the Director of Public Works have also noted the disruption in public safety, critical operations, and development that would result from this proposed rule. See Exhibit F, Testimony from Police Chief, Fire Chief, and DPW Director. Specifically, the rule would hinder, if not eliminate, routine operations of Nantucket's public safety departments who must travel from and return to the island in a single day to transport child abuse victims to Cape Cod, deliver and retrieve evidence from crime labs, and attend educational training programs on the mainland. Id.

Further, without the high-speed ferry service, the Town's vulnerable populations will suffer, as there is no Massachusetts Department of Children and Families (DCF) caseworker on Nantucket. Ex. F. The same is true for mental health and addiction services, where there is no DCF provider. Id. The Fire Department and Police force are already impacted by the existing housing crisis and many live on the mainland and commute to Nantucket for work every day by high-speed ferry, which they will be unable to do, threatening the ability of the island to staff critical public safety positions. Id.

Finally, the island's critical recycling and waste operations, along with other environmental health concerns on the island, will be hindered by the reduction in high-speed ferry services for seven months per year. Id. The ability to get consultants to conduct infrastructure repair for critical projects from November through May (during the seasons of major storms, ice, and snow events) will be impacted, among other concerns. Ex. F. The DPW relies upon the Steamship Authority's freight hauling capabilities to maintain access to public infrastructure during the harshest weather months on the island. Id. The safety of boaters who have to travel at reduced speeds during harsh weather conditions is a further likely result of this rule, further demonstrating inconsistency with coastal uses and resources.

## **IV. CONCLUSION**

In short, the potential impact of this rule has been grossly underestimated. The Town has endeavored to comment briefly on some of the inconsistencies with coastal use and resources resulting from the proposed rule, but this letter does not begin to cover all the potential impacts that the Town and County of Nantucket, along with the State of Massachusetts, may experience from the proposed rule. The Town further reserves the right to supplement this letter with a final report from UMass Amherst's Donahue Institute.



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The Town, therefore, requests that Nantucket Sound be exempt from these new speed restrictions. There has never been a documented right whale sighting by the ferry service providers, nor a documented strike of a North American Right Whale by a ferry service provider. Exempting the Nantucket Sound and/or the high-speed ferry providers is a simple and effective means of allowing the island to retain its essential services and livelihood without harming the species.

Like other coastal states experiencing similar impacts have taken issue with the amendment,<sup>8</sup> the Town urges the Massachusetts Office of Coastal Zone Management to oppose the rule for its inconsistency with state coastal uses and resources and request an exemption for Nantucket Sound.

Please contact us with any questions.

Very truly yours,



George X. Pucci



Devan C. Braun

GXP/DCB/asc

Enc.

cc: Town Manager  
Assistant Town Manager  
Planning Director  
Select Board

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<sup>8</sup> See, e.g., Georgia's Coastal Resources Division, Letter to NOAA (Feb. 22, 2024), available online at <https://gadnrlc.org/sites/default/files/crd/pdf/PressReleases/CRD%20Vessel%20Strike%20Reduction%20Rule%20Effects%20and%20Policies%20Letter%20022223.pdf>.

# Exhibit A



## Woods Hole, Martha's Vineyard and Nantucket Steamship Authority

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### AUTHORITY MEMBERS

**MOIRA E. TIERNEY**  
New Bedford Member, Chair

**ROBERT F. RANNEY**  
Nantucket Member, Vice Chair

**ROBERT R. JONES**  
Barnstable Member, Secretary

**JAMES M. MALKIN**  
Dukes County Member

**PETER J. JEFFREY**  
Falmouth Member

**ROBERT B. DAVIS**  
General Manager

**MARK K. ROZUM**  
Treasurer/Comptroller

**TERENCE G. KENNEALLY**  
General Counsel

October 28, 2022

By: Electronic Submission - <https://www.regulations.gov/>

Department of Commerce  
National Marine Fisheries Service (NMFS),  
National Oceanic and Atmospheric Administration (NOAA)  
1401 Constitution Ave. N.W. Hoover Bldg. Rm 5128  
Washington, DC 20230

Re: Comments on Proposed Amendments to the  
North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Sir/Madam:

The Woods Hole, Martha's Vineyard and Nantucket Steamship Authority (the "Authority") is a public instrumentality created by the Commonwealth's legislature through its Enabling Act, St. 1960, c. 701, *as amended*, to provide for the "transportation of persons and necessities of life for the islands of Nantucket and Martha's Vineyard" by operating its ferry boat line between the mainland and the islands. The Authority is the "lifeline" for those islands, providing the only year-round passenger, automobile and truck ferry service delivering food, medicine, fuel and numerous other consumables and products from the mainland. Historically, the Authority annually carries approximately 3,000,000 passengers, 475,000 cars and 195,000 trucks to and from the islands in the performance of its essential state mandated function.

The Authority has reviewed the recently published proposed amendments to the North Atlantic right whale vessel strike reduction rule. The amendments<sup>1</sup> include the following:

- Changes to the spatial boundaries and timing of mandatory Seasonal Management Areas (SMAs) to better address areas and times where vessel strike risk is high;

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<sup>1</sup> As set forth in *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule*, 87 Fed. Reg. 46,921 (Aug. 1, 2022) (to be codified at 50 C.F.R. pt. 224). Copy attached.

- Inclusion of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to the speed restriction;
- Implementation of a Dynamic Speed Zone (DSZ) framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs; and
- Updates to the speed rule's safety deviation provision.

The Authority is strongly opposed to (1) changing the current Seasonal Management Areas (SMAs) protocols to the proposed Seasonal Speed Zones (SSZs) for the Atlantic region from November 1<sup>st</sup> to May 30<sup>th</sup> and (2) the implementation of mandatory speed restrictions in the proposed DSZ including Vineyard Sound and Nantucket Sound that are triggered by acoustical detection of right whales. The implementation of mandatory speed restrictions in Vineyard Sound and Nantucket Sound will result in a significant reduction in the number of scheduled trips that the Authority can complete during its winter, spring, and fall operating schedules between the Massachusetts mainland and the islands.

On its Martha's Vineyard traditional ferry (passengers and freight) route (approximately eight and one-quarter miles one way) from Woods Hole, Massachusetts, the Authority operates twenty-one (21) round trips during its winter, early spring and fall operating schedules and twenty-eight (28) round trips during its spring operating schedule at speeds between twelve (12) and thirteen (13) knots.

On its Nantucket traditional ferry (passengers and freight) route (approximately twenty-nine miles one way) from Hyannis, Massachusetts, the Authority operates six (6) round trips during its winter and fall operating schedules and nine (9) roundtrips during its spring operating schedule. The Authority also operates a high-speed (passengers only) ferry at approximately thirty (30) knots on its Nantucket route during its spring, summer, and fall operating schedules.

Currently, the Authority operates primarily on a United States Coast Guard approved eighteen (18) hour operating day on both routes. The Authority's vessel speeds are foundational operating conditions for it to meet its published and approved schedules and any reduction in those speeds will compromise or impede the Authority's ability to meet its schedules and fulfill its service obligations to the islands. These concerns are particularly heightened during the winter months because the Authority is the only lawful transporter of essentials for the islands' residents such as home heating fuel, gasoline, medicines and food.

NMFS's current regulatory measures require (1) vessels greater than sixty-five (65) feet in length to transit at speeds of ten (10) knots or less in designated SMAs (50 CFR § 224.105 - Speed restrictions to protect North Atlantic Right Whales) and (2) a minimum approach distance of 500 yards from right whales (50 CFR § 224.103 - Special prohibitions for endangered marine mammals.) A copy of NOAA's map depicting the current speed restriction SMAs is attached hereto. In its operations, the Authority implements these protocols when its vessels encounter any whales (typically humpback and minke) to avoid any vessel strikes with whales.

The proposed SSZs and mandatory speed restrictions in the proposed Vineyard Sound and Nantucket Sound DSZs will require the Authority to reduce its ferries' operating speeds to



ten (10) knots or less. A copy of NOAA's map depicting the proposed speed restriction SSZs is attached hereto. If implemented, these speed reductions will require the Authority to eliminate one-third or thirty-three percent (33%) of its year-round traditional ferry roundtrips and eliminate its high-speed service during its early spring and late fall operating schedules on the Nantucket route. The elimination of these essential services will provide less transportation capacity to island residents, cause delays in the delivery of goods to the island and result in a fundamental shift in the lifestyle of the island residents as ferry travel will become more crowded, more time consuming, and expensive as the Authority anticipates longer operating days and as a result increasing cost. Further, the island's tourist and hospitality economies will suffer significant reductions without fast, timely and reliable high-speed ferry service to deliver passengers to the island.

The Authority's concerns are not limited only to its Nantucket route. The proposed speed reductions in Vineyard Sound will require the Authority to eliminate one-seventh or some fourteen percent (14%) of its traditional ferry roundtrips to Martha's Vineyard. Furthermore, the loss of significant revenue on the Authority's Nantucket route will certainly impact its gross revenue overall leading to likely fare increases on both routes. Again, both islands' tourist and hospitality economies will suffer with a downturn in the number of passengers carried to the islands.<sup>2</sup>

The Authority also seeks to ensure that any implementation of the proposed DSZs accounts for large physical land masses such as Cape Cod or the islands of Martha's Vineyard and Nantucket. In scenarios where three (3) or more right whales are spotted, or a confirmed acoustic detection occurs south of Martha's Vineyard or Nantucket then the DSZs imposed to protect these whales should be limited to the waterways south of the islands. The same concerns arise in a scenario where whales are spotted in Cape Cod Bay, but the speed zone restrictions are potentially imposed upon stakeholders transiting Nantucket or Vineyard Sounds. To place speed zone restrictions on waterways physically blocked by land masses from where the whales are situated would be impractical, unreasonable, and utterly burdensome to vessels operating in those waters.

All of the above concerns are considered and analyzed despite the fact that the Authority during its sixty (60) plus years of operating experience across Vineyard Sound and Nantucket Sound, including nearly five hundred thousand (500,000) ferry trips over the past twenty-two (22) years, has failed to encounter, observe or been notified of any North Atlantic right whales in Nantucket or Vineyard Sounds.

The imposition of speed zones in Nantucket or Vineyard Sounds without sufficient scientific data would be an arbitrary decision that warrants further support from stakeholders that operate in the impacted waterways. The Authority is more than willing to support the federal government's efforts to obtain more data on the impacts that its ferry operations might have upon right whale habitat. As mentioned in the *Federal Register* of August 1, 2022, the installation and

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<sup>2</sup> The Authority's operating revenues in 2021 totaled \$128,239,112. Passenger revenue accounted for 24.3% of the Authority's total operating revenues in 2021, while automobile revenues represented 34.7%, freight revenues represented 29.4%, parking revenues represented 5.6%, and miscellaneous revenues represented 6.0% of total operating revenues. A copy of the Authority's 2021 Annual Report can be viewed at [SSA Annual Report 2021](#).

use of avoidance technologies onboard vessels and the deployment of marine mammal observers in areas where right whales are known to congregate are better uses of resources that address vessel strikes. The Authority supports these types of measures rather than at an across-the-board reduction on vessel speeds, which is simple in articulation, but it is impractical and negatively impactful to the Authority's operations and more importantly, to the islands' residents, which the Authority is mandated to serve.

Finally, the Authority questions the reasoning behind the omissions of Buzzards Bay, Narragansett Bay and Long Island Sound from the proposed North Atlantic right whales seasonal speed zones. If observed and documented right whale activity occurs to the south of Long Island, Nantucket and Martha's Vineyard and the above-mentioned bodies of water are omitted from the proposed North Atlantic right whales seasonal speed zones, it logically follows that the waters of Vineyard Sound and Nantucket Sound (north of the islands) should also be omitted. The Authority's longstanding operations in the Sounds without encountering a right whale should be a strong indicator that it is prudent and safe for the Authority to continue to operate its vessels at their current speeds and the whales will be left to safely forage south of the islands.

We sincerely thank you for your review and consideration of the Authority's comments and request that the proposed rule be amended further to omit its application to the waters of Vineyard Sound and Nantucket Sound.

Very truly yours,



Robert B. Davis  
General Manager

# Exhibit B



NANTUCKET PLANNING AND ECONOMIC DEVELOPMENT COMMISSION



June 10, 2024

Senator Ed Markey  
255 Dirksen Senate Office Building  
Washington, D.C. 20510

Senator Elizabeth Warren  
309 Hart Senate Office Building  
Washington, D.C. 20510

Congressman William Keating  
2351 Rayburn House Office Building  
Washington, D.C. 20510

RE: Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Senators Markey and Warren and Congressman Keating:

The Nantucket Planning & Economic Development Commission is writing to you to express our extreme opposition to the inclusion of Nantucket and Vineyard Sound in the Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule as proposed by the National Oceanic and Atmospheric Administration (NOAA).

As proposed, the amendments to the rule, while intended to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, are misplaced in their applicability to Nantucket and Vineyard Sound. It is our understanding that a right whale sighting has not been confirmed in Nantucket and Vineyard Sound during the time period during which NOAA began documentation, and our local fisherman and ferry operators have also confirmed that no local sightings have occurred.

The required reduction in vessel speed November 1 through May 1 would have catastrophic effects on the residents of Nantucket. Being geographically isolated approximately thirty (30) miles south of Cape Cod, high speed passenger and traditional vehicle ferry travel is the primary transportation source to and from the island. Passenger travel by plane, once the preferred method, has been almost entirely replaced by ferry travel during the off-season, which is when this speed reduction rule would be in effect. The proposed amendments would eliminate all high speed (1 hour one-way) ferry service and reduce traditional vehicle ferry service from 3 round trips per day to 2 round trips per day, with each one-way trip being extended from approximately two hours and fifteen minutes to two hours and fifty minutes. While this may not seem important from a distance, residents have an entirely different point of view.



The combination of fast ferry elimination and slow ferry service reduction will have significant economic and quality of life impacts to Nantucket residents and businesses. Negative quality of life impacts include, but are not limited to: delivery of necessities such as food, medical supplies, fuel, and other materials, access to off-island medical care, school age children would no longer be able to participate in sports, social interactions such as a trip off island for the day to shop, see friends or family, or attend an event would no longer be possible. Last but certainly not least, the residents who can least afford these impacts – the economically disadvantaged and underserved residents within areas designated as environmental justice communities - will be most individually affected.

Economic impacts, which we argue far exceed the amount estimated by NOAA, include significant shoreside impacts – none of which were considered. The high cost of living on Nantucket is a major impediment to island life that is partially addressed by a commuting workforce who rely on year-round and daily fast ferry service. A reduction in the labor force would have a trickle down effect on all local businesses. Aside from the removal of year-round and daily high speed ferry service, the delay and reduction in goods brought to the island via the traditional vehicle ferry service would have far reaching impacts, particularly when weather conditions cause delays and cancellations. Nantucket has successfully extended the tourism “shoulder season” to bolster the economy through the off-season with events such as Nantucket Noel throughout the months of November/December and Nantucket Daffodil Festival in April – both of which would likely no longer be possible.

The Nantucket Planning & Economic Development Commission is entirely supportive of the protection of endangered species such as right whales where the proposed regulatory impacts would have a benefit. In the case of Nantucket and Vineyard Sound, no such benefit has been confirmed. While well intentioned, the proposed rule seems to only have negative consequences to Nantucket and would effectively leave the island isolated with unnecessarily limited access to the mainland.

Please use your influence and support to recommend that Nantucket and Vineyard Sound is removed from the proposed rule. Thank you, in advance, for your attention to our concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry G. Rector".

Barry G. Rector,  
Chairman



## TOWN AND COUNTY OF NANTUCKET

16 Broad Street  
Nantucket, Massachusetts 02554

Telephone (508) 228-7255  
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[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

June 5, 2024

Senator Ed Markey  
255 Dirksen Senate Office Building  
Washington, D.C. 20510

Senator Elizabeth Warren  
309 Hart Senate Office Building  
Washington, D.C. 20510

Congressman William Keating  
2351 Rayburn House Office Building  
Washington, D.C. 20510

RE: Proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Senators Markey and Warren and Congressman Keating:

Nantucket Island and its more than 15,000 year-round residents urgently need your assistance and support.

It is critical that Nantucket Sound be exempted from the proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule. A decision on this rule is imminent from The Office of Management and Budget, and, if adopted as currently written, it would have a devastating and life-altering impact on Nantucket.

The need to institute measures to protect the right whale population is indisputable. But right whale conservation efforts must be focused where the whales travel and congregate and that is not Nantucket Sound. According to our primary ferry operators, there have been no documented right whale sightings in Nantucket Sound during more than one million trips between Hyannis and Nantucket over the past 25 years. Many (if not all) of Nantucket's long-time commercial fishers concur and have never seen right whales in their frequent travels to the Hyannis area from Nantucket.

The Draconian edict would eliminate fast ferry passenger service to the island for more than half of the year, and significantly reduce the number of trips the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority could operate for its traditional freight and vehicle ferries during that period to two round-trip passages per day (weather permitting). These vessels provide the freight, vehicle, food, fuel, municipal, solid waste disposal and medical supply "lifeline to the islands." There could also be lengthy disruptions in ferry service during the rest of the year if a right whale were to be sighted as far away as Cape Cod Bay.

The economic consequences on Nantucket would be cataclysmic – likely more than \$100 million and much higher than NOAA's flawed estimation which does not account for major shoreside impact. Beyond the obvious decimation of our tourism industry, islanders would be severely limited in access to off-island medical care, mutual aid for public safety emergencies and travel to school academic and athletic events. The hundreds of daily commuters from Hyannis - who are indispensable in keeping so many of our businesses operating due to the severe housing crisis on Nantucket– would no longer be available for employment. In fact, The Federal Transportation Administration in 2023 designated the Hyannis to Nantucket ferry route as a commuter service eligible for federal funding.

The proposed rule would also disproportionately affect economically disadvantaged and underserved residents on both sides of Nantucket Sound, as Hyannis and Nantucket both have areas designated as environmental justice communities.

To this end, we urge you to request that NOAA amend the proposed rule with an exemption for Nantucket Sound when considering seasonal speed zones, similar to exemptions granted for the waters of Long Island Sound, Buzzards Bay and Narragansett Bay.

Please do not allow a stunningly shortsighted and inadequately researched – yet well intentioned – rule to sever Nantucket's lifeline to the mainland.

From 30 miles at sea, we are relying on your support and advocacy.

Sincerely,

A handwritten signature in cursive script that reads "Brooke Mohr, CEO".

Brooke Mohr  
Chair, Nantucket Select Board

# TOWN OF NANTUCKET CONSERVATION COMMISSION

IAN GOLDING, CHAIR  
131 PLEASANT STREET  
NANTUCKET, MA 02554

CONCOM@NANTUCKET-MA.GOV  
508-228-7230



June 4th, 2024

Attn: National Oceanic and Atmospheric Administration, Fisheries, Office of Management and Budget (NOAA Fisheries OMB)

**Re: Opposition to the potential adoption of the “North Atlantic Right Whale Vessel Strike Reduction Rule” without specific exemptions granted for Nantucket and Vineyard Sound**

Based on a unanimous vote (7-0) at the May 23rd, 2024, meeting of the Nantucket Conservation Commission, I have been authorized to issue this letter of opposition regarding potential adoption of the NOAA Fisheries “North Atlantic Right Whale Vessel Strike Reduction Rule”. This rule, as currently drafted, has the potential to cause impacts for Nantucket and Martha’s Vineyard that are exponentially higher than those expected in mainland communities. In 2023, the Steamship Authority transported 97,635 trucks (SSA classifies a truck as over 20’ length) between Cape Cod and The Islands.

Our island relies on two ferry services for much of its shipping and transportation needs. Only one ferry operator, The Steamship Authority, carries all the fuel, vehicles, and freight bound for Nantucket. The year-round residents rely on these boats, our lifeline to the mainland, to keep our homes heated, groceries on the shelves, and medicine stocked at the pharmacy. Nantucket is a functional, bustling community of year-round residents, kept alive in large part due to the ferries.

As one may imagine, this issue is not just about the movement of freight, but the movement of people. The ferry services to Nantucket provide the most economical option for travel to and from the island. Shutting down the fast ferry service from November 1<sup>st</sup> to May 31<sup>st</sup> will disproportionately affect our middle to lower income residents. Year-round residents rely on reliable fast-ferry service to get children and loved-ones to medical appointments, among other necessary off-island excursions. Those with greater means, including contingents of the summer seasonal population, will be able to opt for more costly options such as private and commercial flight. The loss of our fast ferry through these months would also eliminate all our team sports programs, further isolating our community of island



# TOWN OF NANTUCKET CONSERVATION COMMISSION

IAN GOLDING, CHAIR  
131 PLEASANT STREET  
NANTUCKET, MA 02554

CONCOM@NANTUCKET-MA.GOV  
508-228-7230



schoolkids. This move seems counterproductive to our Commissions commitment to environmental justice and what it means for Nantucket.

The Nantucket Conservation Commission holds the protection of endangered species as a core value. However, there have been no confirmed observations, either by visual sighting or acoustic detection, of the North American Right Whale in Nantucket Sound, or Vineyard Sound, since NOAA Fisheries began documentation. As the local regulatory body whose goal is to protect our natural resources, we understand the impetus behind the proposed rule, but ask that appropriate scientific data and technologies are applied when developing policies. We cannot in good conscience support adopting this rule, which will negatively impact Nantucketer's lives in myriad ways, without any proof that a Right Whale will benefit.

For these reasons, The Nantucket Conservation Commission opposes the adoption of this rule without specific exemptions made for Nantucket and Vineyard Sound. The Commission is requesting an audience with NOAA Fisheries and the Office of Budget and Management to discuss this matter and would be happy to provide more information or comments as needed.

Thank you for your consideration.

Sincerely,

Ian Golding, Chair  
Nantucket Conservation Commission

# Exhibit C



Nantucket Island Chamber of Commerce  
508-228-1700  
NantucketChamber.org

June 6, 2024

Senator Elisabeth Warren  
309 Hart Senate Office Building  
Washington, DC 20501

Senator Ed Markey  
225 Dirksen Senate Office Building  
Washington, D.D. 20510

Congressman William Keating  
2351 Rayburn House Office Building  
Washington, D.C. 20510

The Nantucket Island Chamber of Commerce urgently requests your attention regarding the North Atlantic right whale vessel strike speed reduction rule. As an organization representing over 730 member businesses, and through our designation as a Regional Tourism Council of the Mass. Office of Travel and Tourism, we are uniquely qualified to speak to the economic impacts of the proposed speed reduction.

While we are in favor of reasonable measures to protect the right whale, the proposed speed restriction is foolishly broad and overreaching. We are asking you to request an exemption for Nantucket Sound, the crucial transit route between the island and mainland. Reliable transportation to and from Nantucket is not a luxury or a convenience, it is a necessity.

During the November-April timeframe outlined in the proposal, the speed reduction would eliminate passenger "fast" ferry service, and cut the total freight trips per day by *at least* 30%. Nearly 100% of consumer and wholesale goods arrive by boat, including home heating fuels, groceries, medical supplies, building materials, and gasoline. The essential workforce commuting on the passenger ferries during these months should not be dismissed either, with their removal decreasing available labor volume and increasing local labor costs. Despite the summer months remaining out of the restriction proposal, the catastrophic economic impact would be felt year round, with residents and visitors facing meteoric prices and scarce inventories.

Tourism remains our single biggest economy, including traditional hospitality industries like hotels and restaurants, as well as the ancillary industries such as seasonal retail, landscaping, housekeeping, construction and maintenance, and recreational boating. Fully calculating the negative impact on tourism spending is impossible. However, consider just the tax revenue impacts. Behind Boston, Nantucket generates the second largest Room Tax revenues for the Commonwealth. By eliminating reliable travel to Nantucket during any part of the year, the entire state will shoulder the burden of tax revenue losses, reinforcing the need for your immediate legislative action. This measure would have an irreversible and crippling effect for the entirety of Nantucket's business and tourism sectors.

We urge you to create an exemption for our vital waterway, and we will gladly participate to create and support reasonable conservation solutions for the North Atlantic right whale.

Thank you for your consideration,

Nantucket Island Chamber of Commerce

A handwritten signature in black ink, appearing to read 'Peter Burke'.

Peter Burke  
Executive Director

# Exhibit D



June 6, 2024

Shalanda Young  
Director  
Office of Management and Budget  
1650 17th St NW  
Washington, DC 20500

Submitted via [shalanda.d.young@omb.eop.gov](mailto:shalanda.d.young@omb.eop.gov)

Director Young:

We are writing to express our concerns with the proposed rule by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce entitled "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule." The proposed rule is now under review by your agency as a final rule. We have requested a meeting to discuss this issue further but have not yet been assigned a time.

The proposed rule establishes speed limits for vessels in Nantucket and Vineyard Sound during the months of November through May. The impact on traditional freight service and high speed-passenger service to the islands of Nantucket and Martha's Vineyard will seriously impact the ability of Nantucket Cottage Hospital (NCH) and Martha's Vineyard Hospital (MVH) to provide healthcare on the islands and limit the overall access to care for island residents. ***We strongly urge you take all possible steps to ensure that Nantucket and Vineyard Sounds, which are not known be North Atlantic Right Whale habitat, be exempted from this rule.***

Located on Nantucket Island, Nantucket Cottage Hospital (NCH) is a not-for-profit community hospital that delivers health care under unique circumstances: providing quality facilities, programs, and services to a year-round population of 14,000 residents, which increases to almost 100,000 during the summer months, all while being isolated from the mainland. It is located about 30 miles off the southern coast of Cape Cod, Massachusetts. This 110-year-old hospital includes a complete inpatient ward, a full range of modern diagnostic and treatment capabilities for both emergency and ongoing care, and numerous outpatient services and programs. Martha's Vineyard Hospital (MVH) is a critical access, not-for-profit, community hospital on the island of Martha's Vineyard. It is located about 7 miles off the southern coast of Cape Cod, Massachusetts. Committed to delivering high-quality healthcare to the community and its visitors, MVH provides acute, ambulatory, and specialty services either on-site or through its affiliation with Mass General Hospital.

The Steamship Authorship, which is the main provider of high-speed ferry service to and from the mainland to both Nantucket and Martha's Vineyard, estimates under the proposed speed restrictions there would be a 33% reduction in scheduled trips by its vessels. Reducing high-speed ferry service to and from the islands during the months of November through May will have a major impact on our hospitals ability to serve our patients and communities. It will reduce the overall access to healthcare for

the islanders. High-speed ferry, with a sailing time to Nantucket of 1 hour and 45 minutes to Martha's Vineyard, each way, is the only practical way to make a single day trip to and from the islands.

Behavioral Health Crisis Patients: There are no inpatient behavioral health facilities on Nantucket or Martha's Vineyard. Patients who need that level of care must be sent to a mainland facility. Behavioral health crisis patients are not allowed to fly by air ambulance. The only way to get them to the care they need is by an ambulance that must make the round trip to get the patient and then delivers them to a mainland inpatient facility by ferry. The logistics of this are very complex. For instance, ambulances are not typically available in the early morning, and many inpatient facilities do not accept patients after normal working hours. With the extreme shortage of inpatient behavioral health capacity in Massachusetts, if a patient cannot be delivered in a tight time window, that bed is given to a different patient and the search begins all over again. This logistical challenge is already causing care for island patients who are in behavioral health crisis to have their care delayed by a minimum of 24 hours. At current levels, this would impact 40-50 patients during the months of November through May at NCH, and about 84 patients a year at MVH.

Subspecialty Patient Care: During the months of November through May, NCH relies on weekly, bi-weekly, and monthly visits from physicians in 28 critical subspecialties such as Cardiology and Oncology to provide care for island residents. MVH also relies on physician specialists who come over from the mainland to care for patients. Without high-speed ferry service, and with the additional complication of slower and reduced car ferries, these visits would come to a halt and residents would either have to make their way off island or defer critical care.

Patients Who Need to Travel for Care: Not all medical services can be provided on the island and many island residents must travel for needed specialized care. Eliminating high-speed ferry service will impact everyone who needs travel for health care, but we fear it will disproportionately impact our most vulnerable populations who cannot afford a hotel or miss an extra day of work, and who will be forced to forgo the care they need.

Medical and Pharmaceutical Supplies: NCH and MVH rely on regular shipments of medical and pharmaceutical supplies that come by truck via Steamship Authority vessels. Currently the hospitals receive shipments several times a week. Medical and pharmaceutical supply chains rely on just in time deliveries and any disruption in delivery can lead to critical shortages. This includes pharmaceutical shipments that are perishable.

Emergency Equipment Repair: NCH and MVH rely on specialized equipment to deliver life sustaining emergency care on the islands. This includes CT Scanner, MRI machine, and specialized operating room equipment. When equipment like this needs service, specialized equipment is needed from the mainland.

Workforce impact: It is no secret that there is a nationwide shortage of nurses and other healthcare professionals. In the islands the challenge of recruiting and retaining employees is exacerbated by the high cost of living, the lack of affordable housing, and the isolated geography. Eliminating high-speed ferry service will lead to the immediate loss of employees who currently make the 2-hour commute to NCH and MVH several days a week. In addition, the lack of affordable, convenient transportation to and from the islands during the winter months, will make the already difficult job of recruiting talent to the islands that much harder.

We appreciate this opportunity to provide comments on a matter that directly impacts our patients and employees. We look forward to receiving a scheduled meeting time to discuss this matter further with your team. In the meantime, if you should have any questions, please do not hesitate to contact Aimee Golbitz, Director of Public Policy and Research at Mass General Brigham, at [agolbitz@mgb.org](mailto:agolbitz@mgb.org).

Sincerely,



Amy Lee, MBA  
President, Nantucket Cottage Hospital

***Denise Schepici***

Denise Schepici  
President, Martha's Vineyard Hospital

# Exhibit E





# Nantucket Public Schools



www.npsk.org

School Committee

10 Surfside Road . Nantucket, MA 02554 . Phone: 508-228-7285 . Fax: 508-325-5318

June 14, 2024

Senator Ed Markey  
255 Dirksen Senate Office Building  
Washington, D.C. 20510

Senator Elizabeth Warren  
309 Hart Senate Office Building  
Washington, D.C. 20510

Congressman William Keating  
2351 Rayburn House Office Building  
Washington, D.C. 20510

RE: Proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Senators Markey and Warren and Congressman Keating:

We are members of the Nantucket Schools Committee vested with ultimate legal responsibility to protect the best interests of the Nantucket Public Schools, with its 1,707 students and over 350 staff members. **We write on their behalf to highlight the particular and dire impacts that the proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule will have on them. Our school community, students, and staff urgently need your assistance and support.**

It is critical that **Nantucket Sound be exempted from the proposed Rule**. If adopted as currently written, it would have a devastating and life-altering impact on the Nantucket Public Schools and their ability to educate the island's children effectively.

To be clear, we see right whale conservation efforts as a highly important and worthwhile matter. But those efforts must be focused where the whales actually travel and congregate, and that is not Nantucket Sound. According to our primary ferry operators, there have been **no documented right whale sightings in Nantucket Sound during more than one million trips between Hyannis and Nantucket over the past 25 years**. Many (if not all) of Nantucket's long-time commercial fishers concur and have never seen right whales in their frequent travels to the Hyannis area from Nantucket.

This edict would eliminate fast ferry passenger service to the island for more than half of the year and significantly reduce the number of trips the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority could operate for its traditional freight and vehicle ferries during that period to two round-trip passages per day (weather permitting). These vessels provide the freight, vehicle, food, fuel, municipal, solid waste disposal, and medical supply "lifeline to the islands." As countless members of the Nantucket public have made clear, the economic consequences on Nantucket would be cataclysmic – likely more than \$100 million and much higher than NOAA's flawed estimation, which does not account for major shoreside impact. But **the effect on our island's schools would also be uniquely devastating.**



# Nantucket Public Schools



www.npsk.org

School Committee

10 Surfside Road . Nantucket, MA 02554 . Phone: 508-228-7285 . Fax: 508-325-5318

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With a 77% participation rate in our school athletic program, **it would be nearly impossible for our student-athletes, many of whom are multiple-sport athletes, to compete in middle and high school athletic competitions**, and we would struggle to have any teams or officials come to the island to play Nantucket teams. For island children, athletics is one of the most important options for after-school activities, and our Athletic Department depends on fast ferry transportation almost every day to transport Nantucket student-athletes and student-athletes from other communities to and from our island schools.

We are also deeply concerned about **the ability to maintain our regular food service supply for our school cafeterias**. Unbeknownst to many, close to 43% of Nantucket children are considered economically disadvantaged, and often their only opportunity for two nutritionally balanced meals comes from our school cafeterias.

Nantucket Public Schools have an added challenge - the remoteness of island living in **attracting high-quality educators to move to Nantucket and teach in our schools**. Our ability to hire teachers and other staff to educate our island's growing number of students, who are so deserving of meaningful and appropriate education, would be greatly reduced. Our school employees would be severely limited in accessing essential services and opportunities for off-island, real-world learning for our children, required professional development for educators, and other important educational experiences for staff and students. Finally, and of the highest importance, our **students who have severe special needs are entitled by law to the services they require so that can receive a free and appropriate public education. Many of these services are met through contract providers, many of whom commute to the island. The proposed rule could well affect how and when these services are provided, with unpredictable consequences.**

We are certain that you will agree that the list of adverse impacts on our schools and their students should be avoided, especially when balanced against the lack of evidence that the proposed rule will confer any real benefit if implemented for Nantucket Sound. To this end, we urge you to request that NOAA amend the proposed rule with an exemption for Nantucket Sound when considering seasonal speed zones, similar to exemptions granted for the waters of Long Island Sound, Buzzards Bay, and Narragansett Bay.

Please do not allow a stunningly shortsighted and inadequately researched – yet well-intentioned – rule to sever Nantucket's lifeline to the mainland. The effect it would have on Nantucket's children and their futures would be devastating.

From 30 miles at sea, we are relying on your support and advocacy.

Sincerely,

*Pauline Proch*

Pauline Proch  
Chair, Nantucket School Committee

*Laura Gallagher Byrne*

Laura Gallagher Byrne  
Vice-Chair, Nantucket School Committee

# Exhibit F

**6/24/24 – 4 P.M.**

**NANTUCKET POLICE CHIEF JODY KASPER**

Good morning. I'm Nantucket Police Chief Jody Kasper. Thank you for the opportunity to be heard today.

Let me get right to the point – Passage of the NOAA North Atlantic Right Whale Vessel Strike Reduction Rule without an exemption for Nantucket Sound would have significant public safety impact for Nantucket Island, its law enforcement officers and its residents. I, like my colleagues at the Town of Nantucket, wholeheartedly support efforts to conserve and grow the North Atlantic Right Whale population, but these initiatives must be focused on where the whales travel and congregate, and that is not Nantucket Sound. I fear what could happen from both a safety and economic perspective if the rule were to be approved “as is.”

Please allow me to highlight some of the potential impacts the rule could have on policing and public safety on Nantucket.

It is quite common for members of the Nantucket Police Department to travel off-island and return on the same day. This is part of our routine operations. We transport child abuse victims to the Children's Cove child advocacy center on Cape Cod to conduct forensic interviews, we deliver and retrieve evidence from crime labs, we conduct background investigations for new employees, we participate in regional meetings, and we attend critical training and education programs. All of these activities require ferry travel to the mainland.

Without high-speed ferry service for more than half of the year, this type of travel would not be feasible, and some of our most vulnerable populations – *including children and crime victims* – would suffer. Individuals in our care who require mental health and recovery/addiction services would also be affected, as many of these critical services are located off-island. In fact, there would be reduced capacity for many state services to effectively and efficiently support island residents in need, including the Massachusetts Department of Children and Families, which does not have a caseworker on Nantucket.



There would also be reduced capacity for mutual aid assistance from other local and state police agencies – *yes, bad things can and do happen on Nantucket*. A disruption to high-speed ferry service would severely hinder our ability to utilize off-island regional emergency services such as drug task forces, police specialty units, K-9 resources, bomb detection and public safety equipment sharing.

Even the court system would be affected – there is no Assistant District Attorney or judge who lives permanently on Nantucket. They, along with prosecutors and other court personnel, rely on high-speed ferry travel for arraignments and hearings on the island.

The rule would also take a significant toll on the Nantucket Police Department itself, which has already been affected by the island's affordable housing crisis and high cost of living. We would likely experience a reduction in the number of candidates applying for open police officer positions and would be limited in our ability to send officers and civilian employees off-island for education and training opportunities. It would also impact us financially through increased overtime expenses to account for vacant positions and officers being off-island longer while they are attending training or appointments; increased sick time use for employees who have off-island medical appointments; and increased cost to bring training opportunities to the island since trainers would likely require overnight accommodations.

The impacts that this proposed rule would have on the public health and safety of residents and visitors on Nantucket are far-reaching and would dramatically and negatively impact our ability to provide professional and effective police services.

Again, thank you for the opportunity to speak today.

I urge the Office of Management and Budget to amend the proposed rule to include an exemption for Nantucket Sound.

I'll now turn things over to our Fire Chief, Michael Cranson.

### **NANTUCKET FIRE CHIEF MICHAEL CRANSON**

Good morning, I am Nantucket Fire Chief Michael Cranson. Thank you for listening to us today. First and foremost, please know that I – and the

Nantucket Fire Department – support right whale conservation efforts, but, as you've heard earlier, they do not frequent the waters of Nantucket Sound.

Our department has already been severely affected by the affordable housing crisis and exorbitant living expenses on Nantucket, and the approval of the NOAA North Atlantic Right Whale Vessel Strike Reduction Rule without an exemption for Nantucket Sound would be devastating and extremely dangerous for island residents and firefighters.

We live and work on an island with many colonial-era buildings, a densely populated downtown area, a busy airport, events that attract large crowds – *and the occasional world leader* - throughout the year, and an active harbor that serves a main transportation hub for travel to and from the island. In the event of an emergency or major fire – *which does indeed happen* -- we cannot wait nearly three hours for help to arrive from the mainland. The possible scenarios that could unfold on the island keep me awake at night.

We have firefighters that commute to work from the mainland. Without an exemption for Nantucket Sound, the proposed rule would require them to come to the island a full day before their scheduled workday to be on shift for the 8 a.m. start time.

The Nantucket Fire Department also has contracts with off-island vehicle mechanics who are specifically trained to repair emergency vehicles. Possible vessel speed restriction would further delay repairs to critically needed emergency apparatus and increase the cost of these repairs.

Ongoing training in the fire service is an absolute necessity and we need to travel to the mainland for education programs and certifications. Nantucket firefighters attend off-island training continuously throughout their careers, from recruit academy training, paramedic training, and all other training. The high-speed ferry restrictions would make it necessary, in many cases, for the firefighter to leave the island a day before the scheduled training so that they could arrive to the training on time on the day it is conducted. This will require the town to spend additional funds on rental vehicles and lodging for these firefighters.

It is my belief that this restriction will hurt firefighter recruitment both for call firefighters and career firefighters on Nantucket.

Please add Nantucket Sounds to the exemption list that includes Buzzards Bay, Narragansett Bay and Lond Island Sound.

Thank you again for taking the time to listen to my concerns this morning.

Now Andrew Patnode, Nantucket Department of Public Works Director, will discuss additional impacts.

### **NANTUCKET DPW DIRECTOR ANDREW PATNODE**

Good morning. I'm Drew Patnode, Nantucket Department of Public Works Director.

The Department of Public Works, like other town departments, would be significantly impacted by the proposed vessel speed reductions in Nantucket Sound. Our department operates, maintains, and manages construction of all town facilities, public buildings, employee housing units, roads, bridges, culverts, parks and recreation facilities, and solid waste operations. The value of major and minor infrastructure repair, maintenance, and construction projects that the department is responsible for every year is in the tens of millions of dollars. Along with those construction costs, we contract with many vendors, consultants, engineers, and service providers to support our operations throughout the year, most of which reside on the other side of Nantucket Sound.

The ability to get personnel to the island on the high-speed ferry and freight, vehicles, equipment, and materials on the traditional ferry to the island in the fall, winter, and spring months is crucial to our department's ability to serve the island community year-round. Our scope of responsibilities is vast, with no duty more or less important than the next.

Since 2009 DPWs have been classified as first responders under the U.S. Department of Homeland Security's Emergency Services Sector Coordinating Council's Sector Specific Plan. During storm events, of which there are many 30 miles out to sea, the DPW is responsible for providing the labor, equipment, and specialized machinery as a part of the town's emergency response services. Specifically, nor'easters and other snow and

ice events in the winter months can be frequent, and our ability to source materials and repair and maintain our fleet during these events is essential to this community. Our department relies on the Steamship Authority's freight hauling capabilities to supply and replenish road salt and other materials necessary to provide safe transportation, maintain access to public facilities, and maintain operation of public infrastructure during the harshest weather months on the island.

Competing interests for limited boat reservations and highly sought after "standby" reservations would likely impose severe limitations our ability to proactively access critical resources needed to provide basic services for the Nantucket's more than 15,000 year-round residents on a daily basis, but also in the most urgent of times.

The Solid Waste Division of the Nantucket Department of Public Works already navigates uniquely challenging circumstances to properly manage solid waste on the island. In conjunction with the Department of Public Works Solid Waste Division, the Town's solid waste contract operator, Waste Options Nantucket (WON), has coordinated tens of thousands of solid waste shipments over the last 24 years.

Based on the current Steamship Authority (SSA) schedule, Waste Options is allowed to request reservations for solid waste shipments twice a year, once for the months of May-October and once for the months of October – May. As a rule of thumb, WON requests three loads per day, Monday-Friday. Of the 25 (and growing) waste streams that come into the Solid Waste Facility, Construction & Demolition (C&D) and Non-Recyclable Non-Compostable (NRNC) waste shipments are prioritized when scheduling solid waste shipments off island.

Approximately two weeks before Memorial Day and running through Thanksgiving, including major holiday weekends, the schedule is constrained because of the pressure put on the SSA by other travelers, town departments, and private businesses. During this time, the SSA offers standby reservations only for the large dump trailers utilized by Waste Option's subcontracted haulers. These loads are often approved for travel on short notice, so WON and their haulers must be ready to react when the opportunity presents itself. It is very difficult to get a load of solid waste off Nantucket, delivered to an approved disposal facility off Cape Cod, and

make the SSA freight or vehicle ferry for a return to the island in the same day. Many times, throughout the year these “standby shipments” are vital to the successful management of solid waste for Nantucket and quite often make all the difference in getting waste off Nantucket in a timely manner. Proper management of solid waste is crucial to the public and environmental health of the island, and the ability to transport as much solid waste on the SSA ferry as we currently do is paramount to that endeavor.

If SSA trips and reservations are decreased by one-third, the impact on our ability to effectively manage solid waste would be devastating. Frankly, we are barely able to transport enough solid waste off the island for disposal and recycling as things currently stand. WON stockpiles non-critical solid waste streams, while concentrating shipments of C&D and NRNC for disposal off Nantucket in order to maximize the available ferry space and remain, ever so slightly, in compliance with State and Federal permits and regulations.

The landfill at the Solid Waste Facility currently receives only baled residual NRNC waste, which is separated by the composting of Municipal Solid Waste (MSW). In Fiscal Year 2023 (FY23) the Solid Waste Facility received 14,500 tons of MSW & NRNC waste. Using the on-site Composter, this resulted in approximately 6,000 tons of residuals being disposed in the single active landfill cell. A reduction in SSA trips by one-third would result in the landfill receiving an additional 2,000 tons per year. The introduction of an additional 2,000 tons per year would reduce the useful airspace much faster than has ever been anticipated. The effect of this increased on-site disposal volume would have incredibly detrimental impacts on the landfill, the town’s finances, and public and environmental health. The site-assigned area as permitted by the Massachusetts Department of Environmental Protection (MassDEP) for the landfill is strictly limited. When the available landfill space is gone, there are few alternatives, if any. One would be to implement Alternative Technologies for Processing, though none of which are currently permitted in the State of Massachusetts. The other option would be to... ship all non-compostable MSW, C&D, and NRNC waste off island, dramatically increasing the number of shipments needed to manage the island’s solid waste, in a scenario where one-third of the current ferry reservations are suddenly no longer available.



The existing Transfer Station, where C&D and NRNC waste is received, is permitted to accept 49 tons per day. In FY23, the transfer station received a total of 9,200 tons of C&D waste which then needed to be shipped off-island for recycling. A very important fact that cannot be overlooked is that landfill disposal of C&D waste is banned in Massachusetts. If ferry capacity is limited and C&D waste is unable to be transported to a proper recycling facility, there is no currently permitted or commercially viable alternative to manage this material. In this scenario, the Solid Waste Facility would then be burdened by not only the need to stockpile backlogged C&D and NRNC, but an exponentially increased risk of fire, potentially resulting in catastrophic environmental impacts, public health risks, and substantial property damage.

Simply put, reducing vessel speeds in Nantucket Sound would have devastating effects – environmentally, fiscally, and public health wise – on the town's ability to manage solid waste, which is undeniably one of the most significant responsibilities we hold as a municipality.

Thank you for the opportunity to speak this morning. Please consider an exemption for Nantucket in the NOAA North Atlantic Right Whale Vessel Strike Reduction Rule.



NANTUCKET PLANNING AND ECONOMIC DEVELOPMENT COMMISSION



August 14, 2024

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Attn: Caroline Good  
1315 East-West Highway  
Silver Spring, Maryland 20810

RE: Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Ms. Good:

The Nantucket Planning & Economic Development Commission is writing to you to express our extreme opposition to the inclusion of Nantucket and Vineyard Sound in the Coastal Zone Management Act's Consistency Determination for the National Marine Fisheries Service (NMFS) and the National Oceanic and Atmospheric Administration (NOAA's) Proposed Rule entitled "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule". Please accept this letter as our written comments as the Regional Planning Agency representing the Town and County of Nantucket. In addition, we echo the concerns and issues addressed in the letter submitted by KP Law on behalf of the Town of Nantucket.

As proposed, the amendments to the rule, while intended to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, are misplaced in their applicability to Nantucket and Vineyard Sound. It is our understanding that a right whale sighting has not been confirmed in Nantucket and Vineyard Sound during the time period during which NOAA began documentation, and not since a rule aimed at the species protection was first established in 2008. Our local fisherman and ferry operators have also taken the position that no local sightings have occurred.

The required reduction in vessel speed November 1 through May 30 would have catastrophic effects on the residents of Nantucket. Being geographically isolated approximately thirty (30) miles south of Cape Cod, high speed passenger and traditional vehicle ferry travel is the primary transportation source to and from the island. Passenger travel by plane, once the preferred method, has been almost entirely replaced by ferry travel during the off-season, which is when this speed reduction rule would be in effect. The proposed amendments would eliminate all high speed (1 hour one-way) ferry service and reduce traditional vehicle ferry service from 3 round trips per day to 2 round trips per day, with each one-way trip being extended from approximately two hours and fifteen minutes to two hours and fifty minutes. While this may not seem important from a distance, residents have an entirely different point of view.

The combination of fast ferry elimination and traditional ferry service reduction will have significant economic and quality of life impacts to Nantucket residents and businesses. Negative quality of life impacts include, but are not limited to: delivery of necessities such as food, medical supplies, fuel, and other materials, access to off-island medical care, school age children would no longer be able to participate in sports, social interactions such as a trip off island for the day to shop, see friends or family, or attend an event would no longer be possible. Last but certainly not least, the residents who can least afford these impacts – the economically disadvantaged and underserved residents within areas designated as environmental justice communities - will be most individually affected.

Economic impacts, which we argue far exceed the amount estimated by NOAA, include significant shoreside impacts – none of which were considered. The high cost of living on Nantucket is a major impediment to island life that is partially addressed by a commuting workforce who rely on year-round and daily fast ferry service. A reduction in the labor force would have a trickle down effect on all local businesses. Aside from the removal of year-round and daily high speed ferry service, the delay and reduction in goods brought to the island via the traditional vehicle ferry service would have far reaching impacts, particularly when weather conditions cause delays and cancellations. Nantucket has successfully extended the tourism “shoulder season” to bolster the economy through the off-season with events such as Nantucket Noel throughout the months of November/December, Nantucket Daffodil Festival in April, Nantucket Wine Festival in May, and the Figawi Sailboat Race Memorial Day week-end – none of which would likely be possible.

The Town of Nantucket commissioned an economic analysis to be completed by the University of Massachusetts Amherst’s Donahue Institute. The analysis is not yet complete and we reserve the right to supplement this letter when the complete report is completed. However, preliminary findings include the following impacts, which we find to be extremely compelling:

- According to the Census, there are 1,245 people who live off island and work in Nantucket. Given their daily commute would be six hours with the vessel speed restriction, we assume they would no longer come. And with local home prices being what they are, we also assume they would not move to the island. Losing these workers for seven months results in \$187.8 million of lost economic activity in Nantucket. Tax revenue impacts are \$25 million, including nearly \$18 million in federal, \$4 million state, and \$3 million local.
  - Note: you can’t add together the economic activity number and the tax number. They are separate concepts.
- During the seven months in question, off island residents spend approximately \$41 million in Nantucket. A significant portion of that is attributable to commuters and day trippers and is at risk.
- Using data from IMPLAN, we estimate that \$337 million of goods move back and forth between the mainland and Nantucket during the November through May period. Given that a third of freight capacity will be lost, that puts \$112 million of goods at risk.

The Nantucket Planning & Economic Development Commission is entirely supportive of the protection of endangered species such as right whales where the proposed regulatory impacts would have a benefit. In the case of Nantucket and Vineyard Sound, no such benefit has been confirmed. While well intentioned, the proposed rule seems to only have negative consequences to Nantucket and would effectively leave the island isolated with unnecessarily limited access to the mainland.

Please support our recommendation that Nantucket and Vineyard Sound is removed from the proposed rule. The impacts to our residents of all ages and economic backgrounds deserve serious consideration. Thank you, in advance, for your attention to our concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry G. Rector". The signature is fluid and cursive, with a large initial "B" and "R".

Barry G. Rector,  
Chairman

August 20, 2024

Sean Duffey, Project Review Coordinator  
Massachusetts Office of Coastal Zone Management  
100 Cambridge Street, #900  
Boston, MA 02114

[Sean.duffey@mass.gov](mailto:Sean.duffey@mass.gov)

Re: Comment Letter  
Consistency Review of Massachusetts Coastal Zone Management Policies  
Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Mr. Duffey:

This letter, including Attachment A, which is incorporated herein by reference, serves to provide comments regarding consistency of the Massachusetts Coastal Zone Management (MCZM) enforceable<sup>1</sup> policies relative to the proposed amendments known as the North Atlantic Right Whale Vessel Strike Reduction Rule (hereinafter “Speed Rule” or “proposed amendments”). For several years, there have been voluntary North American Right Whale (NARW) speed restrictions that were imposed by National Oceanic and Atmospheric Administration (NOAA) in certain areas to protect the remaining NARW population off the coast of the United States (16 USC 1531-1543; 50 CFR s. 224.105).

In 2022, the National Marine Fisheries Service (NMFS), a division of NOAA, proposed new, mandatory regulations, which requires that all ships 35 feet in length or more, cannot exceed 10 knots during the period of November to May, each year. Nantucket Sound is proposed to be included in the new Atlantic Zone Seasonal Speed Zones (SSZs) where the proposed Speed Rule would be applicable. The SSZs are proposed to replace the Seasonal Management Areas (SMAs) which never included Nantucket Sound.

On March 5, 2024, the proposed amendments were released to the White House Office of Regulatory Affairs for potential issuance. This triggered the review of coastal zone consistency in coastal states. In response, the MCZM Public Notice requesting public comments on the NMFS proposed amendments was published in the July 24, 2024 Environmental Monitor with a 21-day comment period.

NMFS issued a letter dated June 18, 2024 (hereinafter the NMFS Letter) requesting each state coastal zone agency submit concurrence or objection to the Speed Rule within 60 days (by August

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<sup>1</sup> State policies which are legally binding through constitutional provisions, laws, regulations, land-use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.



18, 2024)<sup>2</sup>. We understand that this deadline has not been extended by NMFS and lack of response would indicate consistency concurrence by a state. The NMFS Letter indicated that the MCZM did not identify any enforceable policies relative to the Speed Rule. In general, this may be appropriate except for when the policies are applied to the addition of Nantucket Sound to the Atlantic Zone SSZ. The NARW has never been sighted in Nantucket Sound, therefore, the Speed Rule is NOT CONSISTENT with at least four of the MCZM policies as further described in this letter and Attachment A.

For purposes of this letter (including Attachment A), we focus on impacts of the proposed amendments on Nantucket Sound located between the south coast of Cape Cod and the north coast of Nantucket Island and subsequent direct impacts to Nantucket Island. New England Development, through its related entities, represents one of the largest, single, commercial land and building owners on Nantucket. We own multiple hospitality venues, including the White Elephant, White Elephant Residences, the Jared Coffin House, the Boat Basin Cottages, and others. In addition, we own the Nantucket Boat Basin, the primary marina in Nantucket. We also own much of the commercial restaurant and retail properties on Main Street and on the Commercial, Straight, and Old South Wharves. We employ, year-round and seasonally, 800-1,000 people on Nantucket Island. The proposed amendments will drastically affect the economy of Nantucket, both year-round and seasonally as the Speed Rule will impact the ferries which are vital lifelines connecting Nantucket to the mainland as well as commercial, industrial, and recreational maritime activities.

## CONSISTENCY REVIEW

The following table (also included in Attachment A) is a summary of all of the MCZM policies including those that are considered as enforceable and those that, based on our review of the proposed amendments, that are applicable to the Speed Rule, specifically in relation to Nantucket Sound and Nantucket Island. Attachment A includes the text of each of the policies and goes into depth those four policies that we believe are NOT CONSISTENT with the proposed Speed Rule as the NARW has never been sighted in Nantucket Sound.

The following four MCZM policies are considered as enforceable and, based on our review, are applicable to the Speed Rule. Following our review, it is our opinion that the Proposed amendments are NOT CONSISTENT with these four applicable MCZM policies as they relate to Nantucket Sound and Nantucket Island:

- Habitat Policy #1
- Ports and Harbors Policy #4
- Protected Areas Policy #3
- Public Access Policy #1

***Habitat Policy #1 [enforceable]*** Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches, banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other

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<sup>2</sup> The Coastal Zone Management Act (CZMA) requires federal actions affecting the coastal zone be consistent with a state's coastal management program.

*important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.*

**Table 1: Summary of MCZM Policies And Consistency Relative to the Speed Rule**

MCZM Policy	Enforceable	Consistency of Speed Rule
<b>Coastal Hazards</b>		
Coastal Hazards Policy #1	Enforceable	Not Applicable
Coastal Hazards Policy #2	Enforceable	Not Applicable
Coastal Hazards Policy #3	Enforceable	Not Applicable
Coastal Hazards Policy #4	Not Enforceable	Not Enforceable
<b>Energy</b>		
Energy Policy #1	Enforceable	Not Applicable
Energy Policy #2	Not Enforceable	Not Enforceable
<b>Growth Management</b>		
Growth Management Policy #1	Not Enforceable	Not Enforceable
Growth Management Policy #2	Not Enforceable	Not Enforceable
Growth Management Policy #3	Not Enforceable	Not Enforceable
<b>Habitat</b>		
Habitat Policy #1	Enforceable	<b>NOT CONSISTENT</b>
Habitat Policy #2	Enforceable	Not Applicable
<b>Ocean Resources</b>		
Ocean Resources Policy #1	Enforceable	Not Applicable
Ocean Resources Policy #2	Enforceable	Not Applicable
Ocean Resources Policy #3	Enforceable	Not Applicable
<b>Ports and Harbors</b>		
Ports and Harbors Policy #1	Enforceable	Not Applicable
Ports and Harbors Policy #2	Enforceable	Not Applicable
Ports and Harbors Policy #3	Enforceable	Not Applicable
Ports and Harbors Policy #4	Enforceable	<b>NOT CONSISTENT</b>
Ports and Harbors Policy #5	Not Enforceable	Not Enforceable
<b>Protected Areas</b>		
Protected Areas Policy #1	Enforceable	Not Applicable
Protected Areas Policy #2	Enforceable	Not Applicable
Protected Areas Policy #3	Enforceable	<b>NOT CONSISTENT</b>
<b>Public Access</b>		
Public Access Policy #1	Enforceable	<b>NOT CONSISTENT</b>
Public Access Policy #2	Not Enforceable	Not Enforceable
Public Access Policy #3	Not Enforceable	Not Enforceable
<b>Water Quality</b>		
Water Quality Policy #1	Enforceable	Not Applicable
Water Quality Policy #2	Enforceable	Not Applicable
Water Quality Policy #3	Enforceable	Not Applicable

The NARW is listed as Endangered by both the federal government and the Massachusetts Natural Heritage and Endangered Species Program (NHESP). NHESP has mapped the waters in and around Cape Cod and the Islands including Nantucket Sound out to the limit of state waters (approximately three miles offshore) as Priority and Estimated Habitats. Areas in Nantucket Sound seaward of the three-mile limit are not mapped as habitat as they are in federal waters. Many of these habitats are mapped for state-listed waterbirds such as terns.

As stated in the NMFS Letter, “the proposed amendments are consistent with state policies regarding coastal uses related to recreation and commercial fishing and coastal resource management because they would not affect fish and their habitat, interfere with any fisheries resources or coastal resource regulations, or have any physical impact on natural coastal resources. However, there may be seasonal economic impacts to the fishing industry by increasing transit times and longer trips to fishing areas in federal waters, for vessels that otherwise would transit in excess of 10 knots.” As no NARW have been observed within Nantucket Sound, the proposed amendments will result in seasonal economic impacts. Nantucket Sound should be removed from the Atlantic Zone SSZ which would eliminate economic impacts to Nantucket and other towns surrounding the sound with no detrimental impact to the NARW.

Portions of Nantucket Sound are within the Cape & Islands Ocean Sanctuary defined as being located between mean low water and the limit of state waters (approximately three miles offshore). This sanctuary is also located within the Massachusetts Ocean Management Planning Area. The remainder of Nantucket Sound seaward of the three mile limit is not identified as a sanctuary or within an ocean management planning area as these are considered federal waters. The Massachusetts Ocean Management Plan (OMP) establishes an elevated level of protection for special, sensitive, or unique (SSU) resources (such as the NARW) and important existing water-dependent uses. Based on this mapping created for the OMP, no NARW habitat is identified in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with the MCZM policies relative to habitat.

***Ports and Harbors Policy #4 [enforceable]*** *For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water’s edge for operational purposes.*

According to the NMFS Letter, “the proposed amendments are consistent with state policies regarding the right of use of all navigable waterways because they would not restrict access to navigable waters’ rather they would limit vessel speed in certain state waters during seasons when North Atlantic right whales are present in these waters.” No NARW have ever been recorded or observed in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with Ports and Harbors Policy #4.

According to MCZM 2011 Policy Guide, “It is CZM’s intent to ensure that the Commonwealth waterways and port resources are maintained and improved by the least environmentally damaging practicable alternatives. To accomplish this objective, CZM has developed policies concerning dredging and disposal of dredged material, priorities for channel dredging, Designated Port Area management, protection of water-dependent uses along the

waterfront, and the promotion of additional improvements to developed ports.” These Ports and Harbors Policies are intended to help support maritime activities. The proposed amendments will be detrimental to marine activities in Nantucket Sound including major economic impacts. Therefore, as the amendments will result in negative impacts to ports and harbors in Nantucket Sound where no NARW have ever been recorded or observed, the amendments are NOT CONSISTENT with this policy.

***Protected Areas Policy #3 [enforceable]*** *Ensure that proposed developments in or near designated or registered historic places respect the preservation intent of the designation and that potential adverse effects are minimized.*

The entire island and county of Nantucket is designated and registered as a historic district. The impact of the proposed amendments will impact the economic stability of the island which is dependent on maritime activities including the rich maritime history. The proposed amendments will impact the ferry services to Nantucket which is dependent on these water-dependent services affecting not only tourists but residents and folks dependent on jobs on the island and on food and materials shipped to the island. According to the NMFS Letter, “There are no foreseeable impacts on cultural or historic resources.” For many of the reasons set forth in this letter, we disagree with this conclusion. Therefore, the proposed amendments are NOT CONSISTENT with Protected Area Policy #3.

***Public Access Policy #1 [enforceable]*** *Ensure that development (both water-dependent or nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water’s edge, to an extent commensurate with the Commonwealth’s interests in flowed and filled tidelands under the Public Trust Doctrine.*

The proposed amendments will impact public access to state and federal waters within Nantucket Sound. The NMFS Letter states “the proposed amendments are consistent with state policies regarding public access for recreation because they would not impede access to federal waters for public recreation.” In addition, “the proposed amendments consist primarily of speed restrictions and, therefore, would allow for public access anywhere in state waters.” As noted in Attachment A, access to the water will be affected negatively for the following reasons:

- The Hy-Line (High-Speed Ferry) is dependent on faster speeds that will not longer be allowed and may cease to exist as it currently services 800,000 passengers, 40% of which trips occur between November and May.
- The Steamship Authority would not be able to provide adequate levels of freight service to and from Nantucket between November and May, resulting in shortages of food, fuel and basic household items.
- School sports would likely be cancelled, as there would no longer be an ability for students, on a daily basis, to go to the mainland.
- Medical appointments and medical treatments currently serviced on the mainland would have to be curtailed.
- Construction projects that occur primarily in the off-season (which last year totaled over \$2 Billion), would be significantly reduced. On an average day during the winter, as

many as 200 contractors are on the morning and afternoon Hy-Line ferries, which may not be running between November and May.

- Employment would be significantly curtailed, as many of the workers on Nantucket (including Town employees), commute on a daily basis to and from the mainland.
- Significant popular tourist events, such as the Christmas Stroll (and many other events) would be significantly curtailed due to impacts on the ferries directly affecting the local Nantucket economy.

While the Speed Rule would not prevent access, tangentially there will be major economic impacts to all the maritime uses in Nantucket Sound including ferry access to the island and access to commercial, industrial, and recreational boating access. Therefore, the proposed amendments are NOT CONSISTENT with Public Access Policy #1.

## CONCLUSION

In summary, life on Nantucket as it is currently situated, with its 17,000 residents and over 70,000 seasonal residents, would be dramatically and permanently negatively impacted by the proposed amendments. The proposed amendments are being proposed to include Nantucket Sound even through no NARW has ever been seen.

The potential solution for Massachusetts, is that areas such as Nantucket Sound should be excluded from the proposed amendments. If Nantucket Sound isn't excluded in its entirety, the shipping lanes, which form the lifeline for Nantucket, should be exempted, so that the needed freight, supplies and residents can daily traverse to the mainland.

We support the protections proposed for the NARW but are opposed to the inclusion of Nantucket Sound. For example, we support the use of Dynamic Management Areas (DMAs) that are identified if a NARW is sighted and slow down zones for all vessels are implemented in real time. This type of active management based on real time sightings will help to prevent impacts to NARW should they happen to appear within Nantucket Sound, which is unlikely based on the physical characteristics of Nantucket Sound and supported by decades of data.

## ACTION REQUESTED

Based on our assessment described in this letter and in Attachment A, the proposed Speed Rule is NOT CONSISTENT with at least four of the enforceable and applicable MCZM policies. We recommend that MCZM provide comments immediately to NOAA and NMFS reflecting such. We request that MCZM submit the following objections to NMFS in a timely manner:

- The inclusion of Nantucket Sound as a SSZ does not further the national interest in the coastal zone policy objectives or purposes in a significant or substantial manner and therefore, Nantucket Sound should be removed from the Atlantic Zone SSZ.
- The national interest furthered by the proposed amendments is outweighed by the adverse effects on the coastal resources of Nantucket Island and Nantucket Sound specifically the detrimental economic impacts that would be unfairly borne by the residents, visitors, town and county of Nantucket.



- The alternative of not including Nantucket Sound in the Atlantic Zone SSZ would permit maritime activities to continue without the Speed Rule in Nantucket Sound with no effects to the NARW and no economic effects to Nantucket Island and surrounding communities.

Respectfully submitted,

NEW ENGLAND DEVELOPMENT AND  
NANTUCKET ISLAND RESORTS

A handwritten signature in blue ink, appearing to read "John E. Twohig", is positioned above the typed name.

By: John E. Twohig

**ATTACHMENT A**  
**Consistency Review of Massachusetts Coastal Zone Management Policies**  
**Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule**

**REQUEST TO EXTEND COMMENT PERIOD**

The MCZM Public Notice requesting public comments on the NMFS proposed amendments to protect the North American Right Whale (NARW) was published in the July 24, 2024 Environmental Monitor with a 21-day comment period. Other than this Public Notice, there was no other notification provided to the public nor was there sufficient time for the public to review the MCZM policies for consistency relative to the Speed Rule. Cape Cod and Nantucket residents and government officials, boards, and commissions have been actively following the proposed amendments and have provided comment letters to their Congressmen and Senators and the US Office of Budget and Management Consultation. Interested parties should also have the ability to submit comments regarding the MCZM consistency. Many coastal states held public hearings on the consistency review. Therefore we are requesting that the comment period be extended in order to accept comments on this issue.

**ENVIRONMENTAL JUSTICE**

According to the Federal Register<sup>3</sup>, “The proposed action [Speed Rule] is not expected to have a disproportionately high effect on minority populations or low-income populations under [federal] Executive Order 12898.” As the MCZM falls under the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and is subject to the EEA Environmental Justice (EJ) Policy, MCZM is required to develop an EJ strategy<sup>4</sup> including, but not limited to, the following:

- Enhanced communication activities to expand information access for EJ populations
- Integrate EJ populations into outreach, environmental monitoring, and citizen volunteering activities
- Strengthen technical assistance to proactively address EJ issues and support EJ populations
- Support meaningful engagement with EJ populations and input during public comment, hearings, and information sessions for program activities.

As shown on Figure 1, there are numerous EJ communities located on Cape Cod (specifically in and around Hyannis where the ferries dock) and on Nantucket and Martha’s Vineyard. Many of the residents in these EJ communities are dependent on employment directly affected by maritime activities in Nantucket Sound. We are not aware that MCZM has provided any outreach to EJ communities on Cape Cod or the Islands regarding the Speed Rule and consistency. Few were aware of the recent Public Notice published in the Environmental Monitor and not enough time was provided to develop comments regarding consistency. As the economic impacts of the Speed Rule

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<sup>3</sup> <https://www.federalregister.gov/documents/2022/08/01/2022-16211/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule>

<sup>4</sup> Massachusetts Executive Office of Energy and Environmental Affairs. February 2024. Environmental Justice Strategy Secretariat and agency strategies for proactively promoting environmental justice in the Commonwealth of Massachusetts <https://www.mass.gov/doc/february-2024-environmental-justice-strategy-english/download>

will impact the EJ communities, we request that outreach be performed with the EJ communities regarding the proposed amendments and the comment period be extended.

### **SEASONAL SPEED ZONES (SSZ)**

In 2022, the NMFS, a division of NOAA, proposed new, mandatory regulations, which requires that all ships 35 feet in length or more, cannot exceed 10 knots during the period of November to May, each year. Nantucket Sound is proposed to be included in the new Atlantic Zone Seasonal Speed Zones (SSZs) where the proposed Speed Rule would be applicable. The SSZs are proposed to replace the Seasonal Management Areas (SMAs) which never included Nantucket Sound.

Nantucket Sound is not presently mapped as a SMA but is proposed to be located within the Atlantic Zone SSZ where speed limitations will be required between November 1 and May 30 of each year to protect the NARW. We do not agree with the modification of the boundaries and creation of a new SSZ to include Nantucket Sound as no NARW have ever been recorded in Nantucket Sound.

Numerous letters have been submitted to the US Office of Budget and Management Consultation, NOAA, and NMFS requesting an exemption of Nantucket Sound from the SSZ similar to what exists for Long Island Sound and Buzzards Bay. As shown in the Figures 2 through 4, Nantucket Sound has never been a location where the NARW has been sighted including formal surveys by private, state, and federal agencies. In addition, according to Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority, their crews and other private entities such as Hy-Line Cruises which are licensed by the Steamship Authority, have run thousands of trips back and forth across Nantucket Sound for years but have never observed any NARW presumably due to the shallowness of the sound as shown in Figure 2.

The Hy-Line ferry is the only convenient access to Nantucket with 800,000 passenger trips annually, 40% (or 320,000) of which occur during the months of November through May. There is no longer convenient short trip air service between Hyannis and Nantucket. The whole function and design of the high-speed ferry is to operate at a higher speed. The Speed Rule would eliminate this function. Many of these trips between November and May are workers who live off Island. There is limited space for worker housing on-Island, therefore, most of the workers, including construction workers and service industry workers, are dependent on the high-speed ferry. If the travel time to the Island for the workers is increased, this would be reflected in service and construction costs and reduce the availability of workers in Nantucket. There are already many challenges in finding help on Nantucket. Lack of a high-speed ferry would compound these issues. This is a direct impact on not only the workers heading to Nantucket but the residents (and economic vitality) of Nantucket.

### **NMFS LETTER**

NMFS issued a letter dated June 18, 2024 (hereinafter the NMFS Letter) requesting each state coastal zone agency submit concurrence or objection to the Speed Rule within 60 days (by August 18, 2024)<sup>5</sup>. We understand that this deadline has not been extended by NMFS and lack of response

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<sup>5</sup> The Coastal Zone Management Act (CZMA) requires federal actions affecting the coastal zone be consistent with a state's coastal management program.

would indicate consistency concurrence by a state. The NMFS Letter indicated that the MCZM did not identify any enforceable policies relative to the Speed Rule.

According to the NMFS Letter, NMFS has determined that the proposed amendments would affect water uses as defined by the Coastal Zone Management Act (CZMA) as “a use, activity, or project conducted in or on waters within the coastal zone” [16 USC 1453(18)] “with respect to vessel traffic and operations”. Also, the NMFS Letter “expects the largest portion of costs from implementation of the proposed amendments would be borne by the commercial shipping industry.” In addition, “Other vessel sectors are expected to incur cost burdens, particularly those characterized by higher speed operations such as passenger vessels (tour boats, charter fishing vessels, high-speed ferries), pilot boats, recreational boats, and some commercial fishing and industrial vessels.” The NMFS Letter also goes on to state that “the estimated economic impacts are not expected to compromise the economic value of coastal resources.” We disagree with these statements and conclusions as there would be detrimental economic impacts that would be unfairly borne by the residents, visitors, town and county of Nantucket. See below for more information.

### **NMFS DRAFT ENVIRONMENTAL ASSESSMENT FOR AMENDMENTS TO THE NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE – JULY 2022**

This Draft Environmental Assessment (DEA) prepared in 2022 for the Speed Rule included an assessment of expanding SSZ “boundaries and timing to better capture areas and times with elevated vessel strike risk” and “minimize impacts to resources (economic, transportation) and small entities”. As no NARW have ever been observed in Nantucket Sound, inclusion of the sound in the proposed Atlantic Zone SSZ does not meet the goals and objectives set forth in the DEA. The DEA notes that data indicates a shift in the NARW distribution, but this shift still does not include Nantucket Sound and will likely not include Nantucket Sound due to the shallow waters (see Figure 2). In addition, there would be detrimental economic impacts unfairly borne by the residents, visitors, town and county of Nantucket. See below for more information.

Alternatives reviewed in the DEA were selected for many reasons, including developing regulations which should “use the smallest footprint and timeframe necessary for SSZs and DSZs to achieve conservation goals.” Removal of Nantucket Sound from the SSZ would achieve this purpose. The DEA also identified that regulations developed should “minimize impacts to resources (economic, transportation) and small entities.” If there are no NARW in Nantucket Sound, then removing Nantucket Sound from the SSZ would reduce any economic impacts as envisioned in the DEA.

### **ECONOMIC IMPACTS**

If the Speed Rule is approved, there would be devastating economic impacts on communities like the towns of Martha’s Vineyard, Nantucket, and Hyannis. Impacts on Nantucket would include, but not be limited to:

- The Hy-Line (High-Speed Ferry) is dependent on faster speeds that will not longer be allowed and may cease to exist as it currently services 800,000 passengers, 40% of which trips occur between November and May.

- The Steamship Authority would not be able to provide adequate levels of freight service to and from Nantucket between November and May, resulting in shortages of food, fuel and basic household items.
- School sports would likely be cancelled, as there would no longer be an ability for students, on a daily basis, to go to the mainland.
- Medical appointments and medical treatments currently serviced on the mainland would have to be curtailed.
- Construction projects that occur primarily in the off-season (which last year totaled over \$2 Billion), would be significantly reduced. On an average day during the winter, as many as 200 contractors are on the morning and afternoon Hy-Line ferries, which may no longer would be running between November and May.
- Employment would be significantly curtailed, as many of the workers on Nantucket (including Town employees), commute on a daily basis to and from the mainland.
- Significant popular tourist events, such as the Christmas Stroll (and many other events) would be significantly curtailed due to impacts on the ferries directly affecting the local Nantucket economy.

## **CONSISTENCY WITH MCZM POLICIES**

The following table is a summary of the MCZM policies identified as enforceable that, based on our assessment, are applicable to impacts of the Speed Rule, specifically in relation to Nantucket Sound and Nantucket Island.

The following MCZM policies are considered as not enforceable and are not addressed here:

- Coastal Hazards Policy #4
- Energy Policy #2
- Growth Management Policy #1
- Growth Management Policy #2
- Growth Management Policy #3
- Ports and Harbors Policy #5
- Public Access Policy #2
- Public Access Policy #3

The following MCZM policies are considered as enforceable but, based on our review, are not applicable to the Speed Rule as it relates to Nantucket Sound and Nantucket Island.

- |                             |                               |
|-----------------------------|-------------------------------|
| • Coastal Hazards Policy #1 | • Ports and Harbors Policy #1 |
| • Coastal Hazards Policy #2 | • Ports and Harbors Policy #2 |
| • Coastal Hazards Policy #3 | • Ports and Harbors Policy #3 |
| • Energy Policy #1          | • Protected Areas Policy #1   |
| • Habitat Policy #2         | • Protected Areas Policy #2   |
| • Ocean Resources Policy #1 | • Water Quality Policy #1     |
| • Ocean Resources Policy #2 | • Water Quality Policy #2     |
| • Ocean Resources Policy #3 | • Water Quality Policy #3     |



**Table 1: Summary of MCZM Policies And Consistency Relative to the Speed Rule**

<b>MCZM Policy</b>	<b>Enforceable</b>	<b>Consistency of Speed Rule</b>
<b>Coastal Hazards</b>		
Coastal Hazards Policy #1	Enforceable	Not Applicable
Coastal Hazards Policy #2	Enforceable	Not Applicable
Coastal Hazards Policy #3	Enforceable	Not Applicable
Coastal Hazards Policy #4	Not Enforceable	Not Enforceable
<b>Energy</b>		
Energy Policy #1	Enforceable	Not Applicable
Energy Policy #2	Not Enforceable	Not Enforceable
<b>Growth Management</b>		
Growth Management Policy #1	Not Enforceable	Not Enforceable
Growth Management Policy #2	Not Enforceable	Not Enforceable
Growth Management Policy #3	Not Enforceable	Not Enforceable
<b>Habitat</b>		
Habitat Policy #1	Enforceable	<b>NOT CONSISTENT</b>
Habitat Policy #2	Enforceable	Not Applicable
<b>Ocean Resources</b>		
Ocean Resources Policy #1	Enforceable	Not Applicable
Ocean Resources Policy #2	Enforceable	Not Applicable
Ocean Resources Policy #3	Enforceable	Not Applicable
<b>Ports and Harbors</b>		
Ports and Harbors Policy #1	Enforceable	Not Applicable
Ports and Harbors Policy #2	Enforceable	Not Applicable
Ports and Harbors Policy #3	Enforceable	Not Applicable
Ports and Harbors Policy #4	Enforceable	<b>NOT CONSISTENT</b>
Ports and Harbors Policy #5	Not Enforceable	Not Enforceable
<b>Protected Areas</b>		
Protected Areas Policy #1	Enforceable	Not Applicable
Protected Areas Policy #2	Enforceable	Not Applicable
Protected Areas Policy #3	Enforceable	<b>NOT CONSISTENT</b>
<b>Public Access</b>		
Public Access Policy #1	Enforceable	<b>NOT CONSISTENT</b>
Public Access Policy #2	Not Enforceable	Not Enforceable
Public Access Policy #3	Not Enforceable	Not Enforceable
<b>Water Quality</b>		
Water Quality Policy #1	Enforceable	Not Applicable
Water Quality Policy #2	Enforceable	Not Applicable
Water Quality Policy #3	Enforceable	Not Applicable

The following four MCZM policies are considered as enforceable and, based on our review, are applicable to the Speed Rule as it relates to Nantucket Sound and Nantucket Island. Following our review, it is our opinion that the Proposed amendments are NOT CONSISTENT with these four applicable MCZM policies:

- Habitat Policy #1
- Ports and Harbors Policy #4
- Protected Areas Policy #3
- Public Access Policy #1

## **COASTAL HAZARDS**

***Coastal Hazards Policy #1 [enforceable]*** *Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, and land subject to coastal storm flowage, salt marshes, and land under the ocean.*

This policy is not applicable to the Speed Rule.

***Coastal Hazards Policy #2 [enforceable]*** *Ensure that construction in water bodies and contiguous land areas will minimize interference with water circulation and sediment transport. Flood or erosion control projects must demonstrate no significant adverse effects on the project site or adjacent or downcoast areas.*

This policy is not applicable to the Speed Rule.

***Coastal Hazards Policy #3 [enforceable]*** *Ensure that state and federally funded public works projects proposed for location within the coastal zone will:*

- *Not exacerbate existing hazards or damage natural buffers or other natural resources.*
- *Be reasonably safe from flood and erosion-related damage.*
- *Not promote growth and development in hazard-prone or buffer areas, especially in velocity zones and Areas of Critical Environmental Concern.*
- *Not be used on Coastal Barrier Resource Units for new or substantial reconstruction of structures in a manner inconsistent with the Coastal Barrier Resource/Improvement Acts.*

This policy is not applicable to the Speed Rule.

## **ENERGY**

***Energy Policy #1 [enforceable]*** *For coastally dependent energy facilities, assess siting in alternative coastal locations. For non-coastally dependent energy facilities, assess siting in areas outside of the coastal zone. Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites.*

This policy is not applicable to the Speed Rule.

## HABITAT

***Habitat Policy #1 [enforceable]*** Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches, banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.

The NARW is listed as Endangered by both the federal government and the Massachusetts Natural Heritage and Endangered Species Program (NHESP). NHESP has mapped the waters in and around Cape Cod and the Islands including Nantucket Sound out to the limit of state waters (approximately three miles offshore) as Priority and Estimated Habitats. Areas in Nantucket Sound seaward of the three mile limit are not mapped as habitat as they are in federal waters. Many of these habitats are mapped for state-listed waterbirds such as terns.

As stated in the NMFS Letter, “the proposed amendments are consistent with state policies regarding coastal uses related to recreation and commercial fishing and coastal resource management because they would not affect fish and their habitat, interfere with any fisheries resources or coastal resource regulations, or have any physical impact on natural coastal resources. However, there may be seasonal economic impacts to the fishing industry by increasing transit times and longer trips to fishing areas in federal waters, for vessels that otherwise would transit in excess of 10 knots.” As no NARW have been observed within Nantucket Sound, the proposed amendments will result in the seasonal economic impacts. Nantucket Sound should be removed from the Atlantic Zone SSZ which would eliminate economic impacts to Nantucket and other towns surrounding the sound with no detrimental impact to the NARW.

Portions of Nantucket Sound are within the Cape & Islands Ocean Sanctuary defined as being located between mean low water and the limit of state waters (approximately three miles offshore). This sanctuary is also located within the Massachusetts Ocean Management Planning Area. The remainder of Nantucket Sound seaward of the three mile limit is not identified as a sanctuary or within an ocean management planning area as these are considered federal waters. The Massachusetts Ocean Management Plan (OMP) establishes an elevated level of protection for special, sensitive, or unique (SSU) resources (such as the NARW) and important existing water-dependent uses. Based on this mapping created for the OMP, no NARW habitat is identified in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with the MCZM policies relative to habitat.

***Habitat Policy #2 [enforceable]*** Advance the restoration of degraded or former habitats in coastal and marine areas.

This policy is not applicable to the Speed Rule.

## OCEAN RESOURCES

**Ocean Resources Policy #1 [enforceable]** Support the development of sustainable aquaculture, both for commercial and enhancement (public shellfish stocking) purposes. Ensure that the review process regulating aquaculture facility sites (and access routes to those areas) protects significant ecological resources (salt marshes, dunes, beaches, barrier beaches, and salt ponds) and minimizes adverse effects on the coastal and marine environment and other water-dependent uses.

This policy is not applicable to the Speed Rule.

**Ocean Resources Policy #2 [enforceable]** Except where such activity is prohibited by the Ocean Sanctuaries Act, the Massachusetts Ocean Management Plan, or other applicable provision of law, the extraction of oil, natural gas, or marine minerals (other than sand and gravel) in or affecting the coastal zone must protect marine resources, marine water quality, fisheries, and navigational, recreational and other uses.

This policy is not applicable to the Speed Rule.

**Ocean Resources Policy #3 [enforceable]** Accommodate offshore sand and gravel extraction needs in areas and in ways that will not adversely affect marine resources, navigation, or shoreline areas due to alteration of wave direction and dynamics. Extraction of sand and gravel, when and where permitted, will be primarily for the purpose of beach nourishment or shoreline stabilization.

This policy is not applicable to the Speed Rule.

## PORTS AND HARBORS

**Ports and Harbors Policy #1 [enforceable]** Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity, and public health and take full advantage of opportunities for beneficial re-use.

This policy is not applicable to the Speed Rule.

**Ports and Harbors Policy #2 [enforceable]** Obtain the widest possible public benefit from channel dredging and ensure that Designated Port Areas and developed harbors are given highest priority in the allocation of resources.

This policy is not applicable to the Speed Rule.

**Ports and Harbors Policy #3 [enforceable]** Preserve and enhance the capacity of Designated Port Areas to accommodate water-dependent industrial uses and prevent the exclusion of such uses from tidelands and any other DPA lands over which an EEA agency exerts control by virtue of ownership or other legal authority.

This policy is not applicable to the Speed Rule.

**Ports and Harbors Policy #4 [enforceable]** *For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water's edge for operational purposes.*

According to the NMFS Letter, “the proposed amendments are consistent with state policies regarding the right of use of all navigable waterways because they would not restrict access to navigable waters’ rather they would limit vessel speed in certain state waters during seasons when North Atlantic right whales are present in these waters.” This statement is correct although as no NARW have ever been recorded or observed in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with Ports and Harbors Policy #4.

According to MCZM 2011 Policy Guide, “It is CZM’s intent to ensure that the Commonwealth waterways and port resources are maintained and improved by the least environmentally damaging practicable alternatives. To accomplish this objective, CZM has developed policies concerning dredging and disposal of dredged material, priorities for channel dredging, Designated Port Area management, protection of water-dependent uses along the waterfront, and the promotion of additional improvements to developed ports.” These Ports and Harbors Policies are intended to help support maritime activities. The proposed amendments will be detrimental to marine activities in Nantucket Sound including major economic impacts. Therefore, as the amendments will result in negative impacts to ports and harbors in Nantucket Sound where no NARW have ever been recorded or observed, the amendments are NOT CONSISTENT with this policy.

## **PROTECTED AREAS**

**Protected Areas Policy #1 [enforceable]** *Preserve, restore, and enhance coastal Areas of Critical Environmental Concern, which are complexes of natural and cultural resources of regional or statewide significance.*

This policy is not applicable to the Speed Rule.

**Protected Areas Policy #2 [enforceable]** *Protect state designated scenic rivers in the coastal zone.*

This policy is not applicable to the Speed Rule.

**Protected Areas Policy #3 [enforceable]** *Ensure that proposed developments in or near designated or registered historic places respect the preservation intent of the designation and that potential adverse effects are minimized.*

The entire island and county of Nantucket is designated and registered as a historic district. The impact of the proposed amendments will impact the economic stability of the island which is dependent on maritime activities including the rich maritime history. The proposed amendments will impact the ferry services to Nantucket which is dependent on these water-dependent services affecting not only tourists but residents and folks dependent on jobs on the island and on food and materials shipped to the island. According to the NMFS Letter, “There are no foreseeable impacts on cultural or historic resources.” We disagree



with this conclusion. Therefore, the proposed amendments are NOT CONSISTENT with Protected Area Policy #3.

## **PUBLIC ACCESS**

***Public Access Policy #1 [enforceable]*** *Ensure that development (both water-dependent or nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water's edge, to an extent commensurate with the Commonwealth's interests in flowed and filled tidelands under the Public Trust Doctrine.*

The proposed amendments will impact public access to state and federal waters within Nantucket Sound. The NMFS Letter states “the proposed amendments are consistent with state policies regarding public access for recreation because they would not impede access to federal waters for public recreation.” In addition, “the proposed amendments consist primarily of speed restrictions and, therefore, would allow for public access anywhere in state waters.” Access to the water will be affected negatively for the following reasons:

- The Hy-Line (High-Speed Ferry) is dependent on faster speeds that will not longer be allowed and may cease to exist as it currently services 800,000 passengers, 40% of which trips occur between November and May.
- The Steamship Authority would not be able to provide adequate levels of freight service to and from Nantucket between November and May, resulting in shortages of food, fuel and basic household items.
- School sports would likely be cancelled, as there would no longer be an ability for students, on a daily basis, to go to the mainland.
- Medical appointments and medical treatments currently serviced on the mainland would have to be curtailed.
- Construction projects that occur primarily in the off-season (which last year totaled over \$2 Billion), would be significantly reduced. On an average day during the winter, as many as 200 contractors are on the morning and afternoon Hy-Line ferries, which may no longer would be running between November and May.
- Employment would be significantly curtailed, as many of the workers on Nantucket (including Town employees), commute on a daily basis to and from the mainland.
- Significant popular tourist events, such as the Christmas Stroll (and many other events) would be significantly curtailed due to impacts on the ferries directly affecting the local Nantucket economy.

While the Speed Rule would not prevent access, tangentially there will be major economic impacts to all the maritime uses in Nantucket Sound including ferry access to the island and access to commercial, industrial, and recreational boating access. Therefore, the proposed amendments are NOT CONSISTENT with Public Access Policy #1.

## **WATER QUALITY**

***Water Quality Policy #1 [enforceable]*** *Ensure that point-source discharges and withdrawals in or affecting the coastal zone do not compromise water quality standards and protect designated uses and other interests.*

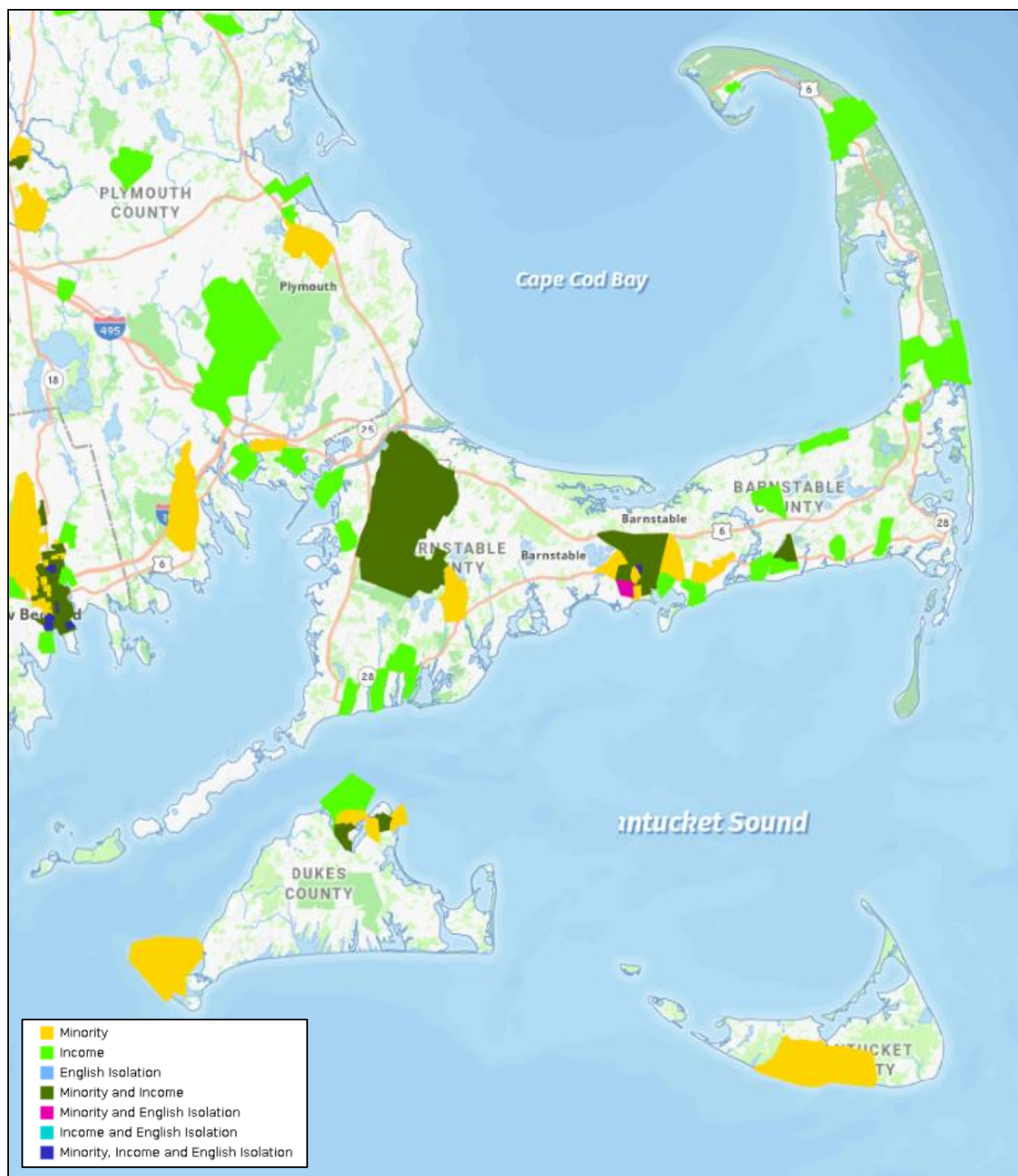
This policy is not applicable to the Speed Rule.

***Water Quality Policy #2 [enforceable]*** *Ensure the implementation of nonpoint source pollution controls to promote the attainment of water quality standards and protect designated uses and other interests.*

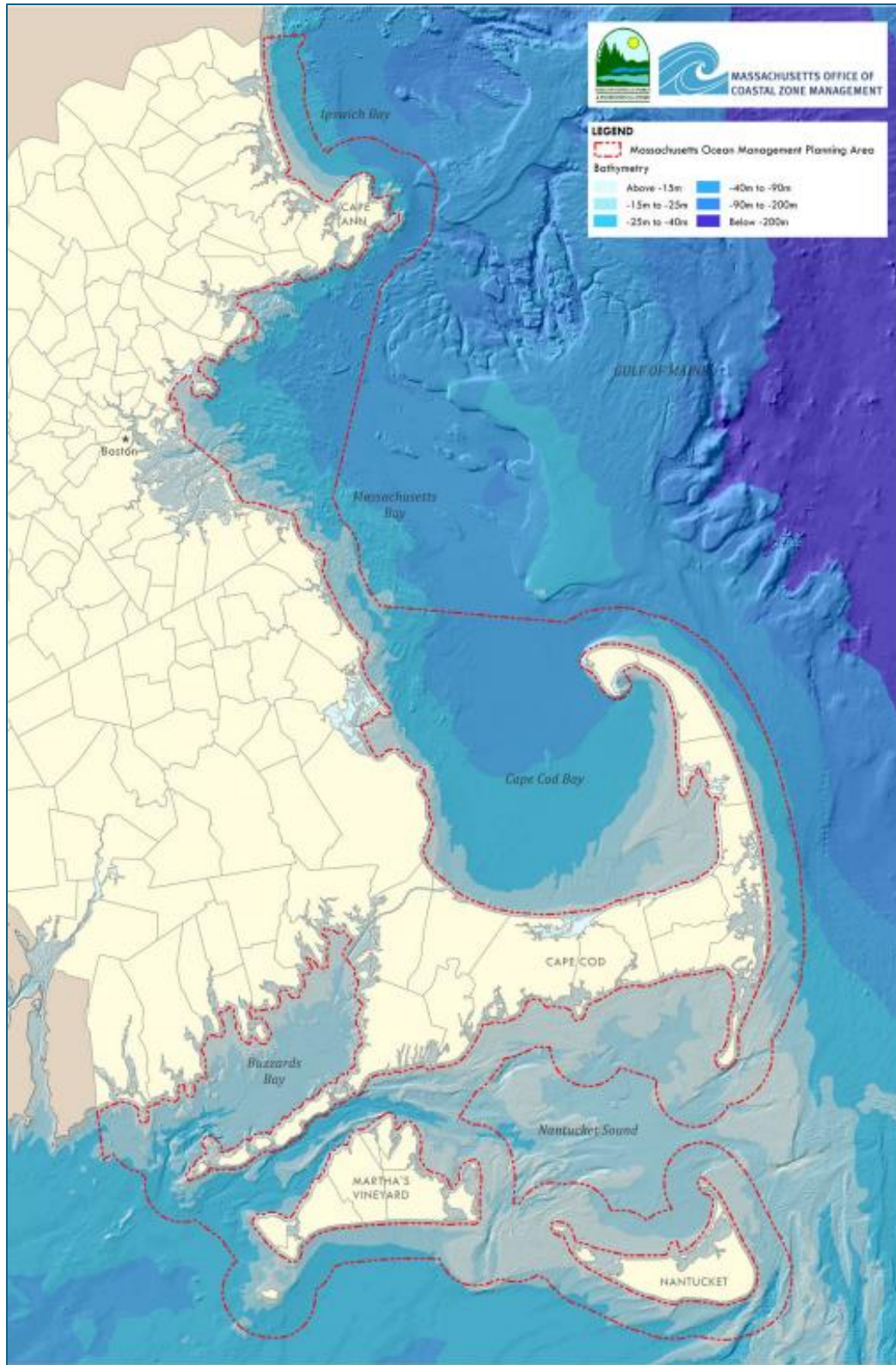
This policy is not applicable to the Speed Rule.

***Water Quality Policy #3 [enforceable]*** *Ensure that subsurface waste discharges conform to applicable standards, including the siting, construction, and maintenance requirements for on-site wastewater disposal systems, water quality standards, established Total Maximum Daily Load limits, and prohibitions on facilities in high-hazard areas.*

This policy is not applicable to the Speed Rule.



**Figure 1: Environmental Justice Populations on Cape Cod and the Islands**  
 (Source: <https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html>; 2020 Census)



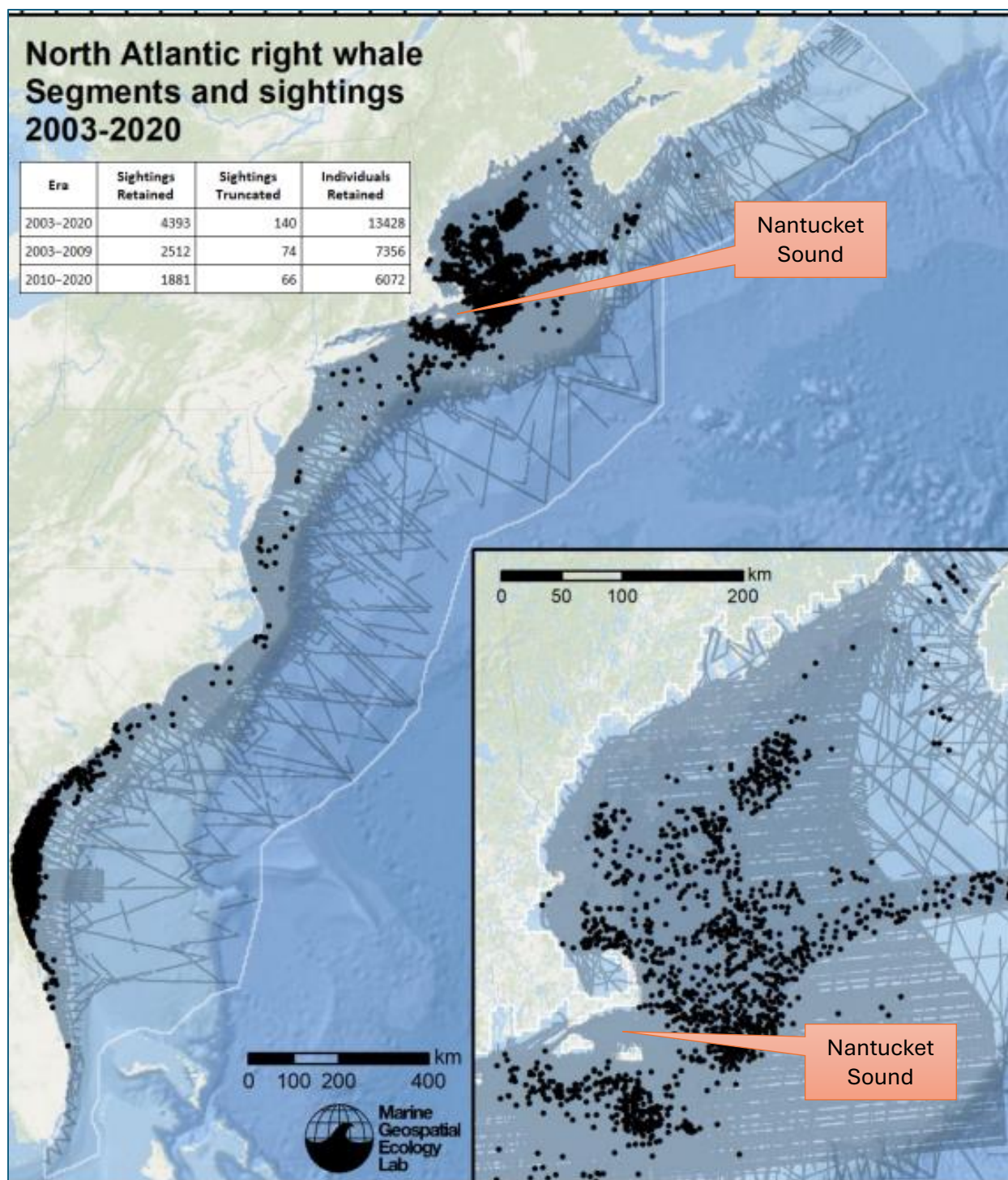
**Figure 2: Massachusetts Ocean Management Planning Areas**  
 (Source: 2021 Massachusetts Ocean Management Plan; Figure 1)





**Figure 3: Special, Sensitive, or Unique (SSU) Resources: NARW Core Habitat**  
(Source: 2021 Massachusetts Ocean Management Plan; Figure 4)





**Figure 4: North Atlantic Right Whale Segments and Sightings 2003-2020**

(Source: [https://seamap.env.duke.edu/seamap-models-files/Duke/EC/North\\_Atlantic\\_right\\_whale/Docs/NARW\\_v12\\_overview.pdf](https://seamap.env.duke.edu/seamap-models-files/Duke/EC/North_Atlantic_right_whale/Docs/NARW_v12_overview.pdf))



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OPERATIONS DIRECTOR

July 26, 2024

Massachusetts Office of Coastal Zone Management  
CZM Project Review Coordinator  
Attn: Sean Duffy  
[Sean.duffey@mass.gov](mailto:Sean.duffey@mass.gov)

### **SUBJ: NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE**

Dear Sean:

The American Pilots' Association (APA)<sup>1</sup> disagrees with the June 18, 2024 NMFS "Coastal Zone Management Act (CZMA) Consistency Determination for the Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Rule." Specifically, APA disagrees with the impacts to waterways, navigable waters, and right of passage, such as safety of navigation and pilotage; the impacts to ports, harbors, piers, and related facilities; and the economic impact to pilot operations. Further, this rulemaking was proposed without any meaningful engagement with the various sectors of the maritime industry – including specifically maritime pilot groups or the APA – and without any serious analysis of the economic impacts the proposal would have on these maritime sectors. Likewise, it seems that NMFS is waiting until the last minute to engage with the states on this issue, as this rule was first proposed in August of 2022, and it is now July of 2024. For your reference, APA submitted comments<sup>2</sup> to the National Marine Fisheries Service's (NMFS) August 1, 2022 Notice of Proposed Rulemaking (NPRM), *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule*.<sup>3</sup> We strongly urge you to consider our serious concerns - as outlined below - pass them on to NMFS, and urge NMFS to withdraw the proposed rulemaking as it is not consistent with Massachusetts's coastal zone management interests.

APA is of the strong view that the proposed NMFS rule does not appropriately account for the safety of America's maritime pilots and pilot boat crews, the safe movement of large merchant vessels carrying

<sup>1</sup> The American Pilots' Association (APA) has been the national association of professional maritime pilots since 1884. Virtually all of the more than 1,200 State-licensed pilots working in the coastal ports and approaches of the United States, as well as all of the U.S. registered pilots operating in the Great Lakes system under authorization by the Coast Guard, belong to APA member pilot groups. These pilots handle well over 90 percent of all large ocean-going vessels moving in international trade in the waterways of the United States. The role and official responsibility of these pilots is to protect the safety of navigation and the marine environment in the waters for which they are licensed. For more visit: [www.americanpilots.org](http://www.americanpilots.org)

<sup>2</sup> <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18954>

<sup>3</sup> Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921 (proposed Aug. 1, 2022) (to be codified at 50 C.F.R. Part 224).

**CAPT. ERIC A. NIELSEN**  
VICE PRESIDENT  
NORTH ATLANTIC STATES

**CAPT. R. TREY THOMPSON III**  
VICE PRESIDENT  
SOUTH ATLANTIC STATES

**CAPT. CLINT A. WINEGAR**  
VICE PRESIDENT  
GULF STATES

**CAPT. MICHAEL T.D. MILLER**  
VICE PRESIDENT  
GULF STATES – LOUISIANA

**CAPT. HANS H. ANTONSEN**  
VICE PRESIDENT  
PACIFIC STATES

**CAPT. JOHN R. BOYCE**  
VICE PRESIDENT  
GREAT LAKES

commercial cargo (including hazardous cargos), and the significant negative economic impacts the proposal would have. In general, the proposed modifications to the NARW vessel strike reduction rule significantly expand the existing NARW vessel speed restriction regulations to the detriment of pilot and pilot boat crew safety, safe navigation of large commercial vessels, and the health of the maritime supply chain and the business of pilot groups along the entire East Coast.

## **Overview**

Before summarizing APA's concerns with the proposed rule, which are spelled out in detail at the link in Footnote 1, it is worth acknowledging the significance of the proposed amendments to the NARW vessel speed restriction. NMFS proposes to more than double the existing speed restriction area, blanketing the entire U.S. East Coast with Seasonal Speed Zones (SSZ) for six to seven months every year.<sup>4</sup> Additionally, under NMFS' proposal the 10 knot speed restriction would apply to all vessels greater than or equal to 35 ft, (the rule currently applies to vessels greater than 65 ft). Finally, the proposed amendments would drastically change the existing regulatory navigation safety "deviation clause," (the provision that allows vessels to exceed the 10 knots speed restriction if navigation safety concerns dictate), making the deviation clause so overly burdensome and complicated that it is virtually unusable. In addition, NMFS' choice to overtly stress the criminal penalties associated with the vessel speed regulations in its regulatory proposal has the dangerous effect of criminalizing critical navigation safety decisions made in a dynamic and already extremely challenging operational environment. The following paragraphs briefly summarize APA's rationale for opposing the proposed amendments to the NARW speed restriction regulations.

## **Impacts to Waterways, Navigable Waters, and Right of Passage**

### **Safety of Life at Sea**

First, and foremost, this is an issue of the safety of life at sea. The application of speed restrictions to pilot boats (which have been purposefully built by East Coast pilot groups, in good faith reliance on NMFS' current NARW regulations and at a cost of tens of millions of dollars, to be less than 65 feet) and the significant expansion of SSZs would increase the dangers faced by pilots and pilot boat crews during dangerous pilot transfer operations. Pilot transfer operations (when a pilot transfers between a pilot boat and larger ocean-going vessel) are inherently dangerous operations. Despite safety regulations and extreme care being taken during the pilot transfer process, eight U.S. pilots and one pilot boat crew member have been killed during transfers since 2006, and four pilots around the world have been killed during the transfer process in calendar year 2023 alone. Unnecessarily limiting the size, capabilities, or the speeds of pilot boats would increase the dangers faced by pilots, pilot boat operators, and pilot boat crews. Limiting pilot boat size is dangerous because, generally speaking, larger vessels of similar design provide much greater stability and ease of handling in a maritime environment, especially the off-shore heavy weather environment in which pilots operate. Pilot boat operators must make split-second decisions related to course and speed changes to provide a stable platform to transfer pilots to and from massive vessels. This precision operation requires that both vessels be moving – often at speeds more than 10 knots – and pilot boat operators must have unfettered discretion to adjust speed at a moment's notice in order to optimize the safety of the transfer. Plain and simple, limiting this discretion and placing arbitrary and artificial speed constraints on pilot boats is dangerous. Finally, and what is so frustrating about NMFS' decision to try to apply NARW vessel speed restrictions to pilot boats, is that this is unnecessary. NMFS has advised APA that it is not aware of a single incidence of a pilot boat ever striking a NARW.

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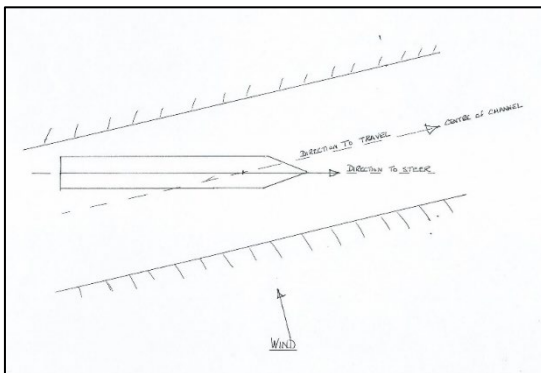
<sup>4</sup> Despite proposing this vast expansion of the NARW vessel speed restriction zones, NMFS unironically claims in its Notice of Proposed Rulemaking that it "aimed to identify the smallest spatial and temporal footprint possible for speed restriction areas." See 87 F.R. 146, 46925.

## Navigating Large Ships in Narrow Channels

Second, the professional maritime pilots whom APA represents are charged with safely navigating massive ocean-going vessels, laden with thousands of passengers, vital supplies, and sometimes hazardous cargo, into and out of port. Vice Admiral Brian M. Salerno, at the time the Coast Guard's Deputy Commandant for Operations, described the work of a pilot as follows:

Each day, pilots are asked to take all sizes and types of vessels through narrow channels in congested waters where one miscalculation could mean disaster. They are trained, highly professional individuals, whose judgments must be spot-on for the hundreds of decisions they must make at every turn to bring a vessel safely to its berth or out to sea.<sup>5</sup>

This NMFS proposal, if enacted, will significantly limit pilots' ability to perform these critical safety and environmental protection duties. Pilots must safely navigate massive vessels, often 800-1300 feet in length, in narrow Federal Navigation Channels (FNC)<sup>6</sup> that, in some instances, are less than 1000 ft wide and extend 10-18 miles offshore along the East Coast. There is little room for error when navigating a 1300ft ship in a 1000ft wide channel. Pilots rely on being able to maintain a safe and sufficient speed to navigate these vessels through areas of cross currents, heavy winds, and two-way vessel traffic where NMFS is proposing its blanket speed restriction. A pilot may find it necessary – to alter the vessel's "crab angle" to combat the lateral forces of the winds and currents to keep the vessel safely in the channel. "Crabbing" requires the pilot to increase the vessel's speed on a moment's notice and to steer the vessel into the lateral forces, such as the wind and currents, which are working to effectively push the vessel off its intended course. Often the winds and currents are perpendicular to the entrance channels in the winter months when the NARW speed restrictions are in place. A significant amount of water flow over the rudder is required to maintain these crabbing angles and, in many instances, given the size of the vessels, the only method of ensuring adequate water flow is to speed up – frequently in excess of 10 knots. The below diagram illustrates the significance of "crabbing" in a narrow channel.



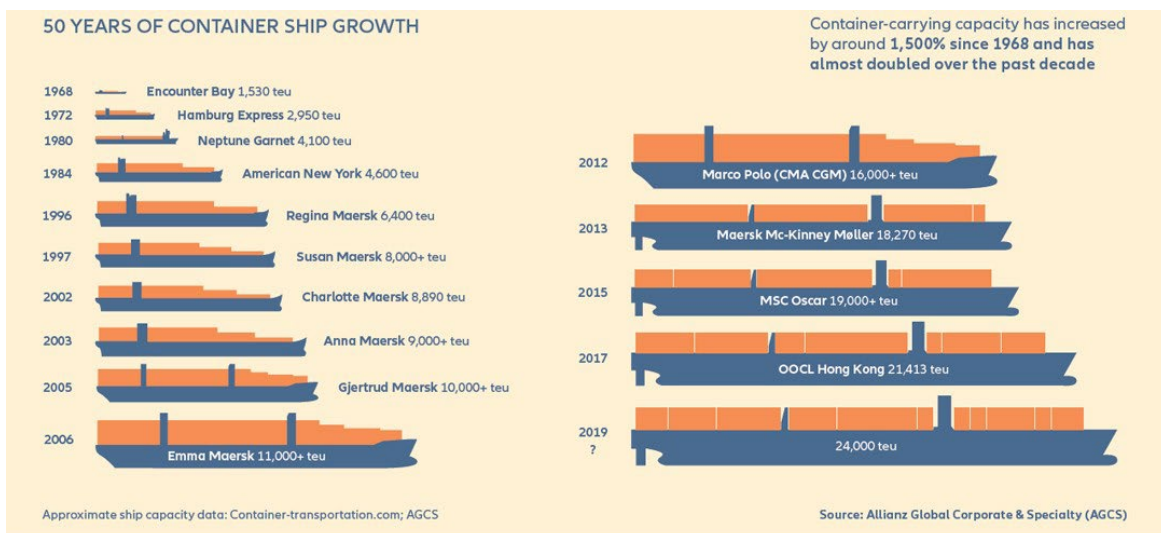
<sup>5</sup> *A Career as a Ship Pilot*, PROCEEDINGS OF THE MARINE SAFETY & SECURITY COUNCIL, THE COAST GUARD JOURNAL OF SAFETY AT SEA, Fall 2008, at 9

<sup>6</sup> Federal Navigation Channels are coastal channels and waterways that are maintained and surveyed by the U.S. Army Corps of Engineers (USACE). These channels are necessary transportation systems that serve economic and national security interests.





Due to the rapid growth in length, width, sail area, and draft of vessels calling at U.S. ports, concerns about the ability of pilots to safely navigate in narrow and challenging FNC waters has only increased since mandatory NARW speed restrictions began in 2008. In short, given the exponential growth of the ships calling at U.S. ports, the routine use of the navigation safety deviation clause is, out of necessity, becoming increasingly prevalent. See the below diagrams to see just how quickly vessels from various shipping sectors have grown over the years since the NARW speed restriction first entered into force.







NMFS’ proposed changes to the navigation safety deviation clause – perhaps purposefully – are so cumbersome and unwieldy that if imposed they would make the safety deviation clause unusable for pilots. What’s more, to date NMFS has not pointed to any concrete data that supports changing this safety deviation clause. In fact, NMFS has been unable to provide APA with a single confirmed incidence of a NARW being struck by piloted vessel in an FNC. Instead, NMFS’ support and rationale for changing the safety deviation clause seems entirely speculative.

### **Considering the Economic Impacts**

The Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, requires an agency to consider the economic and other relevant impacts when acting to protect an endangered species. This was not done in NMFS’ proposal to amend the NARW vessel speed regulations. The courts have taken up this very issue. In *Bennett v. Spear*, the Court addressed the failure of the Secretary to “determine the critical habitat [for certain endangered species] without complying with the mandate of § 1533(b)(2) that the Secretary ‘tak[e] into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat’” under the ESA.<sup>7</sup> By NMFS’s own admission, the agency does not have an accurate picture of the detrimental economic impact the proposed rule will have on the national, state, and local economies. The draft Regulatory Impact Review (RIR) significantly underestimates the direct economic impact of the proposed rule and fails to consider the qualitative impacts as required by EO 12866.<sup>8</sup> The impact to pilot operations alone will be more than NMFS’ total projected economic impact as this rule will render most pilot boats along the East Coast obsolete and would require the acquisition of additional boats and the hiring of considerably more pilots, pilot boat crews and maintenance staff. NMFS’ RIR estimates that the economic impact for all East Coast pilot groups would be \$3,178,259, but our member pilot groups conservatively put

<sup>7</sup> *Bennett v. Spear*, 520 U.S. 154 (1997).

<sup>8</sup> EO 12866 s. 1.

the estimated cost at \$46,000,000 or more.<sup>9</sup> In other words, NMFS underestimated the impact to East Coast pilot operations by a magnitude of at least 14.

Further, NMFS acknowledges in its RIR that “the impact analysis of the proposed rule focuses on direct impacts to affected vessel owners and operator” because much of the impacts on “producer and consumer surplus, changes in profits, employment in the direct and support industries” is unavailable.<sup>10</sup> Troublingly, NMFS acknowledged during an August 24, 2022 webinar that they did not have or consider relevant economic data such as the economic impact on small boat operators, the impact to communities served by high speed ferries, the impact on off-shore fishing, and, most troubling, the impact to ports (which encompasses the impacts on pilots and pilot groups). It is particularly egregious that NMFS has yet to post this webinar, as it has done with all of its other virtual events.<sup>11</sup> Finally, NMFS disregards the benefit-cost analysis (BCA) – what it acknowledges as “the preferred method for analyzing the consequences of a regulatory action” – because the value of the right whale might not be adequately captured by people’s willingness to pay to protect these animals and because it would require more extensive research.<sup>12</sup>

The evidence to support what in this regulatory parlance is referred to as a “Need for Additional Action” is at best scant. Much more evidence is necessary to justify considering such a significant regulatory proposal. In justifying its “Need for Additional Action,” NMFS first acknowledges that its 2021 review determined that the existing “speed rule had made progress in reducing vessel strike risk.”<sup>13</sup> Yet, NMFS concludes that more speed restriction regulations are needed despite acknowledging that “it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events.”<sup>14</sup> NMFS’ rationale is confused and self-conflicted. The agency starts by speculating that the existing speed restrictions have helped; but then states that there is no direct correlation between speed restrictions and the decline in right whale mortality; and finally ends with the puzzling conclusion that radical changes to the vessel speed restriction regulations – including geographic scope and vessel size applicability – are necessary.

This all begs the question, “are additional speed restrictions even needed?” NMFS speculates that more action is necessary “[b]ased on estimates of total right whale deaths” that NMFS estimates, based on conjecture, are only “approximately one-third of actual annual right whale mortality,” to conclude that a vast number of lethal NARW strikes go undetected.<sup>15</sup> In plain words, NMFS uses an estimation of an estimation – a “guess-timation” – of total right whale deaths to imply that the same proportion of deaths apply to the narrower vessel strike cause of death.

Most alarming is that NMFS completely disregards the direct evidence it has that suggests that the existing Seasonal Management Areas (SMAs) are working. NMFS states “[s]trikes occur both inside and outside active SMAs, but in many cases, the location of the strike event remains unknown.”<sup>16</sup> However, in the very next sentence NMFS acknowledges that there have been five vessel strikes by vessels under 65 feet, but only 1 of them was in the area outside the existing vessel restriction zones.<sup>17</sup> This direct evidence is in

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<sup>9</sup> Had NMFS contacted and engaged East Coast pilot groups and APA prior to publishing its proposal, the economic impact would have been more accurate.

<sup>10</sup> *Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule* (Office of Protected Resources National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration Department of Commerce, July 2022), s. 2.2 pps 14-15.

<sup>11</sup> NMFS has not yet posted the recording from its August 24, 2022 webinar. However, during that webinar, the NMFS Economist, Chao Zou-Garfo, acknowledged that economic data was not considered and/or needed for small boats (1857 EST), communities served by high-speed ferries (1859 EST), off-shore fishing (1921 EST), and ports (1925 EST). The recording for the August 16, 2022 webinar is available at the NOAA Fisheries, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule website at <https://www.fisheries.noaa.gov/action/amendments-north-atlantic-right-whale-vessel-strike-reduction-rule>.

<sup>12</sup> *Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule* at 15-16.

<sup>13</sup> 87 Fed. Reg. at 46,924.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

direct contradiction to NMFS conclusion and justification for doubling the size of the SMAs. Curiously, NMFS does not provide location information on the other seven vessel strikes that occurred since 2008. Instead, NMFS goes back to speed data for six lethal collisions in U.S. waters since 1999 despite acknowledging that NMFS lacks vessel speed data associated with collision events in most cases.<sup>18</sup> As far as speed data, the petition provides no concrete, nor updated, reason for a 10 knot or other speed restriction other than referring to a 2007 study that determined that the chance of whale fatality increased the most between the speeds of 10 to 14 knots.<sup>19</sup>

So, NMFS ignores its own direct evidence since 2008 showing that the existing SMAs are working and instead chooses to speculate that existing speed restrictions justify more speed restrictions. Further, NMFS relies on an estimate of an estimate of total right whale deaths to imply that a substantial percentage of vessel strike deaths are going undetected to justify additional action. NMFS relies on the sum of these various possibilities, while ignoring direct evidence to the contrary, to warrant the drastic expansion of existing mandatory ship-speed rule along the entire East Coast without exploring other alternatives, such as technology and increased dynamic speed zones.

### **Conclusion**

APA and its members have been working closely with NOAA for over twenty years to protect the NARW. In fact, the very purpose of state compulsory pilotage is protecting the waters and marine environment while keeping maritime commerce moving safely and efficiently. This is a duty that every pilot takes to heart. Pilots care immensely about the waters and the marine environment as they work, live, raise their families, and recreate on the waters they pilot.

Again, we strongly urge you to consider the serious concerns that we have raised, convey them to NMFS, and urge NMFS to withdraw the proposed rulemaking as it is not consistent with Massachusetts's coastal zone management interests. APA and pilots up and down the East Coast remain committed to working with NMFS and others in the Federal and State governments to address these challenges and would welcome the opportunity to expand on our comments if necessary.

Respectfully,

*Clayton L. Diamond*

Clayton L. Diamond  
Executive Director-General Counsel  
American Pilots' Association

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



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October 28, 2022

Ms. Janet Coit  
Assistant Administrator  
NOAA Fisheries  
1315 East West Highway  
Silver Spring, Maryland 20910

**RE: Comments to Proposed North Atlantic Right Whale Vessel Strike Reduction Rule**

Dear Assistant Administrator Coit:

On behalf of the Stellwagen Bank Charter Boat Association (SBCBA) whose membership includes the for hire fleet, recreational anglers and commercial fisherman that fish the state and federal waters of the northeast United States the following is in response to the proposed changes to the North Atlantic Right Whale Vessel Strike Reduction Rule. The SBCBA understands the importance of protecting endangered North Atlantic Right Whales to reduce vessel strikes. The substantial impact of the proposed vessel speed rule raises concerns about navigational safety and safety at sea, and lack of stakeholder engagement. As a result, we recommend that the National Marine Fisheries Service (NMFS) pause this rule until additional analysis on the issues expressed in this letter can be conducted, and potential new alternatives developed in collaboration with the fishing and boating industry.

With increased water temperatures and climatic shift of our stocks our fishing season extends more than ever within the months during the proposed speed restriction. This period corresponds with the seasons of some of our most popular recreational and commercial fisheries such as bluefin tuna, haddock, striped bass, black sea bass, tautog and summer flounder. It should also be noted that due to the distance to the Canyons a 10 knot speed limit and time to transit such a distance will result in boats not leaving the dock. Ultimately there is significant fishing effort that does not appear to have been considered with this proposed action that will have a significant economic impact on the recreational and commercial fishery and the entire blue economy that relies on such to make a living.



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The recreational boating industry generates approximately \$170 billion in annual economic impact per year with over 50 million American anglers fishing each year. The proposed rule represents a massive expansion in terms of time, spatial area and impacted vessels. The NMFS appears to agree with this assessment and states that the proposed rule “to be a major federal action subject to NEPA” and affecting “thousands of mariners along the U.S. East Coast.” NEPA defines an environmental assessment as detailed review of the proposed action on the purpose and expected outcomes. An Environmental Impact Statement includes a much more comprehensive review of all reasonable alternatives and a deeper analysis on the cumulative impacts from the proposed action and offers greater opportunities for public involvement. As a result SBCBA believes that it is appropriate to conduct an Environmental Impact Statement for this proposed rule. Clearly, it is in the interest of our industry to evaluate all possible alternatives in an open, transparent process.

A speed restriction of 10 knots in such a large area will all but eliminate the opportunity for thousands of anglers and/or vessels to undertake trips where weather windows can be very narrow. Such will also impact select vessels in the maritime industry that bus customers or ship materials in state and federal waters. Many boaters and anglers will forego boating and fishing trips altogether due to the time, cost and safety burdens imposed by the rule. This in turn will negatively impact marinas, tackle shops, charter and party boat operations and all businesses that represent America’s small business economy. More deliberation and analysis is needed to determine if conservation goals could be achieved with less restrictive measures. A pause in rulemaking would provide opportunity to further evaluate the importance of those trade-offs detailed below.

As part of this proposed rule, Southwick and Associates analyzed the probability of a recreational fishing trip in the 35-65 ft. size class striking a Right Whale to better characterize realized risk (Appendix A). This analysis demonstrates that the chances of a recreational boat striking a Right Whale is exceedingly rare, it also shows that in general, the recreational fishing and boating sector does not pose a significant threat on an individual Right Whale level. Despite considerable boat activity, recreational boats are not interacting with Right Whales at a rate consistent with the NMFS risk model.





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NMFS attempting to predict risk on a one and a million chance of a vessel strike. Almost all the strike mortality events in the 35-65 vessel size class occurred within current seasonal speed zones (“SSZs”, as referenced in section 1) and higher mortality occurrences within current SSZs is expected because existing SSZs are bottleneck points for vessel traffic being centered around major Atlantic ports (see current SSZ Figure). This observation lends management to focus more on vessel traffic density on a spatial scale, not on the absolute number of trips.

NMFS’s technical memo states that, “the high densities predicted along the mid-Atlantic may not be realistic.” These inflated density values feed the risk assessment model and produce outcomes that are inconsistent with actual risk and the occurrence of known strikes. The model also served as a primary tool in the development of the proposed rule, thus, the density bias is reflected in those expansive measures. NMFS acknowledges that model development and evaluation is ongoing to address this source of bias. This needs to be addressed prior to moving forward with the proposed rule.

Further exploration of available datasets indicates the NEPA Environmental Analysis (EA) underestimates the number of anglers, boaters, and economic impact associated with the proposed rule. SBCBA recommends that NMFS address shortcomings of the EA through more thorough investigation of the number of vessels impacted, speeds needed for offshore trips to be viable, and the true costs and economic impacts of the lost fishing opportunities associated with Alternative 5, as they clearly exceed the \$1.2 million claimed.

The proposed rule appears to argue that extending speed restrictions to smaller vessels will help address safety concerns as vessel strikes pose a threat to human life. The SBCBA values minimizing safety concerns from strike occurrences, but given the rarity of vessel strikes in the 35-65 ft. size class, we expect more safety concerns and threats to human life will occur from the proposed vessel speed restrictions, due to forcing boaters to spend more time on the water in potentially unsafe conditions, than the highly improbable chances of striking a Right Whale.

The SBCBA recommends that the NMFS conduct a thorough evaluation of impacts to the human environment, however, the Draft Regulatory Impact Review (RIR) provides conflicting economic analyses for benefits



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versus impacts. The RIR includes no indirect impact analysis, but indirect benefits from whale watch operators. The SBCBA questions that NMFS was unable to compile any indirect economic impact information for recreational vessels especially when NMFS regularly publishes a Fisheries Economics of the United States report. These points highlight the need to revisit to make it more consistent with the intent of the law.

NMFS provides a safety deviation provision as part of the proposed rule. The deviation provision is only applicable to vessels less than 65 ft., allowing those vessels to transit at speeds greater than 10 knots within areas where a National Weather Service Gale Warning, or other National Weather Service Warning for wind speeds exceeding those that trigger a Gale Warning is in effect. The [National Weather Service](#) defines Gale force wind speeds at 39 to 46 mph. SBCBA questions how NMFS arrived at a Gale force threshold. Typically vessels 35 to 65 ft. cannot operate safely at 10 knots during wind speeds exceeding approximately 25mph. Therefore, the SBCBA suggests NMFS lower the wind speed deviation threshold to 25-31mph to ensure safe vessel operation at sea.

Many boats lack high displacement hull design that often provides ocean going and commercial vessel stability and the ability to operate safely in significant sea states. Vessels utilize speed to conduct fishing and other trips during weather windows of opportunity. Vessels forced to not exceed a 10 knot speed limit during high winds and nasty weather, results in conditions that would compromise safety of the passengers and vessel. Speed is also a safety asset in the event of localized weather events such as thunderstorms where a vessel could return to port or avoid a line of thunderstorms with the ability to operate above 10 knots. The proposed rule would unfairly deprive a primary safety feature of boats 35 ft. and larger.

Operating at speeds that do not exceed 10 knots, for most recreational boats, forces the vessel to operate at a less than optimal speed and angle of attack. Operating at these speeds raises the bow which reduces the visibility of the operator to see and avoid hazards in the water, including Right Whales. Most recreational boats have hull designs that allow the boat to ride level when on plane. Operator visibility is optimized when a boat is on plane. The proposed rule may actually have the unfortunate consequence of reducing operator visibility and elevating the risk of collisions.



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Pausing the rule would provide opportunity to address the technology that can deliver real-time monitoring to protect Right Whales. From direct observations, aerial surveillance, acoustic detection, heat signature technology, satellite monitoring and ambient DNA signatures found water samples, it is feasible to gather real-time location information on a significant portion of the Right Whale population. Outreach is recommended with the fishing and boating community detailing ways they can provide direct observations of Right Whales to NOAA.

The SBCBA welcomes developing ways to provide real-time positioning on navigational hazards, including Right Whales, to vessel operators. The SBCBA also supports this approach because it applies empirically based targeted precaution instead of excessively severe measures. Developing ways to distribute this information to vessel operators will only occur through direct engagement with the industry, fishing, and boating organizations.

The SBCBA is sensitive to the status and outlook of the North Atlantic Right Whale population and do not want to contribute to mortality of Right Whales due to vessel strikes. The magnitude of the proposed rule warrants careful consideration to ensure that a practical, enforceable and realistic plan is put in place to address the declining Right Whale population. Consistent with above, we recommend that the NMFS pause this rule until additional analysis on the issues expressed in this letter can be conducted via an Environmental Impact Statement with resulting alternatives developed in collaboration with the fishing and boating industry to protect the Right Whale population.

If you have any questions or comments, please contact us at the email below.

Very truly yours,

*Capt Timothy Brady*

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[tcbship874@gmail.com](mailto:tcbship874@gmail.com)

*Capt Rick Golden*

Capt. Rick Golden  
SBCBA, Secretary



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Tom Nies, NEFMC  
Russell Dunn, NMFS  
Dan McKiernan, MassDMF  
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COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

July 19, 2024

Richard Spinrad, Administrator  
NOAA/National Oceanic and Atmospheric Administration  
1401 Constitution Avenue NW, Room 5128  
Washington DC 02030

Dear Administrator Spinrad:

We write to express our and our constituents' viewpoints regarding the proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule. The North Atlantic Right Whale has immense ecological, cultural, and economic importance to the Commonwealth and the residents of Cape Cod, Martha's Vineyard, and Nantucket. With only 360 whales remaining, sustained and effective conservation efforts are essential to reverse centuries of destruction. Massachusetts is committed to ensuring that these efforts move forward and are successful. However, the proposed application of the mandatory 10-knot speed restrictions for vessels between 25 and 65 feet in length in Nantucket Sound, Vineyard Sound, and Cape Cod Bay without a mechanism to lift the speed restriction when Right Whales are not present in those areas would impose severe economic hardship while not furthering the goal of reducing ship strikes. The economic impacts would burden and threaten the very viability of residents of Cape Cod and the Islands, many of whom are already struggling to "make it" in the challenging economic and housing environment.

Nantucket Sound is the crucial transit route connecting Nantucket and the mainland. Both freight and fast-ferry service from Hyannis to Nantucket are essential to maintaining the year-round population's ability to make a life on the Island. Home heating fuels, groceries, medical supplies, building materials, and gasoline are shipped to the island daily through Nantucket Sound. Traditional ferry and fast-ferry services are also required to enable the essential workforce to commute to the Island regularly. The Town cannot sustain itself year-round should Nantucket Sound be included in the Seasonal Management Area under these amendments. As envisioned, the application of a Seasonal Speed Zone to Nantucket Sound would reduce the number of daily freight ferry trips by a third and eliminate fast-ferry service. The economic impact onshore would be crippling to the Island.

Beyond the economic impact on the island, the implementation of the Seasonal Speed Zone would pose a grave risk to public health and public safety. Off-island medical transport which relies in part on fast ferry service would be dramatically curtailed. Lengthened transport times are a substantial risk to future patients who will need to be moved off island. These speed



controls would also dramatically slow response time for first responders answering mutual aid calls to on island emergencies, lengthening response times from neighboring Cape-based emergency services to hours.

Vineyard Sound is similarly situated as the primary transit route connecting Martha's Vineyard and the mainland. While the reduction in ferry and freight service is not as profound, the impact on shoreside jobs and businesses is great. A decrease in ferry service to Martha's Vineyard will further strain an already heavily utilized ferry system. Beyond the immediate reduction in service, the Woods, Hole, Martha's Vineyard and Nantucket Steamship Authority projects a loss of revenue that would require fare increases to maintain its remaining services. This will come as an increased cost to Islanders who must regularly travel off island and have no alternative transportation options.

The impacts of the proposed amendments are not solely limited to island communities only reachable by ferry and air service. The extended Seasonal Speed Zone limitations in Cape Cod Bay will have deep negative impacts on the communities of the outer Cape from Orleans to Provincetown. Every day, residents and visitors to the outer Cape communities travel by ferry to get to work, go to doctor's appointments, or to connect with friends and families. Of course, thousands of tourists also choose to leave their cars at home and enjoy the 100-minute ride to and from Boston to Provincetown. The proposed speed restriction would turn that 100-minute ride into a five-hour trip, effectively putting the ferries out of business. The impact on the local economy would be dramatic. The Town of Provincetown alone estimates an economic loss of up to \$100 million to the local economy if the ferry services were to be subjected to these restrictions. The loss or reduction of these services to Provincetown and the outer Cape would further exacerbate existing traffic congestion in the area.

Massachusetts has always led the way and has already made effective management decisions in order to ensure the safety of the North Atlantic Right Whale during the time of year they are feeding in Cape Cod Bay. All vertical lines are out of the water, and protective speed restrictions are in place. Massachusetts has for years maintained active monitoring of the North Atlantic Right Whale populations in Cape Cod Bay including the use of spotter planes to conduct regular surveys and reports on the number, status, and location of North Atlantic Right Whales in our waters. Only when the last Right Whales have left the bay are speed restrictions lifted and fixed gear fishers allowed to deploy their gear.

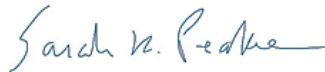
Careful reconsideration must also be given to the policy of mandatory slowdowns for a two-week period any time a Right Whale is "heard" with acoustic monitoring devices. The developers of these devices themselves admit that the buoys can neither determine the number nor the location of the Right Whales when detected and serve more for information gathering than active monitoring. In summer months, there are thousands of sighting resources including whale watching, fishing, and recreational vessels. In the air, there are spotter, commercial, and recreational airplanes over Cape Cod Bay. Even with all of these "eyeballs on the waters, there has never been a sighting of a Right Whale in Cape Cod or Massachusetts Bay at that time, yet the buoys hear pings. We ask that in the full consideration of these proposed amendments the mandatory two-week slowdowns not be triggered by these acoustic devices.

We support sustained and effective conservation efforts that protect the Right Whale and are proud that Massachusetts has pioneered many of the policies being considered for much of the Eastern Seaboard. Using methods DMF currently has in place in Cape Cod Bay in Nantucket Sound and other impacted waters can serve as a viable alternative to the proposed speed restrictions, providing the ability to lift the restriction if Right Whales are not present in the area. We would encourage the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the Department of Commerce to continue to robustly engage with the Commonwealth, the Healey-Driscoll Administration, and local communities to explore this option as an alternative to the proposed implementation of the amended rule. We are confident that in working together, we will be able to implement measures that effectively protect the North Atlantic Right Whale, while also minimizing deleterious impacts on Cape Cod, Martha's Vineyard, and Nantucket.

Respectfully,



Julian Cyr  
*State Senator*  
*Cape & Islands*



Sarah K. Peake  
*State Representative*  
*4th Barnstable*



David T. Vieira  
*State Representative*  
*3rd Barnstable*



Dylan Fernandes  
*State Representative*  
*Barnstable, Dukes & Nantucket*



Kip Diggs  
*State Representative*  
*2nd Barnstable*



Steven G. Xiarhos  
*State Representative*  
*5th Barnstable*



Christopher R. Flanagan  
*State Representative*  
*1st Barnstable*



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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Secretary

THOMAS K. O'SHEA  
Commissioner

DANIEL J. MCKIERNAN  
Director

September 16, 2024

David DeConto  
Massachusetts Shellfish Officers Association President  
100 Route 6A  
Sandwich, MA 02563

### RE: Shellfish Constable Powers

Dave,

The Massachusetts Shellfish Officers Association has requested DMF issue a letter to those coastal towns exercising municipal shellfish management outlining the responsibilities of shellfish constables. My understanding is that this request was made in response to concerns raised by several constables regarding challenges they are experiencing limiting their ability to fulfill their duties to enforce municipal and state rules governing shellfish. I appreciate you bringing these issues to my attention. In response, I am writing to you and cc'ing all the Commonwealth's municipal shellfish constables to put onto the public record DMF's view of the purpose and role of shellfish constables.

Massachusetts is a home rule state whereby the Legislature has granted substantial authority over the control and management of shellfish to the municipality. Specifically, G.L. c. 130, §52 authorizes a municipality to control and manage the harvest of shellfish within its waters but stipulates that if a municipality neglects or refuses to establish such controls then control will be temporarily exercised by DMF. Additionally, G.L. c. 130, §98 authorizes the municipality to appoint Shellfish Constables to enforce all relevant laws and rules affecting shellfish in the municipality and inspect the catch of any person they believe may be engaged in unlawful shellfish fishing or in possession of shellfish unlawfully taken.

Moreover, Massachusetts is a member of the National Shellfish Sanitation Program (NSSP). The NSSP is a cooperative federal-state program for the sanitary control of shellfish produced for human consumption. At its most basic level, this body creates nationwide standards for the sanitary control of shellfish from harvest to consumption to safeguard public health, and state authorities are expected to implement and enforce these controls for their shellfish to be sold into interstate commerce. These federal standards are embodied in state statutes (Chapter 130) and state regulation (322 CMR).

In Massachusetts, DMF is the principal management authority governing the sanitary harvest of shellfish and the Department of Public Health is the principal management authority for the processing and sale of shellfish. At the harvester level, shellfish controls are to be enforced by both the Massachusetts Environmental Police and the municipal shellfish constables. In fact, the shellfish constable is the principal enforcement agent and first line of defense in safeguarding public health.

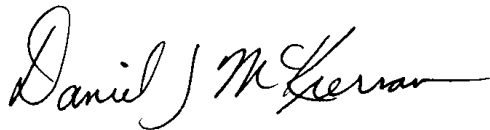
It is DMF's view that in order for a municipality to exert control over its shellfish resources, the municipal officials must not only actively regulate their shellfish fisheries but have a capable shellfish constable empowered and supported by the municipality's officials and the community at large to educate local shellfish fishers and enforce all relevant controls. This includes matters such as enabling the

shellfish constables and deputy shellfish constables to: (a) work appropriate hours flexibly based on tides so that they are in the field when shellfish harvesting is occurring; (b) conduct routine inspections of any harvester's catch, any vessels involved in harvest of shellfish, and shellfish aquaculture grant sites to ensure compliance with various state and local rules and regulations; (c) issue verbal warnings, written warnings, and citations when warranted; and (d) communicate directly with DMF Shellfish Program staff, including being available to receive notice of—and immediately implement—emergency public health closures to shellfish growing areas issued under G.L. c. 130, §74A.

I understand that in some communities the shellfish constable is not a Law Enforcement Officer certified under the Commonwealth's Peace Officer's Standards and Training (POST). Given this, my expectation is that shellfish constables should consult their municipality's legal counsel regarding the extent of their shellfish enforcement authority and municipalities must ensure their shellfish constables are capable of conducting their job in accordance with DMF's above-stated expectations for sufficiently controlling shellfish harvest. Shellfish are a high-hazard food product that are often consumed raw and present a significant public health risk if not properly harvested and handled. Municipal shellfish constables are the first line of defense in ensuring that harvested shellfish are safe to eat for both recreational harvesters and consumers, and harvest activity is conducted in strict conformity with the federal standards under the NSSP that allow our shellfish to be sold into interstate commerce.

If it appears there is insufficient enforcement of rules and regulations within a community, DMF may be forced to withdraw its approval of any ongoing state-municipal agreement and management plan, resulting in a fishery closure within the municipality until issues are rectified.

Sincerely,

A handwritten signature in black ink, reading "Daniel J. McKiernan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel J. McKiernan, Director  
Massachusetts Division of Marine Fisheries

cc:  
Massachusetts Shellfish Constables