



**MARINE FISHERIES ADVISORY COMMISSION  
BUSINESS MEETING AGENDA**

**9:00AM**

**September 17, 2024  
Kingston Town House  
26 Evergreen Street  
Kingston, MA 02364**

1. Call to Order and Routine Business (9:00 – 9:15)
  - a. Introductions and Announcements
  - b. Review of September 2024 Business Meeting Agenda
  - c. Review and Approval of August 2024 Draft Business Meeting Minutes
2. Comments (9:15 – 9:45)
  - a. Chairman
  - b. Law Enforcement
  - c. Commissioner
  - d. Director
3. Update on 2024 Quota Utilization and Menhaden Quota Transfer (9:45 – 10:15)
4. Upcoming Public Hearing Items (10:15 – 11:00)
  - a. Protected Species
    - i. Controls on Use of Fish Pots in Federal Zone
    - ii. Entanglement Reporting
  - b. Striped Bass Total Length Measurement Clarification
5. Discussion Items (11:00 – 12:00)
  - a. Update on Effort to Modernize Management of Surf Clam Dredge Fishery
  - b. CSO-Related Shellfish Closures in Buzzards Bay
  - c. False Albacore and Atlantic Bonito Management
6. Other Business (12:00 – 12:15)
  - a. Commission Member Comments
  - b. Public Comment
7. 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  
October 29, 2024  
1 Rabbit Hill Road, Westborough

9AM  
November 19, 2024  
via Zoom

9A  
December 17, 2024  
via Zoom

## **MARINE FISHERIES ADVISORY COMMISSION**

**Tuesday, August 20, 2024**

**SMAST East**

**836 S. Rodney French Blvd,  
New Bedford, MA 02744**

### **In attendance:**

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

*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; Kelly Whitmore; Tracy Pugh.

*Department of Fish and Game:* Sefatia Romeo-Theken, Deputy Commissioner; Julia Hopkins, Communications Director.

*Massachusetts Environmental Police:* Captain Jack Chapin.

*Members of the Public:* Beth Casoni, Chris Chadwick

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the August 20, 2024 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW OF AUGUST 9, 2024 BUSINESS MEETING AGENDA**

Chairman Kane asked if there were any amendments to the August 20, 2024 MFAC business meeting agenda. No amendments were offered.

## **REVIEW AND APPROVAL OF JUNE 19, 2024 DRAFT MEETING MINUTES**

Chairman Kane asked if there were any amendments to the June 19, 2024 draft MFAC business meeting minutes. No amendments were sought. The Chairman requested a motion to approve the minutes. **Kalil Boghdan made the motion to approve the June 19, 2024 business meeting minutes. Shelley Edmundson seconded the motion. The motion was approved 6-0-1 with Chairman Kane abstaining.**

## **CHAIRMAN’S COMMENTS**

Chairman Ray Kane stated his intention to host more in-person business meetings with a preference for in-person meetings except during the winter to avoid weather-related complications. Regardless of venue, the meetings would continue to start at 9AM. If

the meeting is held in-person meetings he favored working lunches to more efficiently move through the public body's business.

Director McKiernan expressed his desire to host the November and December business meetings in the virtual format to prevent the transmission of seasonal illness prior to the holidays. He added that he also supported moving the September business meeting from the virtual format to an in-person meeting. There were no objections to these suggestions. Jared Silva would work to arrange a venue for an in-person September meeting.

Chairman Kane also recognized the Meet the Fleet event held in Menemsha by the Martha's Vineyard Fishermen's Preservation Trust ("Trust"). Ray commended Shelley Edmundson and the Trust for their organization of this event and noted that DMF staff, including Director McKiernan attended, as well as several officers from the Massachusetts Environmental Police (MEP) attended.

### **LAW ENFORCEMENT COMMENTS**

Captain Jack Chapin introduced himself to the MFAC. Jack was recently promoted to North Coastal Captain and was moving back to the Coastal Bureau after working inland. Jack was getting up-to-speed on coastal enforcement issues and did not have a full briefing prepared for today's meeting.

Director McKiernan expressed his interest in working with the Massachusetts Environmental Police (MEP) and New Hampshire's Department of Fish and Game and Office of Law Enforcement to address the states' marine lateral boundary. He explained that some New Hampshire fishers wrongly believe the boundary proceeds east-southeast—rather than east-northeast—from the terrestrial boundary at Salisbury Beach. This misunderstanding is the product of a confounding section of New Hampshire state law. Dan's intention was to work with the parties to improve outreach, education, and enforcement regarding the location and bearing of the actual boundary. Jared Silva stated he would share the information regarding the marine lateral boundary with MEP and the MFAC.

Kalil commended MEP's efforts this summer regarding striped bass enforcement along the North Shore noting both the poaching issues along the Merrimack River, as well as commercial fish coming in unlawfully through New Hampshire. Captain Chapin acknowledged the cooperative effort with New Hampshire to address these issues.

### **DIRECTOR'S COMMENTS**

Director Dan McKiernan began his comments addressing administrative and personnel issues. Following his retirement, Dr. Mike Armstrong's duties are being divided up among various staff. Nichola Meserve will serve as the Director's proxy to the Atlantic States Marine Fishery Commission's Striped Bass Board; Story Reed will oversee the Recreational Fisheries Project; Bob Glenn will oversee the Diadromous Fisheries Project and the Fish Biology Program; and Gary Nelson will take over the day-to-day

oversight of the Cat Cove facility. The state's hiring freeze remains in effect and is expected to continue through at least October 2024. This has generally limited DMF's ability to backfill positions and hire new staff. Accordingly, various staff have taken on additional responsibilities to cover for recent vacancies, particularly in the Policy Program with Justin Bopp and Julia Kaplan leaving the agency this past spring. There is an exemption to the hiring freeze relevant to public health and safety, which has allowed DMF to staff its Shellfish Program. Chairman Kane congratulated Bob Glenn and Story Reed on their new responsibilities and commended DMF for their continued professionalism despite these personnel issues.

Director McKiernan also applauded the Trust's Meet the Fleet event. He noted that Vineyard fishers face both the routine challenges broadly facing the industry, as well as unique challenges related to the limited local consumer market and the cost of transporting fish off the island. The Trust has been a critical advocate for the island fishers and their interests. Nowhere is this more evident than the port of the Menemsha where the Meet the Fleet event is held, as it has managed to maintain its working waterfront and diverse commercial fishing fleet. Dan noted his intent to work with Shelley to ensure DMF has a more robust presence at the event in future years.

While on the Vineyard, Dan visited the John T. Hughes Hatchery in Oak Bluffs. This is a facility that is owned by the Commonwealth but leased and maintained by the Martha's Vineyard Shellfish Group (MVSG). The MVSG faces various challenges related to maintaining and developing the facility and Dan intends to advocate that capital funding is made available to address these issues. Chairman Kane indicated that he helped the MVSG's Executive Director—Emma Green-Beach—network with staff at the Aquaculture Research Corporation (ARC) on Cape Cod.

The Director then pivoted to offshore wind energy development. His comments focused on the perceived lack of outreach to eastern Cape Cod communities regarding the proposed sale notice for wind energy development in the Gulf of Maine; public health and safety concerns related to the Vineyard Wind turbine blade failure; and upcoming meetings of the Commonwealth's Fisheries Working Group and Habitat Working Group on Offshore Wind Energy. Dan noted that DMF has been challenged to address these emerging issues with the recent departure of Dr. Justin Bopp from the agency's Wind Energy Specialist position.

Kalil Boghdan recalled a recent letter from Secretary Tepper at the Executive Office of Energy and Environmental Affairs (EEA) to BOEM regarding offshore wind energy development. He applauded the level of nuance in the letter and the Secretary's understanding of the challenges related to developing wind energy to meet carbon zero goals. Kalil felt strongly that the Healey Administration should prioritize backfilling DMF's Wind Energy Specialist position and advocated the MFAC draft a letter to Secretary Tepper requesting this be expediently addressed. This position was supported by the MFAC members present. Chairman Kane indicated he would discuss the request with Commissioner O'Shea and determine the most appropriate way to advocate for this action.

Chris McGuire stated that the unfortunate Vineyard Wind blade failure incident is part of the growing pains that should be expected in the ambitious development of offshore wind. He was optimistic that this would serve as a learning experience resulting in increased scrutiny, enhance testing protocols, and improved outreach to avoid similar issues moving forward. Dan and Chris then discussed the complicated administrative hand-offs between the Bureau of Ocean Energy Management (BOEM)—who oversees development—and the Bureau of Safety and Environmental Enforcement—who regulates and enforces the production of offshore renewable energy. Dan and Chris were both in agreement that the lack of experience managing these handoffs in this context likely contributed to some of the communication and notification issues experienced around this incident.

Chris McGuire and Shelley Edmundson also discussed the proactive response from the commercial fishing industry to help manage and assist in the clean-up efforts following the blade failure. McGuire stated that Crista Bank—the fisheries specialist for Vineyard Wind—was highly complementary of the industry’s willingness to become engaged and involved in the clean-up efforts despite the tension between the fishing industry and offshore wind energy development. Shelley added that the industry remains very concerned about the potential public health and safety issues related to this incident and how it may impact fishery resources, particularly fiberglass and micro-plastic pollution.

Bill Amaru echoed the comments made by McGuire and Edmundson. He added that given the varied challenges related to offshore wind energy development, he felt more terrestrial energy development option should be considered. McGuire noted that many similar conversations are behind had in Central and Western Massachusetts regarding industrial-scale solar energy development. He noted one of the most ubiquitous social and cultural challenges associated with renewable energy development is that it requires a lot of space and ultimately affects how we interact with our lands and waters.

Lastly, Director McKiernan discussed the Massachusetts Restricted Area Wedge (“Wedge”). NOAA Fisheries closed this area to buoyed trap gear in 2022 and 2023 on an emergency basis. Then in 2024, NOAA Fisheries moved to make the closure permanent. In response the Massachusetts Lobstermen’s Association (MLA) sued NOAA Fisheries. The First District Court for Massachusetts found in favor of MLA citing that this action violated the Consolidated Appropriation’s Act, which held the lobster fishery in compliance with the Marine Mammal Protection Act and the Endangered Species Act through December 31, 2028. NOAA Fisheries appealed this decision claiming the ruling was incorrect because the language of the Consolidated Appropriations Act provides an exemption specifically written to allow NOAA Fisheries to finalize the Wedge Closure. Dan noted that since the Wedge was inadvertently created in 2020, DMF has strongly advocated for NOAA Fisheries to seasonally close the area to trap gear consistent with the surrounding Massachusetts Restricted Area and the Massachusetts Attorney General has filed an Amicus Brief on behalf of NOAA Fisheries in their appeal.

## 2024 FISHERY PERFORMANCE AND QUOTA UTILIZATION REPORT

Director McKiernan reminded the MFAC that they voted up several regulatory proposals for managing commercial fisheries for 2024. Today's report would highlight how these amendments have impacted fishery performance. Additionally, the presentation would preview the various management issues DMF and the MFAC may want to address for 2025.

Anna Webb began the presentation by providing an overview of overall commercial fishery landings and value compared to prior years. She noted both value and landings are down in 2024 due to a decline in the performance of the federal sea scallop fishery. Webb then transitioned to the performance of quota managed fisheries.

*Striped Bass.* For 2024, the fishery moved from three open fishing days per week (Monday – Wednesday) to two days per week (Tuesday – Wednesday). This was done to slow catch rates to extend the season and due to concerns about front-loading fish over the weekend for sale on Monday. The 2024 fishery opened on Tuesday, June 18 and closed after 16 open fishing days on Wednesday, August 14. Anna anticipated that once all reports were accounted for the commercial fishery would take between 96% and 97% of its annual quota; the likely quota underage is less than landings on an average open day. Despite the change in the number of fishing days per week, the fishery closed in mid-August like it did in 2022 and 2023. This likely indicates an even earlier closure would have occurred if a three open fishing days per week schedule were maintained. Daily landings were about 34% higher compared to those two prior years, and this winter, DMF will look at the data to better understand what may have drove these higher daily landings.

*Bluefish.* Webb noted the commercial bluefish fishery generally trends similarly to the striped bass fishery. However, this was not the case this season, as only 30% of the quota has been taken to date. There also exists interannual variability in bluefish availability that may be influencing harvest.

*Menhaden.* The directed purse seine fishery opened on May 15 this year, rather than June 15 to accommodate early season quota use should fish arrive early and depart early like they did in 2023. The initial quota was set at 10.83 million pounds. The commercial fishery took 50% of its quota on June 6, which resulted in the trip limit being reduced from 120,000 pounds to 25,000 pounds. At this time, it appeared 90% of the quota would be taken come late-July or early-August and the trip limit would then be reduced to 6,000 pounds. This prompted requests from industry to take action to maintain the fishery at 25,000 pounds. To accommodate this, DMF obtained a 1.2-million-pound quota transfer from South Carolina (700,000 pounds) and Georgia (500,000 pounds). This increased our base quota allocation and consequently the 90% quota use threshold from 9.76 million pounds to 10.83 million pounds. DMF anticipated the 90% quota use threshold on the transfer-adjusted quota would be reached in the next few days and the trip limit would then be reduced to 6,000 pounds for the remainder of the season. Effectively, this transfer effectively allowed the 25,000-pound fishery to continue up to the levels of the initial quota and remain open into late August.

Story Reed spoke briefly about fishing effort to date. He expected participation would wane at the 6,000-pound trip limit and Massachusetts would not likely achieve 100% of the transfer-adjusted quota. The reason for this is two-fold. First, DMF rules require the use of a smaller net at the 6,000-pound limit and the fish have primarily been in deeper water this year where they cannot be accessed with smaller nets. Second, 10% of the current quota (initial or transfer adjusted) is likely more than the small-scale purse seine fishery can achieve at the end of the season even under best-case conditions.

Chairman Kane asked if DMF had observed more interest or effort in the small-scale fishery. Story indicated that issuance of the CAP-Purse Seine permit remained steady but there was reportedly less activity this year compared to prior years.

Chris McGuire and Mike Pierdinock asked questions regarding the quota transfer. McGuire asked about the transfer process. Nichola Meserve responded that the process varies from species to species based on what is stipulated in the Fishery Management Plan (FMP). In the case of menhaden, it is just a straight state-to-state transfer to be approved by the ASMFC. Southern states, like South Carolina and Georgia, hold a de minimis share of the coast wide quota but do not have active fisheries and are often willing to transfer their quota. Pierdinock asked if Massachusetts would have reached its initial quota had we not obtained the transfer. Story indicated that we would have reached the 90% trigger several weeks earlier, but it was still unlikely that the remaining 10% would have been achieved at the 6,000-pound limit. The quota transfer allowed Massachusetts to increase its 90% threshold to a level commensurate with its initial 2024 quota, resulting in a situation whereby the fishery will likely land slightly more menhaden than the initial quota but less than the transfer adjusted quota.

Bill Doyle asked about the market value of menhaden. After reviewing the value data, Webb indicated the ex-vessel value was about \$0.25 per pound, resulting in the total ex-vessel value of the fishery being in just in excess of \$2.5M. Reed added that part of the challenge in managing this fishery is that the market is at its strongest during the late summer and early fall, which is when the fishery is likely to close. In the past, we have started the fishery in June to keep quota available into the September. However, resource availability is variable year-to-year. In 2023, the fish migrated through our waters by late-June and we ran a substantial quota underage. In response, industry stated their preference was to start the season earlier even if it meant closing at the end of the summer. Now this year, were experiencing the challenges of a closure occurring when local bait demand remains high.

Chairman Kane asked if the small-scale fishery ever landed 1 million pounds of quota. Story indicated this was difficult to assess because the management scheme has changed over time. Nichola then explained some of the recent state and interstate changes. Jared Silva reiterated that it was unlikely that the small-scale purse seine fishery can achieve the last 10% of the current quota at the end of the season even under best-case conditions. Director McKiernan stated that this discussion

underscored the fact the DMF needs to reevaluate the trip limit reduction to 6,000 pounds at 90% quota use this winter.

Chairman Kane and Nichola Meserve then briefly discussed the rules around the EESA and whether any of this set-aside had been used.

Pierdinock, Reed, and Silva then discussed the performance of the Boston Harbor menhaden fishery. It was agreed that this year's stakeholder meeting in Salem coupled with the high abundance of fish both in the harbor and along the North Shore likely helped to reduce the user group conflict.

*Summer Flounder.* It was projected that the Period I summer flounder would hit its 30% quota us allocation in early February 2024. Accordingly, the trip limit was reduced from 5,000 pounds to 100 pounds of February 6. The Period II fishery then opened on April 23 under status quo limits with a new threshold that would automatically reduce trip limits should 75% of the annual quota be taken before August 1. Anna explained the fishery started off slowly during the spring spring, but then picked up in July with daily catch rates higher than have been observed in recent years. Ultimately, the 75% quota use trigger was not reached by August 1, so trip limits were not automatically reduced — landings through July 31 came in just over 70%. At present, it appears that the quota will be taken around the end of August or early September. Like striped bass, DMF intends to take a deeper look at how this fishery performed later this winter.

Silva explained that while the 2024 summer flounder quota was reduced by 56% compared to 2023, DMF maintained status quo limits to start the season. This was because we severely underperformed the quota and data indicated we would likely achieve the 2024 quota in the fall with no changes in participation. However, DMF did build in the quota trigger to reduce the trip limit if 75% of the quota is taken before August 1. Throughout the season this management approach raised some concerns among the members of the industry who want to maintain quota into September. These concerns increased when it became apparent that landings would come in just under the 75% quota use trigger before August 1 and would likely take 100% of the quota by late-August or September.

In response, there was interest DMF pursuing an in-season adjustment to reduce trip limits or eliminate the multi-day program for the remainder of the season. Silva noted that he spoke with various members of the industry and there was no consensus position. Accordingly, DMF chose not to take an action and instead preferred to let the season play out. Based on his conversations with the industry, Jared relayed that there is a difference of opinion among regarding how the summertime fishery should be managed. Some industry members prefer managing the quota to maintain a September fishery, whereas others prefer taking the quota during the summer months when the ex-vessel value is typically stronger. This difference of opinion then influences viewpoints on trip limits to start the season and how conservative the quota-based in-season trip limit reduction trigger should be. There also exists some frustration with how the multi-day program has evolved. This program was adopted in 2019 to allow dayboats to more efficiently fish in state waters with the resource moving



east. However, it also enables offshore boats with federal fluke permits to double up on trip limits by conducting a single overnight trip in federal waters. Accordingly, there is some interest in eliminating or modifying the multi-day program, but this interest is not universal. Lastly, there was a sentiment that DMF and the MFAC should not overreact to a single year, as participation this year was likely inflated because of poor squid fishing conditions. There is substantial interannual variability in the squid fishery and should squid fishing conditions rebound next year, then it is likely that there will be a corresponding decrease in the number of these vessels targeting summer flounder.

Silva stated DMF remains interested in having some amount of quota available in September to limit the regulatory discarding of fluke by trawlers who intend to continue to fish the Sounds in September and target other species (e.g., horseshoe crabs, scup). For this year, DMF and biomedical trawlers have agreed that 10" mesh should be used when targeting horseshoe crabs after the summer flounder quota closure goes into effect.

Silva indicated that DMF will meet with the industry later this year, preferably before Thanksgiving, to discuss performance this past season and management next year. Trip limits, trip limit triggers, and the multi-day program will likely be front and center in the discussion.

Bill Amaru supported DMF discontinuing the multi-day program and exploring ways to manage the quota so that quota remains in September. He argued that while price may be diminished in September, it would allow dayboat draggers to retain a bycatch of summer flounder when targeting other species and for hook and line fishers working Nantucket Shoals to target the fish when they migrate through the region. Bill also advocated for DMF to consider adopting a sub-quota for the hook and line fishery.

Director McKiernan spoke in more detail regarding his decision to not pursue an in-season adjustment to decrease the summer flounder limits. Dan noted he is often quick to propose an in-season adjustment to liberalize commercial fishing limits to avoid a quota underage. This type of action is generally supported by the industry and is to their benefit. However, he proceeds more cautiously when taking an action to constrain limits to slow quota utilization. With regards to the summer flounder fishery, the fleet is heterogenous even among gear types and there exists a diversity of opinion on how best to manage the quota. Given this, he did not think it was appropriate to diverge from the regulatory program and take an action to constrain limits that may benefit one segment of the industry at the expense of another. Rather, his preference was to spend the winter period working with the industry to develop management goals and objectives and then set smarter limits and triggers to achieve the goals.

Amaru admired Dan's position, however, he opined that the key is to set the right limits and he did not think the right limits were implemented for 2024. Silva agreed with Amaru's statement but noted that "getting it right" was a difficult task given that a modest shift in effort can dramatically alter performance and projections. Jared felt the 2024 fishery clearly demonstrated this challenge. Bill agreed and expressed his gratitude for DMF's willingness to work with industry.

Chairman Kane and Jared Silva discussed the multi-day program. Kane was concerned that the program now accommodated offshore fishing activity in a manner that is inconsistent with the initial purpose of the program which negatively impacts the quota available to the inshore dayboat fleet. Jared agreed that the program has evolved beyond how it was initially envisioned, and it accommodates a more efficient taking of the quota. However, there is still broad support for it among fishery participants, including numerous inshore day boats. Accordingly, he expected the multi-day program would be a challenging issue to address this winter.

*Horseshoe Crabs.* Anna Webb reviewed the use of the 2024 bait quota for horseshoe crabs and noted that landings were above 50% of the quota on August 1, so the trip limits were not automatically increased from 300 crabs to 400 crabs. However, it appeared likely that the 80% quota use threshold would be reached before September 15, resulting in trip limits being reduced to 200 crabs. Jared Silva discussed the bait market in the context of uncertainty regarding this fall's whelk market and the high cost of cold storage.

Director McKiernan asked about the status of the biomedical quota. Webb stated horseshoe crabs had been landed against this quota throughout the season. Amaru noted that one of the biomedical dealers had started the season accepting horseshoe crabs against the biomedical quota but switched over to obtaining bait crabs through the rent-a-crab program during the July and August.

Kalil Boghdan discussed the development of synthetic alternatives to *Limulus* Amoebocyte Lysate (LAL) and his expectations that the synthetic would soon supplant LAL. To this point, he was curious if DMF had any insight into whether this was a factor in biomedical quota utilization this year. Dan opined that more routine business decisions were likely influencing how the biomedical firms were sourcing their crabs. It is likely that concerns about the bait market drove decisions to rely on biomedical quota at the start of the season and then the focus shifted towards rent-a-crabs later in the season because there was a steady supply of bait crabs and an interest in preserving the biomedical quota for later in the year should the bait quota be taken. Amaru and Silva agreed with the Director's assessment. Amaru added that there were also concerns about how high summer temperatures may affect horseshoe crab fitness resulting in a preference to bleed bait crabs.

Bill also noted that mobile gear catches of horseshoe crabs were abundant this summer. Jared noted that he heard similar reports from trawlers who were seeing more crabs per tow and crabs in tows where their presence was previously more limited.

*Black Sea Bass.* Anna stated that Massachusetts quota increased from 741,071 pounds in 2023 to 926,338 in 2024. The fishery was performing similar to 2022 when the quota was similarly high, and the fishery landed about 97% of the quota. Projections showed the quota would likely be taken mid-to-late fall.

Jared Silva discussed the two in-season management actions considered by DMF this

summer. First, DMF initiated a multi-day pilot program for potters, similar to what was adopted in 2022 and similar to what is afforded trawlers in the summertime fluke fishery. Several Buzzards Bay based potters advocated this program be renewed in 2024 because they were fishing off Noman's Land and further south into federal waters and the program would allow them to reduce steaming expenses by taking two-day trips and laying up in Menemsha overnight. This was particularly important this year given the reportedly small run of fish and corresponding lower ex-vessel value. Moreover, the ex-vessel value was even more depressed on Martha's Vineyard due to the costs associated with transporting the fish off island, so there was a strong economic incentive to offload on the mainland. Given the available quota, DMF supported this action and initiated this program; about 10 vessels are participating. Second, DMF proposed an in-season adjustment to increase trip limits from 500 to 600 pounds for potters and 250 to 300 pounds for hook fishers on August 21. This action was not broadly supported by the industry in the public comment, with fishers preferring this quota to remain open into the late fall so that black sea bass can be landed when fishing tautog or lobstering. Accordingly, DMF was not pursuing a final action on the proposed in-season adjustment. Instead, the limits would remain status quo for the time being, then if more than 15% of the quota remains on September 15 the trip limits will automatically increase to 600 pounds for potters and 300 pounds for hooker fishers and the Friday and Saturday closed fishing days will be eliminated.

*Scup.* Anna reviewed quota use to-date and opined that the quota would likely be underutilized again in 2024.

Director McKiernan stated that the state's quota share was established based on landings from a time-period when pair trawlers could fish a small net mesh at night in state waters. This is no longer allowed. Now trawlers generally only catch large quantities of scup during the springtime small mesh trawl fishery for squid and the gear types targeting scup are fish pots and rod and reel. Dan opined that given these factors, coupled with the low ex-vessel value for this species, it was unlikely that the fishery will ever achieve its full quota allocation (under current stock conditions). However, Dan was interested in having DMF's Seafood Marketing Program pursue ways to get scup into local urban markets consistent with the Governor's priorities regarding food security and environmental justice.

Jared Silva heard that fish potters were having a comparatively decent season scup fishing given the large size of the fish being caught and the relatively strong ex-vessel value for this grade of fish.

Chris McGuire applauded DMF for their ability to manage quotas to prevent overharvest while also working to optimize the value of its quota managed fisheries. He felt this capability was indicative of good fisheries management.

Bill Amaru noted NOAA Fisheries was changing how federal permit holders can electronically report. Anna Webb stated that someone from the Statistics Project can follow up with him and provide some guidance as to the available applications. This discussion prompted Director McKiernan to have Anna forecast the state's timeline to

move over to 100% electronic reporting. Anna stated that about 45% of current state permit holders are reporting electronically and the goal was to move to 100% mandatory electronic reporting by at least 2028.

## **UPCOMING PUBLIC HEARING ITEMS**

### Monkfish Trip Limits

Jared Silva reviewed DMF's proposal to increase the monkfish trip limits from 536 pounds to 600 pounds tail weight (1,560 pounds to 1,746 pounds for whole weight using the existing 2.91 conversion factor). He noted that DMF has historically managed the state waters trip limits consistent with the federal Northern Fishery Management Area (NFMA) days-at-sea (DAS) program under Category B and D permits. These trip limits had become out-of-phase over the past decade and this proposal would bring them back in line.

Jared added that Chris Chadwick, a state waters gillnet fisher, had requested DMF consider increasing the state waters trip limit and likely supported a more substantial increase, which DMF could consider in its final recommendation based on public comment. Director McKiernan noted that Chris Chadwick was in attendance and asked Chairman Kane to recognize him. Chairman Kane then recognized Chris Chadwick.

Chris proposed that DMF adopt a trip limit of up to 1,000-pound tail weight. He argued that a higher limit would not likely result in a substantial increase in overall monkfish landings considering there are less than a handful of state waters gillnetters who would target monkfish. He also noted that he fishes larger mesh when targeting monkfish, which allows him to avoid groundfish bycatch. Director McKiernan stated that DMF would consider going out to public hearing with a proposal that sets a range for a potential increase from 600-pound tail weight up to 1,000-pound tail weight.

## **DISCUSSION ITEMS**

### Update on Legislation Affecting Marine Fisheries

Director McKiernan highlighted that an outside section to the FY25 state budget amended state law so that persons engaged in fishing activities permitted by DMF are not subject to filing a Notice of Intent under the Wetlands Protection Act (WPA) and its implementing regulations or obtaining a water quality certification. This amendment gives priority to food production and reaffirms the authority of DMF and the MFAC in managing fisheries. In doing so, it also resolves the question of regulatory authority over hydraulic surf clam dredge fishing that followed an appeals court decision in Aqua King Fishery, LLC v. Conservation Commission of Provincetown whereby it was determined that hydraulic shellfish dredging could be regulated by the Division of Marine Fisheries, as well as the Department of Environmental Protection and municipal Conservation Commissions under the WPA.

With the passage of this amendment, the expectation is that DMF and industry are going to thoroughly manage this gear to prevent interactions with sensitive inshore habitats like eel grass. Dan then briefly described his vision for the future management of the surf clam

dredge fishery, which included using real-time trackers and geofences to create clear and enforceable habitat area closures. Story Reed briefly described how this technology can be used to alert vessels that they are approaching a geofence and in the enforcement of a closed area. Dan added that this new technology may also allow DMF to simplify other time-area closures affecting this gear type and allow night fishing north and east of Cape Cod during the wintertime trap gear closure.

Bill Amaru expressed his support for the work done by DMF and the surf clam dredge fishery to cooperatively address this issue.

Chairman Kane recognized Beth Casoni. Beth expressed her support for this initiative. She was hopeful that by providing more extensive wintertime fishing opportunities the surf clam dredge boats could then seasonally avoid areas like southern Cape Cod Bay in the late summer and early fall to reduce interactions between this gear type and new shell and egg bearing lobsters.

Bill Doyle asked DMF how they intended to communicate this statutory change to municipalities. Dan stated he intended to meet with local shellfish constables this fall and winter to discuss how DMF intends to modernize the management of this fishery.

Doyle then asked Dan about whether aquaculture would be similarly exempt. Dan stated that the current amendment applies only to wild harvest commercial fisheries, however, he recalled that the Wetlands Protection Act has an existing exemption for aquaculture. McKiernan intended to discuss this question with his Aquaculture Project to provide a more thorough response to Doyle.

Kevin Creighton the provided an update on food security earmarks. Several earmarks were approved to fund infrastructure to process fish and shellfish for food banks. This included a \$200,000 earmark to address this issue on the North Shore and a \$50,000 earmark for the Martha's Vineyard Fishermen's Preservation Trust to continue their work on the island. Shelley Edmundson explained how this funding has helped the trust build infrastructure to freeze fish and delivery it off island, as getting fresh fish off island to food pantries was challenging. She also noted that the low ex-vessel value for black sea bass this year had priced it competitively so that the Trust could purchase fish landed on the island to process it for food banks. Another earmark of \$50,000 funded a feasibility study regarding managing donations of fish commercially caught fish to local food banks on the North Shore. Kevin credited Deputy Commissioner Sefatia Romeo-Theken for her work in developing this earmark. Sefatia explained this concept was modeled after the "Hunters Share the Harvest" program and the study would help determine how to best implement the concept state-wide and address challenges related to processing and distributing fish.

#### Federal Fisheries Management

Kelly Whitmore provided a presentation on the recent June 2024 New England Fishery Management Council (NEFMC) meeting, as well as the upcoming September 2024 NEFMC meeting.

With regards to the June meeting, Kelly highlighted: (1) changes in NEFMC membership;

(2) the decision to discontinue the development of a framework to consider sea scallop dredge access within the Northern Edge of Georges Bank; (3) a report on public scoping to inform development of Amendment 10 to the Atlantic Herring FMP that addresses user group issues and bycatch avoidance; (4) the setting of annual specifications for Atlantic herring for 2025–2027; (5) the initiation of Framework 69 to the Northeast Multispecies FMP that addresses annual specifications for 2025–2027 and the Atlantic Cod Management Transition Plan; and (6) ecosystem and climate initiatives being developed pursuant to the Inflation Reduction Act. For the September meeting, Kelly previewed the final action on Amendment 25 to the Northeast Multispecies FMP that incorporates four new cod stock units into the FMP, informed by recent genetic research.

Director McKiernan intended to reach out to NOAA Fisheries to coordinate a presentation by their staff at a future MFAC meeting on their Climate, Ecosystems, and Fisheries Initiative (CEFI). CEFI's purpose is to create operational modeling and decision support tools for fisheries managers and stakeholders to address the impacts of climate change and increase resiliency. Chris McGuire strongly supported this idea. McGuire felt that not only would DMF and the MFAC benefit from the presentation, NOAA Fisheries should also want to hear a state management perspective. Chris' understanding of CEFI is that it is a science initiative with a management audience. Fisheries are currently managed based on historic data and with climate change the expectation is that the future is going to look different than the past, but these forecasts are not yet used in decision making. The goal of CEFI is then to create the tools to help managers to use such forecasts. McGuire recommended that DMF consider reaching out to Jon Hare at the New England Fisheries Science Center.

Tracy Pugh noted that the ASMFC's Lobster Technical Committee has been in touch with NOAA Fisheries staff involved in CEFI regarding how to incorporate oceanographic modeling into the lobster stock assessment.

McGuire then discussed the NEFMC's transition away from the ecosystem-based fisheries management (EBFM). The NEFMC's work on EBFM was highly focused on managing Georges Bank as a single system. This was an exciting and ambitious undertaking but struggled to move forward under the incredible scope of the undertaking. Accordingly, he felt this transition was likely a good thing as it would allow the NEFMC to more nimbly take intermediary steps that are more ecosystem focused. Mike Pierdinock agreed with Chris and felt this allowed the NEFMC to evaluate and integrate ecosystem approaches already being used at the Mid-Atlantic Fishery Management Council and other management bodies.

Bill Amaru expressed his disappointment in the NEFMC's decision to discontinue the development of a framework to provide sea scallop access to the Northern Edge. He understood how they reached this decision given the spatio-temporal overlap of the intended scallop fishery in this area with concerns about the importance of this habitat to lobster and cod. However, Amaru felt the issue was ripe for a conservation engineering solution. Bill also expressed his concerns regarding the status of river herring and American shad. Lastly, he understood the need to create resiliency in fishing communities to combat the impacts of climate change, but he was uncertain how scientists and

managers intended to address the resiliency of stocks or ecosystems with broad-scale changing environmental conditions.

Bill Doyle asked if there had been any discussions regarding the location of the Hague Line given the north and eastward shift of resources in the northwest Atlantic. Director McKiernan and Mike Pierdinock were unaware of any such discussions at the federal level.

#### Interstate Fisheries Management

Director McKiernan and Nichola Meserve briefed the MFAC on happenings at the recent August meeting of the Atlantic States Marine Fisheries Committee.

Director McKiernan covered the Lobster Management Board meeting. Dan focused on the potential international trade implications related to the biological measures approved in Addendum 27. The Board initiated Addendum 29 to delay the implementation of the biological measures approved in that addendum from January 1, 2025 to July 1, 2025 to provide Canada with additional time to consider adopting complementary measures for their Gulf of Maine fishery. Dan expected he would come back to the MFAC at their October meeting—following the anticipated approval of the addendum by the Board—to vote up similarly delaying implementation of the biological measures in Massachusetts. He reminded the MFAC that they approved the implementation of these biological for January 1, 2025 at their April 2024 business meeting. The Board also initiated Addendum XXX to confirm that the new smallest minimum size (3 5/16") would serve as the national standard, which would affect Canadian imports nationwide and not just in lobster producing states.

For LMA2 and LMA3 there was some discussion about the possible need for more conservation to address the status of the Southern New England lobster stock. However, this was ultimately not supported giving declining fishery performance and effort trends.

Lastly, Dan briefly discussed lawsuits in Maine and Rhode Island over the interstate requirement to require trackers on vessels with a federal lobster trap permit. Maine is interested in making available trackers that can be turned off when fishing is not occurring to address privacy concerns among some of their citizens who use their lobster boats to routinely transit between their island residences and the mainland.

Chairman Kane recognized Beth Casoni. Beth Casoni asked about the likelihood that Canada would adopt complementary measures for the Gulf of Maine. Dan stated he and delegates from Maine and New Hampshire met with Canadian industry and government officials. Under Canada's management program, such an initiative would have to come from the industry because the stock assessment does not indicate that conservation is needed. McKiernan opined that the Canadian industry may be receptive to the approach given how disparate rules may impact trade and the movement of lobsters across borders. However, if Canadian industry does not ultimately support such an action the ASMFC will continue to move forward unilaterally.

Nichola Meserve covered the Menhaden Board meeting. The Board approved the

formation of a working group to address concerns regarding the spatial availability of menhaden in the Chesapeake Bay and how this may impact nesting osprey. The working group was also expected to provide the Board with guidance on how to manage the utilization of the menhaden resource in the Bay to consider piscivorous birds and fish. Director McKiernan noted this issue represents a substantial conflict between Maryland and Virginia, as the Virginia fishery takes place at the mouth of the Bay and the interest is having more menhaden available in the upper reaches of the Bay in Maryland waters.

Mike Pierdinock opined that the impacts of climate change and pollution on the Bay's ecosystem and habitat should be considered by the ASMFC. He expressed particular concern over the potential biological and ecological impacts related to the unregulated discharge of pharmaceuticals, including birth control, in wastewater. Nichola stated that investigating these issues was not within the scope of work assigned to the working group and noted that the most recent report on the health of the Chesapeake Bay demonstrated environmental conditions had improved since the prior stanza in response to some of the work being done by Maryland and Virginia to address pollution issues.

Bill Amaru observed an increase in the osprey population around eastern Cape Cod and was curious if the population was increasing regionally. Nichola noted the osprey population has increased overall, but there are concerns about the population around the Chesapeake Bay.

Meserve stated the Striped Bass Board received an interim report from a working group established to examine management issues around recreational release mortality, including reviewing the efficacy of "non-targeting" closures and gear modifications. The Board also received an update on the 2024 Stock Assessment and provided input on how the Technical Committee should develop potential measures if needed.

Nichola also provided an overview of the 2024 stock assessments presented for Atlantic herring, Atlantic sturgeon, and river herring. Chris McGuire noted that the bycatch river herring and sturgeon in non-directed fisheries is exceeding thresholds for removals, yet this does not trigger management plan actions because there are no directed fisheries for the species. Meserve explained that because there is not a directed fishery for the species the ASMFC Board cannot take action to manage that fishery. Rather, conservation is achieved using other tools. For instance, the most recent Biological Opinion for sturgeon has triggered management actions to address bycatch in dogfish and monkfish gillnet fisheries. Chris noted that using the Endangered Species Act may be a viable option for listed species, such as sturgeon, but not species such as river herring that are not listed. Dan, Ray, and Chris then discuss how reduced sea herring quotas may impact river herring bycatch.

Nichola then briefed the MFAC on recent actions taken for species jointly managed by the ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC). Previously set 2025 specifications—i.e., commercial quotas and recreational harvest limits—were maintained for summer flounder, scup (with a correction made), and bluefish; whereas new specifications were set for black sea bass based on the 2024 stock assessment.



Notably, the situation around black sea bass management is confounded given a disconnect between state managers and federal managers over how to set the Allowable Biological Catch (ABC). The MAFMC is required to adopt the ABC recommended by the Scientific and Statistical Committee (SSC), which would lower the ABC by 20% based on a projected sharp decline in spawning stock biomass moving forward, despite the current spawning stock being assessed at 219% its target. The ASMFC is not required to adopt the SSC-recommended ABC and favored a status quo approach for several reasons including concern about the reliability of those projections. Divergent commercial quotas and recreational harvest limits being set by the two management bodies creates several management issues (e.g., timing of quota closures), which NOAA Fisheries will consider when ultimately determining the federal limits.

Even under the ASMFC-preferred status quo limits, neither Massachusetts' commercial quota nor recreational measures are expected to be status quo for 2025. This is because the 2024 stock assessment indicates a more equal north-south split of the biomass compared to the prior assessment. In turn, this will reduce the northern states' quotas per the state-by-state allocation formula. The worst-case scenario would be a 32% quota reduction should NOAA Fisheries adopt the ABC recommended by the MAFMC's SSC. Recreational measure setting will occur according to the Percent Change Approach, which does not have a viable status quo outcome for black sea bass at this time.

With regards to recreational management, the ASMFC will hold public hearings later this winter to take comment on how recreational fishing limits are set for black sea bass, scup, and summer flounder. This includes options to continue with the Percent Change Approach, modify the Percent Change Approach, or adopt a biomass-based matrix approach. This addendum is expected to be approved in the spring of 2025 for use in 2026.

The ASMFC and MAFMC are also considering changes to both the federal and interstate FMP for Summer Flounder, Scup, and Black Sea Bass to address commercial net mesh size exemptions for the summer flounder fishery. This includes revising the spatial boundaries of the small mesh exemption program, updating the discard evaluation methodology for the small mesh fishery, and modifying the definition of the term "flynet." These proposals principally affect commercial fisheries in the Mid-Atlantic region.

Lastly, Nichola briefed the MFAC on two proposals DMF recently submitted to the ASMFC. First, DMF sought—and the ASMFC approved—a request to include smooth dogfish in the summertime multi-day program for trawlers. Accordingly, fishers participating in the summertime trawl fishery around the Sounds may possess and land up to 600 pounds of smooth dogfish caught over two consecutive fishing days, provided no more than 300 pounds are retained per day and each day's catch is segregated. Second, industry requested DMF consider piloting a multi-day program for flounder species taken in the state waters groundfish trawl fishery. DMF submitted a conservation equivalency proposal to the ASMFC's Winter Flounder Board to authorize a program that would allow trawlers to possess and land up to 1,000 pounds of winter flounder over two consecutive fishing days, provided no more than 500 pounds are retained per day and each day's catch is segregated. DMF expects the Board will vote on this proposal by the end of the

Mike P. suggested that Massachusetts' MRIP data for black sea bass should show that recreational catch is down this year as the biomass of fish did not come into nearshore Buzzards Bay waters this year and instead stayed in deeper waters off the Elizabeth Islands. Meserve heard similar reports but noted that Wave 3 (May/June) MRIP data were not yet available.

Chairman Kane expressed his concerns about the credibility of the recreational black sea bass management program and how confidence in the program will further erode should further cuts in harvest be required despite spawning stock biomass being 220% its target. Nichola recalled a joke from the recent joint ASMFC-MAFMC where it was said that "black sea bass were overmanaged and experiencing over management".

Given the challenges DMF and the MFAC face in managing certain species like black sea bass and summer flounder given climate-related changes in time-area distribution, Director McKiernan restated his commitment to ask NOAA Fisheries to present to the MFAC on CEFI. Chris McGuire and Dan discussed the differences between long-term climatic shifts and ecosystem drivers that influence interannual variability. Chairman Kane, Chris McGuire, Kalil Boghdan, and Mike P. the return of the Labrador current observed this year and how this influx of cold water into the Gulf of Maine and Southern New England may be affecting species distribution.

#### Use of Fish and Conch Pots in Federal Waters

Director McKiernan described DMF's concerns regarding the proliferation of trap gear in the federal zone by Massachusetts permit holders and how this may impact efforts to reduce the entanglement risk posed by buoy lines to endangered right whales and sea turtles. He noted that DMF is considering drafting a regulatory proposal that would manage state permit holders fishing in the federal zone consistent with state regulations and require any buoy lines set in the federal zone be set consistent with buoy line marking rules for the Atlantic Mixed Species Trap/Pot fishery and not the Massachusetts Mixed Species Trap/Pot Fishery. Jared Silva highlighted that a key component is buoy line marking because we do not want to see a proliferation of gear being fished in the federal zone with buoy line markings marked consistent with the Massachusetts Mixed Species Trap/Pot Fishery.

#### Non-Native Species for Use and Sale as Bait

Director McKiernan discussed his emerging concerns regarding the sale of live Pacific lugworms as bait and the potential for this worm, as well as other invertebrates or parasites that may be present in the packing of this product, to become invasive. This emerging issue also raised persistent concerns about the potential introduction of non-native species or pathogens from imported baits. In response, DMF will move to propose banning the possession and sale of the Pacific lugworm and may develop a framework to control the use of baits that are not endemic or naturalized in Massachusetts. Jared Silva provided some additional background on prior agency actions to regulate the use of certain non-native species as bait.

Chris McGuire asked if the immediate concern was the introduction of invasives through live bait. Dan stated that it was, however, there has been some historic interest in

addressing the use of dead baits as the risk exists that they will introduce pathogens and parasites. Jared explained that DMF is trying to triage this issue to immediately address the Pacifici lugworm issue while also considering the developing a long-term strategy to more broadly address other non-native and non-naturalized live and dead baits.

Kalil Boghdan asked if the Pacific lugworm was being sold in Massachusetts bait shops. Jared stated that DMF's Recreational Fisheries Project had investigated this question and found several shops around Boston on the North Shore had sold or were selling the bait.

Mike P. suggested DMF may want to study the question of invasiveness before banning the sale and use. Tracy Pugh explained how difficult it is to document the potential impact of a seaworm on the benthic environment because we do not have an existing benthic ecology monitoring program to use as a baseline.

### **OTHER BUSINESS**

Bill Doyle requested DMF present to the MFAC on the ongoing shellfish classification and closure issues related to the New Bedford wastewater treatment plan and potential strategies to mitigate impacts on the shellfish industry.

Chris McGuire expressed his appreciation for the Meet the Fleet event hosted by the Martha's Vineyard Fishermen's Preservation Trust and thanked Shelley for her work on that. Chris also noted that he would be joining DMF staff on the fall trawl survey and suggested other MFAC members see if they can get involved as well.

Bill Amaru suggested everyone read Arthur Firstenberg's "Invisible Rainbow" which describes the disrupting effect electricity has had on the environment and human health. He felt this was of particular importance given the development of offshore wind energy.

Mike Pierdinock stated that his current term with the MFAC is expiring, and he would not be seeking to serve another term. He noted that his commitments at the NEFMC have grown such that he cannot continue to commit time to both bodies. He appreciated his time serving on the MFAC and the relationships he built around the table.

Shelley Edmundson thanked those who were able to attend the Meet the Fleet event.

### **PUBLIC COMMENTS**

Beth Casoni thanked DMF and its Seafood Marketing Program for their work to counter advertisements by PETA on Steamship Authority vessels. Director McKiernan noted that PETA had purchased advertisements on one of the Vineyard ferries that made claims about lobster fishing killing right whales. DMF then countered this by buying advertising to put decals on the tables with a QR code that linked to a DMF video about the efforts by the lobster fishing industry to address the right whale challenge. Shelley, Beth, and Dan then further discussed this matter.

Beth also noted that the Massachusetts Lobstermen's Association also received a

National Fish and Wildlife grant to develop geo-positioning technology for trap gear that will allow for grappling buoyless trawls at a fraction of the cost of the on-demand systems currently being tested.

Before adjourning, Director McKiernan noted there was some interest from the recreational fishing in establishing recreational limits bonito and false albacore. This was generally in response to reports that young-of-the-year bonito were being jigged up with mackerel and used as bait. DMF staff were looking into this issue and Dan would likely address it at an upcoming MFAC business meeting. Mike P. expressed some initial concerns regarding states becoming involved in HMS management.

### **ADJOURNMENT**

Chairman Ray Kane requested a motion to adjourn the August 20, 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

- August 20, 2024 MFAC Agenda
- June 19, 2024 Draft MFAC Minutes
- Memo and Slides on 2024 Fishery Performance
- Memo and Slides on Monkfish Trip Limit Proposal
- Memo and Slide on Statutory Amendment Resolving Wetlands Protection Act and Fishing Activity
- Federal Fisheries Management Presentation
- August 2024 Atlantic States Marine Fisheries Commission Meeting Summary
- Interstate Fisheries Management Presentation
- Memo on Use of Fish and Conch Pots in Federal Zone
- Memo on Use and Sale of Non-Native Baits
- EEA Letter to BOEM on Wind Energy
- Letter from GARFO to NEFMC on Skate Framework

## UPCOMING MEETINGS

9AM  
September 17, 2024  
26 Evergreen Street, Kingston, MA

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

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MAURA T. HEALEY  
Governor

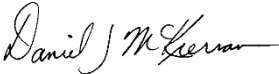
KIMBERLEY DRISCOLL  
Lt. Governor

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:** September 12, 2024  
**SUBJECT:** Proposal Affecting Fish and Conch Pot Gear Set in Federal Waters

#### Proposal

I intend to take to public hearing a proposal to clarify that Massachusetts' rules affecting fish pot and conch pot fishing effort apply to any Massachusetts licensed commercial fisher regardless of whether they are fishing in state waters or adjacent federal waters. This would require a commercial fisher: (1) hold the applicable state-issued fish pot or conch pot permit if possessing or landing fish or whelks taken by that gear in Massachusetts; (2) all pot gear fished in the federal zone must have a valid trap tag; and (3) adhere to the state's trap limits and seasons for fish pot and conch pot gear. Further, this proposal will also clarify that any fish pot gear in the federal zone must comply with the buoy line rules for fish pot gear under the Atlantic Large Whale Take Reduction Plan (ALTRWP) at 50 CFR 229.32, rather than the state regulations governing the Massachusetts Mixed Species Trap/Pot Fishery at 322 CMR 12.06.

#### Discussion

Absent a federal fisheries management plan for channeled whelk, NOAA Fisheries does not permit or manage the whelk fishery or conch pot fishing in federal waters. Accordingly, anyone with an open entry shellfish endorsement in Massachusetts may set conch pot gear in federal waters without any permitting requirement or limitations on the use of pot gear. While federal waters conch pot fishing effort has likely been historically limited because whelk were abundant nearshore, as this fishery has become depleted inshore fishing effort has spilled into the nearby federal zone east of Nantucket, enabled by the lack of state trip limit.

The state's sea bass and scup pot fisheries also present a similar—albeit substantially lesser—challenge. While NOAA Fisheries does not manage fish pot fishing effort in federal waters, commercial fishers hold a federal limited entry scup or black sea bass permit to retain these species in federal waters. Moreover, these species are quota managed and subject to state trip limits, which constrains the extent to which additional gear pot gear in excess of the state pot limits may be set in the federal zone; the low ex-vessel value for scup likely also has a limiting effect on pot fishing effort generally. While a commercial fisher is unlikely to fish pots in excess of the 200 black sea bass pot limit when the trip limit is 500 pounds, it is conceivable that extra gear will be set in the federal zone during the fall months when the fish move offshore and DMF takes action to increase the trip limit in response to quota availability.

The uncontrolled proliferation of pot gear in federal waters poses an avoidable risk to endangered right whales and sea turtles. Accordingly, it is appropriate to clarify that existing state fish pot effort rules apply to Massachusetts licensed commercial fishers regardless of whether they are fishing in state waters or adjacent federal waters. This will continue to allow these commercial fishers to fish in the federal zone

while preventing the proliferation of trap fishing effort in the federal waters and thereby managing the resulting entanglement risk.

It is also necessary to address buoy line marking and configuration requirements. These state regulations apply strictly to the Massachusetts Mixed Species Trap/Pot Fishery, which by definition<sup>1</sup>, occurs only within the waters under the jurisdiction of the Commonwealth. This is consistent with the extent of DMF's draft Habitat Conservation Plan and Incidental Take Permit application. Therefore, it would be inappropriate for buoy lines affixed to pot gear set in the federal zone to comply with these state regulations. Rather, any gear set by pot fishers fishing in the federal zone should comply with the federal ALWTRP's rules. Given the geography of this fishery, the applicable federal rules would likely be those for the [Northern Nearshore Trap/Pot Waters](#). Accordingly, buoy lines would have to be rigged with a weak link at the buoy that has a breaking strength of less than 600 pounds and be marked with three one-foot red marks with one mark occurring in the top, middle, and bottom third of the buoy line. While the federal rules do not require weak rope (i.e., breaking strength of 1,700 pounds or less), DMF would strongly encourage the discretionary use of this gear.

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<sup>1</sup> 322 CMR 12.02 defines the Massachusetts Mixed Species Pot/Trap Fishery as meaning, "inclusively the commercial lobster and crab trap, black sea bass pot, scup pot, and whelk pot fisheries occurring within the waters under the jurisdiction of the Commonwealth."



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Director

### MEMORANDUM

**TO:** Marine Fisheries Advisory Commission  
**FROM:** Daniel J. McKiernan, Director   
**DATE:** September 12, 2024  
**SUBJECT:** Reporting of Large Whale and Sea Turtle Entanglements

The agency's draft Incidental Take Permit application for loggerhead and leatherback turtles ("sea turtles") and North Atlantic right whales (NARW) establishes a Habitat Conservation Plan (HCP). The Habitat Conservation Plan is a planning document that describes how DMF is going to continue to accommodate commercial trap fishing conducted by the Massachusetts Mixed Species Pot/Trap Fishery and limit the fishery's takes of sea turtles and NARW. A component of the HCP is a monitoring program that provides information regarding interactions between the covered species and gear deployed by the Massachusetts Mixed Species Pot/Trap Fishery within the water under the jurisdiction of the Commonwealth. Among other things<sup>1</sup>, the draft HCP proposes to expand entanglement reporting requirement for all vessel operators on the waters under the jurisdiction of the Commonwealth to continue to report any right whale entanglements and additionally report any entanglements of sea turtles. This will help us enhance disentangling efforts; confirm whether or not the entanglements involve gear from the Massachusetts Mixed Species Pot/Trap Fishery; and track any entanglements attributable to the Massachusetts Mixed Species Pot/Trap Fishery for evaluation against the management triggers set by the ITP.

Similar to other aspects of our HCP (e.g., expanded trap gear closure, gear marking), my intention is to front load these regulations into our management program in advance of any approval of our ITP. This is a complicated issue, and prior to developing a draft regulatory proposal, I wanted to consult the MFAC on the subject. These discussions will serve as the foundation for a potential draft regulatory proposal to go out to public hearing this winter for potential implementation for the 2025 fishing season. Note, any regulation adopted will be promulgated pursuant to G.L. c. 130, §17(10)<sup>2</sup> rather than to G.L. c. 130, §17A. Accordingly, a final regulation will not require a formal vote and approval of the MFAC, but your feedback here is critical for DMF to draft a viable regulation.

On the subject of regulatory authority, DMF has previously used similar G.L. c. 130, §17(10) to adopt the existing rules at 322 CMR 12.05—Speed Restrictions to Protect North Atlantic Right Whales and 322 CMR 12.08—Conduct Related to Interacting with Right Whales. However, I am concerned about the challenges of implementing a rule that will broadly apply to all vessels operating on the waters under the

<sup>1</sup> DMF will also train staff to opportunistically monitor for sea turtles and NARW habitat use, and report entanglements observed during routine field work and fisheries monitoring work.

<sup>2</sup> G.L. c. 130, §17(10) reads: Notwithstanding any contrary provision of law, with the exception of chapter 130 of the General Laws of the Commonwealth of Massachusetts, adopt, amend, or repeal all rules and regulations, with the approval of the Governor, necessary for the maintenance, preservation and protection of all marine fisheries resources between the mean high water mark of the commonwealth and a straight line extension of the lateral boundaries of the commonwealth drawn seaward to a distance of 200 miles or to a point where the water depth reaches 100 fathom, whichever is the greatest.



jurisdiction of the Commonwealth. This is a constituent group that is well beyond the recreational and commercial fishing public. DMF will need to conduct substantial outreach to educate all boaters and local authorities (e.g., harbormasters) regarding entanglements and entanglement reporting. Additionally, this rule effectively regulates best practices and may present some enforcement challenges. I expect the Massachusetts Environmental Police would work with DMF to educate the boating public and use their discretion when enforcing the rule. That said, non-compliance is subject to a \$200 non-criminal fine, a criminal fine of \$400 to \$10,000, and a criminal penalty of up to 2.5 years of imprisonment. However, I envision few conceivable situations where non-compliance would necessitate such an action.



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Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)  
FROM: Nichola Meserve, Fishery Management Specialist  
THROUGH: Daniel McKiernan, Director  
DATE: September 12, 2024  
SUBJECT: Future Public Hearing Item: Striped Bass Total Length Measurement

#### Overview

This memo provides background on the issue of the method to measure striped bass, especially within the narrow recreational slot range. It may be appropriate to take to public hearing a proposal to clarify the method of total length measurement for striped bass, specifically that the upper and lower fork of the tail must be squeezed together to measure the tail extremity.

#### Background & Rationale

Size limits are a critical element of the interstate fishery management plan (FMP) and the state's management of striped bass for its sustainability. The Striped Bass FMP establishes all size limits as a measurement of "total length" but does not designate the precise method of measurement. DMF's striped bass regulations define total length as "the greatest straight line length in inches as measured on a fish with its mouth closed from the anterior most tip of the jaw or snout to the farthest extremity of the tail. For fish with forked tails, the upper and lower fork may be squeezed together to measure the tail extremity."

Concern with this definition—specifically the discretion for anglers to either squeeze or leave fanned out the caudal fin—was raised after the adoption of a recreational maximum size limit for striped bass. Both MEP officers and DMF staff have reported that this regulatory ambiguity has led to uneven application of measuring technique to ensure a slot sized fish; i.e., a tendency for anglers to squeeze the tail to reach the minimum length but leave the tail fanned out to fall short of the maximum length. With the recent narrowing of the slot as well as year-class strength increasing the availability of fish near the maximum size, this tendency has likely grown. This is problematic from an assessment perspective (collection of length frequency and weights at length) and management perspective (effectiveness of size limit regulation and intended protection of certain age classes).

The MFAC Law Enforcement Focus Group previously discussed this issue in November 2022. With urging from MEP staff that more precise language would aid in compliance and enforcement, the Focus Group agreed that DMF should consider amending the total length definition to require either the tail be squeezed or fanned out. Subsequent MFAC discussion (also in November 2022) resulted in interest to see how other states define total length to inform MA's proposal and possible movement towards designating a coastwide standard. Since then, with additional complaints and

questions raised from the public about the current definition of total length, DMF has taken additional steps to inform a public hearing proposal.

First, we have undertaken a review of other states' rules and guidance (as readily available online) relevant to this issue. This includes a search of state regulations and recreational fishing guides. The results are summarized below (sources in attached appendix). The majority of states utilize a "must be squeezed" approach to total length measurement of striped bass.

<i>Tail Treatment for Total Length Measurement</i>	<i>Jurisdictions</i>
Must be squeezed	ME, NY, NJ*, PA*, DE*, MD, VA, NC*
Must be left natural/fanned out	NH, PRFC
Angler discretion	MA, RI*, CT*, DC

\*per state recreational fishing guide rather than specified in a regulation (at least one that was able to be found in this review)

Second, to better identify the biological difference between the two methods of tail measurement, we have made plans to collect dual measurement samples within the next month from: 1) striped bass collected from the carcass collection program throughout 2024; and 2) 1-2 field days of sampling this fall, conducted opportunistically during other planned at-sea activities. Samples from the carcass collection program are expected to yield between 50-100 dual measurements from striped bass in the 28 to <31" slot limit. The field days will hopefully provide additional samples just below and above the slot limit. These results will help justify the biological need for state rule-making and potential interstate action to beget uniformity.

It must be noted that the effectiveness of this proposal in standardizing striped bass length measurement will depend on public education. DMF will devise an outreach plan accordingly.

Although the concern about total length measurement arose from the recreational fishery's maximum size, the revised total length definition would apply across all sectors of the striped bass fishery.

### **Timeline**

DMF should consider bringing this item to public comment in early 2025 for implementation prior to the striped bass season commencing. However, this timeline may be influenced by the potential for additional interstate management requirements in response to the 2024 stock assessment (scheduled to be presented to the Management Board in mid-October).

Appendix. **Striped Bass Total Length Definitions by State**  
(as inventoried from available online sources by DMF staff, August 2024)

**Maine**

[Regulation](#): "Total length" means the greatest dimension between the most anteriorly projecting part of the head and the farthest tip of the caudal fin when the caudal rays are **squeezed together**. The measurement is a straight line and is not taken over the curve of the body.

**New Hampshire**

[Regulation](#): "Total length" means the straight-line distance from the tip of the snout to the tip of the tail or caudal fin while the fish is lying on its side, **normally extended**.

**Massachusetts**

[Regulation](#): Total Length means the greatest straight line length in inches as measured on a fish with its mouth closed from the anterior most tip of the jaw or snout to the farthest extremity of the tail. For fish with forked tails, the upper and lower fork **may be squeezed** together to measure the tail extremity.

**Rhode Island**

[Regulation](#): "Total length" means the straight linear distance from the tip of the snout to the end of the tail of a finfish species. All finfish species' minimum sizes are measured as total length, except for coastal sharks, in which minimum size is measured by fork length.

[Rec. Fishing Guide](#): Total length: is the maximum length of the fish, from the tip of the snout to the tip of the tail. The best way to obtain this length is to push the fish's snout up against a vertical surface with the mouth closed and the fish laying along or on top of a tape measure. Measure to the **tip of the tail or pinch the tail fin** closed to determine the total length. Do NOT use a flexible tape measure along the curve of the fish.

**Connecticut**

[Regulation](#): (a) No person, while on the waters of this state or on any parcel of land, structure, or portion of a roadway abutting tidal waters of this state shall possess or land any fish of the following species taken by sport fishing methods, regardless of where taken, if it is less than the identified *length as measured from the tip of the snout to the end of the tail*:...

[Rec. Fishing Guide](#): The minimum length is measured from the tip of the snout to the end of the tail. The tail **may be pinched** to achieve the longest length when measuring, but the minimum length does not include the tendril (dorsal tail filament) found on black sea bass. Fish measuring less than the identified minimum length must be released immediately, with avoidable injury.

**New York**

[Regulation](#): Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the tail, with the lobes **squeezed together**, and the fish laid flat on the measuring device.

**New Jersey**

[Regulation](#): Fish length shall be measured from the tip of the snout to the tip of the tail (total length)...

[Rec. Fishing Guide](#): "Fish tail **pushed together** to obtain greatest length, mouth closed"

**Pennsylvania**

[Rec. Fishing Guide](#): Total length: This is the measurement Commission biologists and law enforcement personnel use. **Compress tail slightly** to obtain this measurement.

#### **Delaware**

[Rec. Fishing Guide](#): Measuring Your Catch: Place the fish on a measuring board or stick with the tip of the jaw or snout (the mouth closed) at the end of the instrument. Hold the head down with one hand to keep the fish in place, **pinch the upper and lower lobes of the tail together** while swiping the tail back and forth across the board. Note the measurement of the longest part of the tail\*; that is the "total length." Keep in mind that fish which barely make the minimum length may shrink after being on ice for an hour or more.

#### **Maryland**

[Regulations](#): "Total length" means the distance from the tip of the snout to the end of the longest lobe of the **extended tail** of a fish.

[Rec Fishing Guide](#): How to Measure a Fish: The total length of a fish is the maximum length with the mouth closed and the **tail pinched together** measured from the snout to the tip of the tail. The best way to obtain this straight line measurement is to push the fish's snout against a vertical surface with the mouth closed and with the fish lying along a tape measure and then pinch the tail fin closed to determine the total length.

#### **Virginia**

[Regulation](#): "Total length" means the length of a fish measures from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the **tail compressed along the midline**, using a straight-line measure, not measured over the curve of the body.

#### **Potomac River Fisheries Commission**

[Regulation](#): Method of Measurement. Measurement shall be the greatest distance in a straight line from the tip of the snout to the end of the caudal fin or tail **in a natural state**, excluding the tail filament of a black sea bass. No person shall alter the natural state of any species of fish listed in (a) above such that its length cannot be measured.

#### **Washington DC**

[Regulation](#): Total Length - the length from the anterior-most part of the fish to the tip of the longest caudal fin rays.

#### **North Carolina**

How to Measure a Fish webpage: <https://www.deq.nc.gov/marine-fisheries/rules-regulations/rec-guide/how-measure-fish/open>

Total Length (TL) – The length of a fish as measured from the tip of the snout to the tip of the tail (**pinch tail together when measuring**).