

FISHERIES ADVISORY COMMISSION

September 22, 2021

Held Virtually via Zoom

In attendance:

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

Division of Marine Fisheries: Daniel McKiernan, Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Story Reed; Jared Silva; Nichola Meserve; Kelly Whitmore; Maggie Nazarenus; Bob Glenn; Scott Schaffer; Steve Wilcox; and Anna Webb

Massachusetts Environmental Police: Capt. Kevin Clayton; and Lt. Matt Bass

Members of the Public: Emerson Hasbrouck; Katie Almeida; Caela Howard; Lizzie Roche; Mike Roderick; Philip Coates; and Domenic Santoro

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the September 22, 2021 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF September 22, 2021 BUSINESS MEETING AGENDA

There were no amendments to the September 22, 2021 MFAC draft business meeting agenda.

Chairman Kane asked for a motion to approve the draft September 22, 2021 business meeting agenda. **Sooky Sawyer made a motion to approve the draft agenda. The motion was seconded by Kalil Boghdan. The September 22, 2021 MFAC business meeting agenda was approved by unanimous consent.**

REVIEW AND APPROVAL OF AUGUST 19, 2021 DRAFT BUSINESS MEETING MINUTES

Kalil Boghdan sought corrections to several typographical errors on page 11 of the August 19, 2021 draft MFAC business meeting minutes. These corrections modified his comments regarding the Spring 2021 Atlantic States Marine Fisheries Commission (ASMFC) meeting. No further corrections were requested. Jared Silva indicated he would amend the minutes as requested by Kalil.

Chairman Kane asked for a motion to approve the amended August 19, 2021 MFAC business meeting minutes. **Kalil Boghdan made motion to approve the August 19,**

2021 business meeting minutes with his amendments. Bill Amaru seconded the motion. The motion was approved by unanimous consent.

CHAIRMAN'S COMMENTS

Chairman Kane thanked the Commission members for their attendance.

LAW ENFORCEMENT COMMENTS

Lt. Matt Bass handled the comments for the Massachusetts Environmental Police (MEP). Lt. Bass stated they are continuing work on cases reported during the August meeting.

DIRECTOR'S COMMENTS

Director McKiernan began his comments discussing the recent Massachusetts Shellfish Officers Association (MSOA) meeting. DMF regularly attends MSOA meetings to provide support to the organization given the joint state-local management of shellfish resources.

Dan then updated the commission on CARES Relief program. DMF sent out applications to commercial fishermen, for-hire fishermen, aquaculturists, and seafood dealers in late-July. There was a four-week application period during which DMF held several workshops across the state to help fishermen and seafood dealers complete their applications. Certain fishing organizations also worked to facilitate the completion of applications. DMF was currently reviewing application appeals and anticipated the ASMFC would receive an eligible payment list by the end of the month. If that were to occur, he expected checks would be issued by ASMFC to eligible applicants in early October. In DMF's spend plan, 10% of the overall funding was set-aside to be potentially redistributed to a sector(s) should its revenue losses be more substantial than the other sectors. However, losses were fairly even across all sectors and the 10% set aside was not redistributed and instead allocated proportionately to each sector based on the initial allocation equation.

Dan then discussed the upcoming ASMFC meeting. Important issues for Massachusetts include the Amendment 7 to the Striped Bass FMP and the ongoing work on addendums to the American Lobster FMP.

DMF's new recreational fishing permitting system is expected to be online in December 2021. Staff have been working closely with the new vendor to ensure the transition occurs as smoothly as possible. Dan anticipated staff would present on this new permitting system at an upcoming business meeting.

Director McKiernan stated the shellfish program is still dealing with the major rainfall event, and shellfish growing areas throughout the state remain closed to harvest due to

contamination. Staff are monitoring water quality in these areas in hopes of having them reopen as soon as possible.

Dan thanked Bill Doyle for taking a number of DMF staff on an educational tour of his oyster farm. He stated it was very informative and the tour gave Dan an appreciation for the care that goes into raising oysters.

Dan then welcomed questions from the MFAC.

Bill Amaru expressed concern over wind farm platforms being put in productive fishing areas.

Kalil Boghdan asked if it was possible for the MFAC to receive a public Zoom meeting link and agenda for the upcoming ASMFC meeting. Jared Silva would provide this information.

2021 QUOTA MONITORED SPECIES UPDATE

Story Reed and Anna Webb provided a brief presentation on the performance of the state's commercial quota monitored fisheries in 2021. The presentation principally focused on black sea bass, striped bass, bluefish, and summer flounder.

Mike Pierdinock asked about the spatial distribution of the commercial bluefish fishermen. Spatial information is obtained through fisherman reports, and not the dealer reports used for quota monitoring. Accordingly, a formal spatial analysis on this year's fishing activity could not be provided before next spring, once the fisherman data is submitted and audited. However, Story Reed stated anecdotally that DMF's Gloucester office had observed a bump in the issuance of commercial fishing permits to target bluefish. This indicates there may be more rod and reel fishing for blue fish along the North Shore.

Jared Silva added that most of the state's bluefish landings are attributable to the strike netter who fishes either in Cape Cod Bay or Nantucket Sound. Bill Amaru stated the bluefish striped netter appreciated DMF securing the extra bluefish quota from New Jersey.

Mike Pierdinock asked if MFAC could receive a presentation on expected federal and interstate management actions affecting bluefish and mackerel. Chairman Kane, Mike P., Director McKiernan, and Nichola Meserve discussed this. On bluefish, Nichola explained the MAFMC's reallocation amendment would shift some of the ACL from the recreational sector to the commercial fishery. As a result, MA's commercial quota should increase from its baseline. However, the bluefish stock was declared overfished and the MAFMC is developing a rebuilding plan for it, which may then have a constraining impact on both the recreational and commercial fishery. Nichola and Dan then discussed the ability for management to timely bring in changes in the status of a stock into management and the challenges associated with the bluefish stock

assessment in particular. On the subject of mackerel, Director McKiernan indicated staff would address ongoing federal management efforts and challenges at an upcoming meeting.

Kalil Boghdan and Bill Amaru expressed concern over the under performance of the summer flounder fishery. He would like an explanation from DMF on why the fishery is underperforming. Director McKiernan deferred this discussion until later in the agenda when it was scheduled to be discussed in more detail. Mike P. and Jared Silva discussed the summer flounder pilot programs.

Kalil Boghdan stated that for several fisheries DMF compared performance overtime (2017 – 2021). However, this was not done for spiny dogfish. Kalil asked if DMF could provide this information. Story stated he did not have the data on hand, but he could provide it after the meeting. Anna Webb also clarified that spiny dogfish was subject to a regional quota, not a state-specific quota like other species. Story added that MA tends to be responsible for a large majority of the region's landings.

Bill Amaru, Ray Kane, Mike Pierdinock, and Kalil discussed the underutilization of the spiny dogfish quota. Bill and Ray focused on some of the challenges facing Chatham area fishermen given markets, profitability, and inshore availability. Mike P. noted spiny dogfish are a nuisance species in the recreational fishery.

ACTION ITEMS

In-Season Adjustment to 2021 Period II Fluke Limits

Director McKiernan reviewed his recommendation to make in-season adjustment to the Period II commercial summer flounder limits for 2021. If approved, DMF would: (1) eliminate closed fishing days (Fridays and Saturdays) effective September 26; (2) increase the commercial possession and landing limit to 800 pounds for all gear types effective September 26—current limits are 400 pounds for net fishermen and 250 pounds for hook fishermen; and (3) increase the commercial possession landing limit to 2,000 pounds for all gear types effective October 10.

Director McKiernan stated there is much less participation in the inshore summertime fishery in 2021 compared to past years and described the various factors thought to be impacting participation and effort. The current regulations affecting this fishery date back to a period when there were higher levels of participation and were designed to ensure the quota remained available throughout the summer. With current effort levels, landings have been depressed and it was unlikely the available quota would be taken. Accordingly, Dan supported liberalizing fishing limits for the remainder of the season to enhance seafood availability and quota utilization. He felt his recommendation would benefit those fishing in state waters, as well as allow for additional landings from vessels fishing offshore.

Bill Amaru thanked Director McKiernan for his comments. Bill generally supported the recommendation. However, he was concerned about the timing of the 2,000 pound trip

limit increase. Specifically, he was concerned it may encourage additional offshore fishing effort and cause a surge of landings. If this were to occur, the ex-vessel value may decrease and negatively impact those fishermen still fishing inshore who would be landing fluke at lower levels. Accordingly, he preferred increasing the trip limit later in the season, around November 1.

Dan explained this proposal sought to increase landings from the offshore fishery. With fishing activity already occurring in federal waters off Nantucket, this change would make these trips more profitable. Dan preferred making this change prior to November 1. Comments from a notable seafood dealer indicated the market would be able to take advantage of increased supply during October, as the larger scale fisheries to our south (NC and VA) do not open at high trip limits until November 1. Therefore, he was recommending a modest increase to 800 pounds on September 26, then a larger increase to 2,000 pounds on October 10, after the last day of recreational fishing on October 9.

Kalil Boghdan agreed with Bill Amaru's call for a more cautious approach. Kalil was more comfortable with increasing the trip limit to 1,000 pounds on November 1. Dan clarified the current rule already establishes a 1,000-pound limit on November 1. If this was the preferred option, then in-season adjustments were not required.

Mike Pierdinock stated it has been difficult for recreational anglers to catch fluke inshore. Mike P. agreed with Bill that it may be time to shift the way fluke are managed due to climatic changes. Mike expressed concern over less fish available for the recreational fishery, and he would prefer all measures go into effect after the recreational fishing season for summer flounder ends on October 10.

Director McKiernan did not anticipate this change would result in substantial user group conflicts between the recreational and commercial fishing sectors. He cited that commercial fishing effort was concentrated offshore, where there is less recreational fishing activity, and recreational fishing activity begins to diminish during the fall.

Ray Kane stated he was happy to see that all gear types are included within the recommendation, as he was aware of some hook and line fishermen seeking higher trip limits.

Bill Amaru, Ray Kane, and Director McKiernan discussed the emerging need to revisit how the summer flounder quota is managed, particularly with regards to the inshore summertime fishery. Dan indicated his intention to hold an industry meeting the fall to discuss potential management actions. He would then follow up with a more in-depth management proposal for public hearing this winter.

Chairman Kane asked for a motion to approve the recommendation from the Director. **Bill Amaru made motion to approve the recommendation from the Director. Sooky Sawyer seconded the motion. A roll call vote was taken, and the motion was**

passed 6-1, with Mike Pierdinock voting in opposition and Chairman Kane abstaining.

Winter II Scup Trip Limits

Jared Silva described the Winter II scup trip limit recommendation. The recommended motion was to adopt a 21,000-pound possession and landing limit for 2021 Winter II (October 1 – December 31) quota period. This is commensurate with the federal trip limit to be established by NOAA Fisheries for this period. If approved, this possession and landing limit would be adopted by declaration for October 1, 2021. Jared stated the inshore fishery could take advantage of this limit, however it is unlikely due to existing restrictions on night fishing and mesh size, as well as the abundance of scup inshore during the fall months.

Chairman Kane asked for a motion to approve the recommendation from the Director. **Shelley Edmundson made motion to approve the recommendation from the Director. Bill Doyle seconded the motion. A roll call vote was taken, and the motion was passed unanimously 7-0.**

ITEMS FOR FUTURE PUBLIC HEARING

Adjusting Lobster Trap Tag Installation Deadline to May 1

Director McKiernan proposed eliminating the LCMA-specific lobster trap tag installation dates, and instead adopt May 1 as the date to have current year trap tags installed in lobster gear across all LCMAs. He explained that with new seasonal trap gear closure affecting state waters of LCMA 1 and OCCLCMA it made sense to sequence trap tag installation with earliest date these areas may reopen to trap fishing. Dan stated for LCMA 2, it will require installation of tags one month earlier—May 1 as opposed to June 1. For LCMA 3, federal rule already requires a May 1 installation.

Sooky Sawyer opined the trap tag company can be slow to distribute tags and was worried an earlier implementation date could result in fishermen being unable to readily set gear. Dan stated he would be asking the fleet to order the tags around the end of December when permit renewals are sent out to provide ample time for tag production and distribution. Sooky stated DMF should do a lot of outreach on the topic to ensure it can be complied with; Bill Amaru agreed.

Permit Clarifications for Seasonal Lobster Permit and Permit Fees

Jared Silva discussed a minor permit clarification for seasonal lobster permit and DMF permit fees. DMF was seeking to clarify in regulation that the seasonal lobster permit was “resident only” to match the statutory language and eliminate any potential confusion on the subject. Additionally, DMF was seeking to reconcile omissions and errors in the permit fee regulations dating back to 2014.

Clarification to Trap Gear Buoy Line Marking Rule

Bob Glenn provided clarification on DMFs recently filed buoy line marking regulations affecting commercial lobster trap gear that are scheduled to go into effect on February

1, 2022. With the recent adoption of complementary federal buoy line marking rules, DMF became aware of a potential regulatory grey area. For those dual state-federal permit holders moving gear across the state-federal boundary, this grey area could potentially lead to federal gear being misidentified as state gear and vice versa. Bob was particularly concerned about the legal and management repercussions should a right whale become entangled in a buoy line and the buoy line be misidentified as coming from state waters.

Accordingly, DMF was seeking to clarify state's recently adopted buoy line marking rules. This proposal would require all buoy lines being fished in federal waters to have a solid or non-solid green mark of at least 1' length adjacent to all red marks and prohibit having any marks other than red marks (or white marks if the buoy line is red) in state waters. Bob was hopeful this could be accommodated by using tracers, rather than requiring fishermen fish separate sets of buoy lines in state and federal waters. DMF was in the process of requesting funds to help offset costs associated with these new right whale conservation regulations, and if appropriated, this could be used to purchase additional buy lines or buoy line marking materials.

Kalil Boghdan asked how difficult it would be for the lobstermen to take the green marks on and off going in between state and federal waters. Bob Glenn stated it's not ideal and reiterated it was likely more readily achievable with tracers as opposed to separate buoy lines.

Sooky Sawyer opposed having dually permitted lobstermen fish two sets of buoy lines. He noted that while funding may help, other major constraints were space, safety, and efficiency. Jared Silva moved to clarify the proposal would not require fishermen fish two sets of buoy lines. Sooky noted safety and efficiency challenges still occur when having to remove tracers.

Shelley sought clarification on how buoy lines were to be marked. Jared Silva and Bob Glenn explained that only the surface system needs to have solid markings (e.g., paint or tape), the markings in the body of the buoy line could be tracers.

Bill Amaru sought clarification on the timing of the proposal. Jared Silva stated DMF would take this out to public hearing over the course of the next few months with the goal of amending the rule for this winter.

Bob Glenn and Director McKiernan added that all commercial lobstermen would be subject to the new buoy line marking rules approved by the MFAC at their June meeting in February 2022. This specific clarifying proposal particular change would not affect all commercial lobstermen, just those dual permit holders who move gear across the state and federal boundary. The purpose of it was not to provide additional marking requirements, but to make sure that a regulatory grey area did not create a risk for gear to be misidentified in the case of an entanglement. Of particular concern would be federal waters gear being misidentified as state waters gear, as this could have severe

consequences for the state's fixed gear fisheries and DMF's Incidental Take Permit application.

DISCUSSION ITEMS

Updates Regarding Atlantic Large Whale Take Reduction Plan (ALWTRP)

Bob Glenn provided a brief presentation regarding updates to the ALWTRP. He focused on three times: (1) recently enacted time-area closures and gear modifications affecting the lobster and Jonah crab trap fishery; (2) the federal buoy line marking rules for the lobster and Jonah crab trap fishery that go into effect next year; and (3) ongoing deliberations on management measures to reduce the risk of entanglement posed by other fixed gear, including gillnets and fish pots.

Bob Glenn and Sooky Sawyer discussed the ALWTRP's South Island Restricted Area.

Sooky asked if the weak contrivances would be considered as approved buoy line marks. Bob stated South Shore sleeves and segments of red weak rope could be used towards complying with the red buoy line marks required in state and federal waters for MA fishermen. However, additional red marks may be required depending on the length of the buoy line and federal waters fishermen would have to insert green marks.

Review of Recent State Waters Groundfish Sub-Committee Meeting

Dan McKiernan and Jared Silva provided a brief presentation summarizing the discussion at the September 17, 2021 State Waters Groundfish Sub-Committee Meeting. This focused on extending the spatial extent of the existing January 1 – May 15 seasonal gillnet closure, late April spawning cod protections, and augmenting commercial groundfish rules to provide additional access to available resources at times and in places where right whale and spawning groundfish concerns were of lesser concern.

Review of Recent Adjudicatory Hearing Decisions

Dan McKiernan gave an overview of DMF's administrative law section. He then turned the floor over to Jared Silva to discuss recent decisions. Jared Silva discussed the various matters that were either resolved through hearing or a settlement agreement in the past year; Jared did not discuss any ongoing matters.

Sooky Sawyer asked what the MEP's role is within the hearing process. Jared provided in-depth clarification on what the MEPs role is, and how each case is handled individually on how to best bring the case forward. Dan added that a shellfish constable has the standing to bring forward a case as well.

Capt. Kevin Clayton MEP believes the program is very successful and was supported by MEP officers as an alternative to criminal or civil proceedings. He thanked DMF for maintaining the program.

OTHER BUSINESS

Commission Member Comments

Bill Amaru stated his preference for in-person meetings moving forward.

Kalil Boghdan wished Mike Pierdinock a happy birthday.

Tim Brady thanked everyone for the presentations and expressed frustration with the lack of decent weather.

Shelley Edmundson thanked MFAC members and DMF staff, and also stated her preference for in-person meetings.

Mike Pierdinock stated he will be sworn in at the next NEFMC meeting and encouraged anyone with concerns to reach out to him.

PUBLIC COMMENTS

Former DMF Director, Phil Coates, stated the discrepancy in the summer flounder minimum size for the recreational and commercial fisheries dates back to the 1990s when he was Director. Phil also suggested enhancing marketing sea robin to increase profitability of summer flounder trips. He referred back to the MFAC's discussion of spiny dogfish, and noted that while former Director Pierce worked on spiny dogfish his PhD. dissertation was on PCBs. Pierce worked on dogfish issues professionally under Director Coates, and was keenly interested in their role in the ecosystem and their impact on rebuilding other stocks as they are voracious predators. Phil noted he supported using permit sanctions as an enforcement tool when he was Director and was encouraged by DMF growing the administrative law program.

ADJOURNMENT

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

MEETING DOCUMENTS

- October 28, 2021 MFAC Business Meeting Final Agenda
- September 22, 2021 Draft MFAC Business Meeting Minutes
- 2021 Quota Monitoring Presentation
- Recommendation for In-Season Adjustment to 2021 Fluke Limits
- Proposal on Setting Scup Winter II Limits
- Proposal to Adjust Trap Tag Installation Date
- Permit Clarification Proposal
- Buoy Line Marking Clarification Proposal
- Atlantic Large Whale Take Reduction Plan Presentation
- State Waters Groundfish Management Presentation

UPCOMING MEETINGS

**November 10, 2021
via Zoom**

**December 2, 2021
via Zoom**