



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

9:00 AM

September 22, 2021

Held Virtually Via Zoom

Webinar Link: <https://bit.ly/3Ak80BL>

Dial In: 1-312-626-6799

Webinar ID: 847 1289 3938

Webinar Passcode: 131340

1. Introductions and Announcements (9:00 – 9:10)
 - a. Review and Approval of the September 22, 2021 Business Meeting Agenda
 - b. Review and Approval of the August 19, 2021 Draft Business Meeting Minutes
2. Comments (9:10 – 9:30)
 - a. Chairman
 - b. Commissioner
 - c. Law Enforcement
 - d. Director
3. 2021 Quota Managed Species Updates (9:30 – 10:00)
4. Action Items (10:00 – 10:30)
 - a. In-Season Adjustment to 2021 Period II Fluke Limits
 - b. Winter II Scup Trip Limits
5. Items for Future Public Hearing (10:30 – 11:00)
 - a. Adjusting Lobster Trap Tag Installation Deadline to May 1
 - b. Permit Clarifications for Seasonal Lobster Permit and Permit Fees
 - c. Clarification to Trap Gear Buoy Line Marking Rule
6. Discussion Items (11:00 – 12:00)
 - a. Updates Regarding Atlantic Large Whale Take Reduction Plan
 - b. Review of Recent State Waters Groundfish Sub-Committee Meeting
 - i. Seasonal Gillnet Closure to Protect Right Whales
 - ii. April 15 – April 30 Commercial Groundfish Closure to Protect Spawning Cod
 - iii. Other Considerations
 - c. Review of Recent Adjudicatory Hearing Decisions
7. Other Business (12:00 – 12:15)
 - a. Commission Member Comments
 - b. Public Comment
8. Adjourn (12:15)

Future Meeting Dates

**October 28, 2021
Location TBD**

**December 2, 2021
Location TBD**

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.

FISHERIES ADVISORY COMMISSION

August 19, 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; Lou Williams; and Shelley Edmundson.

Division of Marine Fisheries: Daniel McKiernan, Director; Michael Armstrong, Assistant Director; Jared Silva; Nichola Meserve; Stephanie Cunningham; Maggie Nazarenus; Melanie Griffin; Bob Glenn; Erin Burke; Nick Buchan; Scott Schaffer; Steve Wilcox; Chrissy Petitpas; Mark Rousseau; and Anna Webb

Department of Fish and Game: Ron Amidon, Commissioner

Massachusetts Environmental Police: Lt. Matt Bass

Members of the Public: Philip Coates; Brett Hoffmeister; Lizzie Roche; Luke Holmes; Beth Casoni; and Kenneth Weeks

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the August 19, 2021 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF AUGUST 19, 2021 BUSINESS MEETING AGENDA

Jared Silva stated DMF sought two minor changes to the August draft business meeting agenda. First, DMF wanted the agenda item on “Updates on Protected Species Management” to be inclusive of happenings at the Atlantic Large Whale Take Reduction Team. Second, DMF wanted to move the “Review of MFAC Authorities in Fisheries Management” discussion up the agenda from item #6F to immediately following the Comments section at agenda item #3.

Chairman Kane asked for a motion to approve the draft agenda as amended by DMF. Sooky Sawyer made a motion to approve. The motion was seconded by Shelley Edmundson. The August 19, 2021 MFAC business meeting agenda was approved by unanimous consent.

REVIEW AND APPROVAL OF JUNE 3, 2021 DRAFT BUSINESS MEETING MINUTES

There were no comments regarding or amendments to the June 3, 2021 draft business meeting minutes.

Chairman Kane asked for a motion to approve the June 3, 2021 draft business meeting minutes. Sooky Sawyer made motion to approve. Mike Pierdinock seconded the motion. The motion was approved by unanimous consent.

CHAIRMAN'S COMMENTS

Chairman Kane hoped that everyone had an enjoyable summer and thanked the MFAC for their full attendance at the August business meeting.

COMMISSIONER'S COMMENTS

Commissioner Amidon thanked Director McKiernan and DMF staff for the rapid progress on the second round of CARES relief and for attending the recent meetings of the Legislature's recent Environment, Natural Resources, and Agriculture Committee.

LAW ENFORCEMENT COMMENTS

Lt. Matt Bass handled the comments for the Massachusetts Environmental Police (MEP). A number of striped bass violations were cited along the North Shore. Fishing activity along the Cape Cod Canal produced some complaints of non-compliance, as well as some citations for violations. An investigation was ongoing regarding commercial lobster gear in southwestern Cape Cod Bay. MEP observed good compliance with the new buoy line rules to protect right whales.

With regards to personnel, Lt. Bass indicated three recent hires had received their field assignments and four new hires had entered into field training.

Sooky Sawyer addressed the commercial lobster gear investigation in Cape Cod Bay. He stated many area fishermen were frustrated by the situation. Specifically, that MEP was not responsive to complaints regarding illegal trap fishing and stolen gear. Lt. Bass stated he would look into MEP's response to the allegations. It was also noted that the investigation was ongoing and DMF had initiated an adjudicatory proceeding.

Ray Kane stated he would like to see more officers entering training to ensure more boots on the ground. He acknowledged MEP is understaffed.

DIRECTOR'S COMMENTS

Director McKiernan stated the final arguments in the Strahan v. Commonwealth were postponed from August 19 to September 2. The hearing could be attended virtually and the Director asked staff to share the link Dan praised Bob Glenn for his work in preparation for this trial, including his testimony in June.

DMF held a meeting with the MA Conch Association, Dr. James Sulikowski from Arizona State University, MA Representative Tony Cabral, and MFAC members Shelley

Edmundson and Ray Kane. The purpose of the meeting was to discuss whelk biology, fishery management, and research initiatives. Dan reported there was support among Association members to revisit the whelk size-at-maturity study. However, he did not find the arguments in favor of redoing the study again to be compelling. Rep Cabral sought for greater collaboration among industry, SMAST, and DMF to improve management and science initiatives.

Director McKiernan then discussed the municipal management of shellfish (“home rule”). State law establishes home rule for the management of certain bivalve shellfish species in municipal waters. In recent months, a small number of vessels were fishing with dredges for mussels in Plymouth Harbor. Unknowingly, however, local regulations prohibit commercial fishing for all municipally managed shellfish species, including blue mussels. While the shellfish constable initially took action to restrict this activity, there was some interest among the local authorities to accommodate it in deeper waters between Gurnett Point, Browns Bank, and Bug Light. At a recent town meeting, the Board of Selectmen took action to allow the activity to continue temporarily while a management plan was developed. There was some interest in the state developing baseline rules which could either be adopted at the local level or apply in certain local waters should the town not want to manage the.

Director McKiernan noted Bill Doyle was involved in this matter locally and asked if Bill wanted to speak to it. Bill stated the selectmen were interested in allowing commercial dredge fishing in the outer harbor to some extent. He was hopeful local officials would work with DMF to develop a management plan.

Director McKiernan then touched on personnel. He stated that with Kathryn Ford leaving for the Northeast Fisheries Science Center, Mark Rousseau was promoted to DMF’s Habitat Program Manager. The Director discussed Mark’s new role and the projects he will be taking on.

Jared Silva was asked to summarize a recent agency action to set recreational cod and haddock limits for the for-hire fishery. NOAA Fisheries just recently finalized the recreational Gulf of Maine (GOM) cod and haddock limits for the current fishing year and allowed a September 8 to October 7 for-hire recreational fishing season for GOM cod. This season was not currently allowed under state rules. DMF wanted to ensure the state rules complemented the federal rules to provide for-hire fishermen with this additional fishing access and to allow fish lawfully taken in federal waters to be landed in Massachusetts. Given the narrow timeframe to implement this, DMF chose to do it by permit condition, as opposed to adopting it by regulation.

Director McKiernan then welcomed questions from the MFAC.

Bill Amaru was concerned about the development of a complex myriad of mussel dredging rules should each town want to adopt its own local management plan out to its seaward boundary. Director McKiernan was optimistic this would not occur but noted such “Balkanization” was why the commercial surf clam and ocean quahog dredge

fishery is managed at the state level. Dan's preference is to work with the local communities through their shellfish officers and potentially adopt baseline regulations that would apply locally should the municipality choose not to manage the resource throughout the extent of its waters. This was an item he hoped would be discussed at an upcoming MSOA meeting.

Sooky Sawyer asked about a recent entanglement of a humpback whale in Massachusetts lobster gear. Director McKiernan stated DMF was still waiting on a formal report from NOAA Fisheries. However, he confirmed it was a juvenile humpback, the whale broke free from the buoy line, and the buoy line was properly rigged with the newly required weak contrivances. Sooky advocated for DMF to share this with the Attorney General's Office and the court that is hearing the ongoing protected species litigation. Director McKiernan stated he intended to share the formal NOAA report with the legal team once it was made available.

DMF Legal Authorities

Director McKiernan provided a historic overview on the formation of the Commission and its rule making authority. He then asked Jared Silva to present on various legal authorities available to manage marine fisheries in MA, and to what extent the MFAC is involved in each. Jared Silva provided a presentation on the subject and then welcomed questions from the MFAC.

At the top of the management pyramid are those laws established by the legislature at G.L. c. 130. While modern fishery laws typically provide a framework for regulation, there are various state laws that actually establish marine fishery limits. The next layer of management is the Director's authority to promulgate regulations pursuant to G.L. c. 130. G.L. c. 130, §17A allows DMF to regulate the manner of fishing and size, times, places, and quantities of fish to be taken with approval of the MFAC. Beyond the explicit purview of the MFAC, the Director may also adopt permitting regulations and regulations governing vessels operating in Massachusetts waters to protect marine species. Emergency regulations are a type of regulation that is set on a temporary basis for a period of 90-days. They are implemented by the Director with approval of the DFG Commissioner. This authority is typically used to respond in a timely manner to changes in federal or interstate management, address issues pertinent to public health, and manage latent effort. Below the agency's regulatory authority resides the Director's declaratory authority. This is an authority developed by DMF and the MFAC to allow DMF to make in-season adjustments to fishery limits without having to amend regulations. For the Director to issue a declaration, the agency must host a two-week written comment period, the MFAC must approve the action, and the action must be published via a certain protocol. The last tier of the agency's management authority is the ability to condition permits. The MFAC has no formal role in this process. However, DMF typically seeks their advice on management and conservation issues. Once adopted, the permit conditions are sent to the permit holder and published on the agency's website. The most common type of permit condition is a Letter of Authorization, which are typically issued to allow certain exempted activities or

accommodate pilot programs. Permit conditions are also used to respond flexibly or immediately to critical enforcement and management challenges.

Bill Doyle thanked Jared for his presentation. Bill noted there was some confusion among MFAC members regarding their authority on certain matters and this helped better explain the MFAC's role. Bill then asked several questions. First, he asked if the MFAC's authority under G.L. c. 130, §17A to regulate certain fishing activity extended to shellfish. Jared stated that shellfish was a complex area of management due to home rule. However, the MFAC's regulatory oversight would extend to those aspects of shellfish management under DMF's control. Second, he asked if the MFAC could move and vote on their own motions on regulations. Jared stated the process for moving regulations begins with a recommendation from the Director. The MFAC may choose to move the Director's recommendation as a motion; if the recommendation is not moved or the motion fails, the MFAC can advise the Director on how to amend the recommendation so that it is supported. Lastly, Bill asked how a MFAC member may push for a certain change to a regulation. Director McKiernan stated the member should discuss the action with other MFAC members and DMF staff. They can also raise the specific action at a business meeting. In response, DMF will then study and review the action and discuss it to determine what course of action is warranted.

ACTION ITEMS

2021 Quota Managed Species Updates

Anna Webb provided an update on quota managed species and quota utilization for 2021. Her presentation focused on black sea bass, summer flounder, striped bass, menhaden and horseshoe crabs.

Ray Kane asked about overall compliance with dealer and harvester reporting. Anna stated that generally speaking reports were being submitted accurately and on time.

Ray Kane then asked about the number of vessels fishing in the summer flounder fishery. Anna stated she did not have the data on hand. Jared Silva noted anecdotal reports were that the inshore trawl fishery was down to about 10 vessels and of those 10 vessels several had left the fishery in season due to a variety of factors. DMF was planning on meeting with the fleet during the fall to discuss the challenges they face and how manage the inshore fishery and utilize the quota moving forward.

Kalil Boghdan, Anna Webb, and Jared Silva discussed DMF's projection for fishery closure dates. DMF's projections were based on current fishing effort and daily catch rates remaining static. Therefore, the projections become less certain during the fall months, as these factors change in response to deteriorating weather and fish migration.

Kalil Boghdan and Director McKiernan discussed the challenges the state may face should it not take its quota. From an economic perspective, it is a deficit of local domestic seafood production and unrealized income for commercial fishermen and

seafood dealers. From a management perspective, if the state continuously underutilizes its quota then there may be pressure at the ASMFC and Council level to reallocate the state's to a state or user-group where it may be better utilized. Accordingly, DMF works with the MFAC to set harvest rules to utilize 100% of the available quota.

Kalil then asked Anna to explain how data is reported. Anna stated that dealers acting as primary buyers report their direct from harvester seafood purchases into the SAFIS database on a weekly basis. This allows DMF to monitor the quota in near real time. As we approach the quota, staff also work closely with the buyers to obtain the landings data in near real-time to more accurately project quota closures and avoid quota overages. On the fisherman side, data is reported monthly on a trip level basis. This data is not used to monitor quota but is used to is used for spatial information and gear types.

Mike Pierdinock asked if adjacent states are seeing the same trends regarding quota and landings. Nichola Meserve indicates that it varies from fishery to fishery and state to state.

Mike Pierdinock then asked if the landings data includes both state and federal permitted vessels. Anna Webb confirmed the data is inclusive of all fish landed in the state regardless of where it was caught and the permits held by the vessel.

Nichola discussed the performance of the 2021 menhaden fishery. MA took its initial 5.4-million pound (mlb) quota by the middle of June. MA—as well as ME and RI—opted into the ASMFC's episodic event set-aside (EESA) program. The EESA was set at 4.28 mlb this year and these states exhausted the EESA by the end of month. MA landed approximately 46% of the overall EESA and allowed fishing up to a 25,000-pound trip limit during the fishery. ME, MA, and RI then 8.27 mlb of quota transfers from other states. The transfer was allocated among the three states based on a cooperative agreement with MA received about 2.49 mlb. This kept the fishery open through early August at the 25,000 pound trip limit. The directed fishery closed on August 11 and fishing continues under the small scale and incidental harvest limit of 6,000 pounds.

In-Season Adjustments

Action on Commercial Black Sea Bass Adjustments

Director McKiernan set forth his recommendation to liberalize commercial black sea bass limits for 2021 to better utilize the remaining quota. The recommendation was:

1. Effective August 30, 2021, increase the directed commercial black sea bass trip limits for hook and line and pot fishermen by 25%. This will increase the commercial pot limit from 400 pounds to 500 pounds and the hook and line limit from 200 pounds to 250 pounds.
2. Effective August 30, 2021, increase the number of open fishing days per week for the directed commercial black sea bass hook and line and pot fisheries from

three days per week (Sunday/Tuesday/Thursday) to five days per week (Sunday – Thursday).

3. Effective October 1, 2021, eliminate the remaining closed fishing days in the directed commercial black sea bass hook and line and pot fisheries.

Director McKiernan opened the floor up to questions from the MFAC.

Bill Amaru supported the recommendation. Bill anticipated there may be some objections to enacting these changes prior to the end of the recreational fishery on September 9 and was curious if the Director would consider amending his recommendation should it not pass. Dan stated his support for the recommendation as provided and did not think it would have a measurable impact on the recreational fishery. However, he indicated he would be willing to amend his recommendation should it fail to pass.

Mike Pierdinock did not oppose liberalizing commercial fishing limits for black sea bass, but could not support any action to enact such changes prior to the end of the recreational fishing season. Mike stated that warm waters were driving the recreational fleet further from shore and increased the likelihood of user group conflicts between the commercial and recreational fishing sectors.

Kalil Boghdan stated he would vote in favor of the motion, but shared Pierdinock's concerns about potential user group conflicts.

Tim Brady stated his intention to vote against the recommendation. He argued increasing commercial fishery removals may limit the fish available to the recreational fishery. This had the potential to impact resource availability and could have a limiting effect on for-hire trips.

Ray Kane summarized conversations he had with commercial fishermen. Those fishermen supported the recommendation, but they wanted the liberalizations to be implemented immediately. Ray was concerned that compromise measures would result in the quota being underutilized this year. Ray and Nichola then discussed quota utilization this year versus past years.

No further comments were made.

Chairman Kane asked for a motion to approve the Director's recommendation for in-season adjustments to commercial black sea bass limits. Bill Amaru made motion to approve the Director's recommendation. The motion was seconded by Sooky Sawyer. A roll call vote was taken. The motion was passed 6-2 with Tim Brady and Mike Pierdinock voting in opposition.

Review of Authorization for Horseshoe Crab Trip Limit Increase for Trawlers
DMF also reviewed its decision to issue Letters of Authorization to all Coastal Access Permits (inshore trawlers) with horseshoe crab landings this season to increase the

daily horseshoe crab limit to 400 crabs. This was done in response to a shortage of crabs on the bait market impact the supply of crabs available to the biomedical industry for LAL production.

Brett Hoffmeister, of the Associates of Cape Cod, thanked DMF for the attention to the matter and stated that this increase helped ameliorate supply chain issues for the biomedical firm.

Bill Amaru and Ray Kane stated their support for the Director's position.

Items for Future Public Hearing

Adjusting the Timing of Inshore Squid Fishery

Director McKiernan reviewed his forthcoming public hearing proposal to modify the timing of the inshore small mesh trawl squid season. At present, regulations allow this fishing activity to occur within the seasonal Small Mesh Squid Trawl Exempted Area from April 23 – June 9. The Director then has the discretion to extend the season beyond June 9. Over the past five years, the Director used this discretion on several occasions to extend the fishery by a week or two in response to a continued abundance of large squid south of Cape Cod. The proposed modification would extend the season by an additional six-days — through June 15— and strike the Director's discretionary authority to extend the fishery.

The Director explained that the April 23 start date is earlier than when the squid normally start showing up in the Sounds. However, with warming water temperatures the timing of this fishery may change, and he would expect DMF and the MFAC to be responsive to that.

Ray Kane asked about participation in the small mesh squid fishery and the homeports of those vessels. Jared Silva stated the fishery was a mix of resident and non-resident vessels. The small trawlers who principally fish in Sounds were largely resident vessels. The larger vessels were typically a mix of resident and non-resident, and these vessels would fish both in the Sounds and south of the Islands. The Chairman extend there would be concerns about non-resident vessels expressed at public hearing and hoped DMF would provide data on this subject.

Mike Pierdinock asked if it is mandatory for bycatch in the squid fishery is reported. Jared Silva explained that bycatch and discards are tabulated from observer data. Bycatch is not reported on fisherman catch reports unless it is retained and sold. Mike P., Jared, and Dan discussed bycatch and discard rates in the squid fishery. Director McKiernan tried to parse the issue of the timing of the fishery in state waters from more broad discussions about bycatch and discards, which affect the fishery more generally. However, he asked Jared to share DMF's squid report and presentation with the MFAC as it deals with the issue in greater detail. He also noted Brad Schondelmeier will be on the panel for the public hearing and he would be able to answer such questions in greater detail, as the principal investigator and author of the report.

Setting of Federal Winter Period Scup Limits

Jared Silva discussed the process for setting wintertime commercial scup limits. He first described the declaratory process whereby DMF moves to compliment federal limits before the Winter II and Winter III period to allow vessels fishing offshore to lawfully land their catch in Massachusetts. After several years of using this process, DMF now prefers to streamline the process for setting wintertime scup limits commensurate with the federal rules and avoid using the declaratory process. To do this, DMF is proposing:

1. Establish a baseline harvest and retention limit for state waters of 1,500 pounds from October 1 – April 22 and 2,000 pounds from April 23 – May 1. This would to apply to all state-only permit holders and those federal permit holders fishing in state-waters.
2. Adopt a regulation allowing federal permit holders to possess and land scup in excess of the state-waters limit from October 1 – April, provided the fish were caught in federal waters in accordance with federal regulations.

Jared noted this proposal was consistent with DMF's approach to managing groundfish and sea scallop limits for state-only and federal permit holders.

DISCUSSION ITEMS

Protected Species Management Update

Bob Glenn provided a briefing on DMF's ITP application and the development of amendments to the Atlantic Large Whale Take Reduction Plan (ALWTRP).

With regards to DMF's ITP application, NOAA fisheries published its 2022 List of Fisheries (LOF) in early August and listed MA's lobster trap fishery separately from the North Atlantic lobster trap fishery and as a Category 2 fishery. This listing designates that the state's fishery poses a lower risk to marine mammals than the overarching lobster trap fishery. Obtaining this designation was a critical step in DMF's ITP application.

This past spring, NOAA Fisheries promulgated amendments to the ALWTRP affecting the lobster and trap fishery to protect the North Atlantic right whale. NOAA was now reconvening the Take Reduction Team to similarly address risk in the gillnet fishery and mixed species trap/pot fishery. Initial discussions have focused on time/area closures and gear modifications. Bob expected public scoping meetings to be held this fall and stated rules may be adopted in 2022 for 2023. Any changes to the ALWTRP impacting these gears would affect the management of the state's inshore gillnet fishery and scup, conch, and black sea bass pot fisheries.

Bob then explained how DMF's ITP application interacted with these likely adjustments to the ALWTRP. From his perspective, the state needed to get out ahead of the ALWTRP and manage these fisheries to mitigate risk to right whales. He was most

concerned about the state-waters gillnet fishery. While the fishery is small, there is a spatial and temporal overlap with seasonal right whale aggregations. He was less concerned about the summertime fish and conch pot fisheries. These occurred south and west of Cape Cod during the summer where there is a negligible co-occurrence with right whales.

CARES Act Relief Update

Jared Silva updated the MFAC on the second round of CARES relief funds. Applications were sent out in late July and were due at the end of August. DMF held workshops in Chatham, New Bedford, Scituate, and Gloucester and was working closely with the Fishing Partnership's Navigators to assist in the completion of applications. Jared was optimistic that relief funds would be distributed to qualified applicants in October.

Updates on August ASMFC Meeting and Joint ASMFC/MAFMC Meeting

Nichola Meserve provided an overview of the recent August 2021 ASMFC meeting.

- *American Lobster and Cancer Crab Board.* The Board initiated Draft Addendum 29 to consider establishing electronic tracking requirements for federally permitted vessels. The purpose is to collect high resolution spatial and temporal fishing effort data to improve the understanding of the resource, protected species entanglement risk assessment, ocean planning and offshore energy development, and other similar items important to the fishery. The development of Draft Addendum 27 is also ongoing. This addendum seeks to increase the resiliency of the Gulf of Maine/Georges Bank (GOM/GBK) lobster stock in anticipation of an expected stock decline in the coming years. This is accomplished through certain pre-established triggers for certain management actions. The Board also postponed further development of a Management Strategy Evaluation (MSE) for GOM/GB lobster stock to prioritize the above two actions. On the Jonah crab front, a species of growing economic value in Massachusetts, the Board initiated the first-ever stock assessment with an expected completion date of 2023.
- *Striped Bass Board.* The Board reviewed 2020 catch and harvest data, which confirmed Addendum VI's success in meeting the intended 18% reduction in total removals in 2020 relative to 2017 levels. In fact, a 28% reduction was achieved. The Board provided additional guidance to the Plan Development Team (PDT) for Draft Amendment 7. The PDT was also assigned reviewing Delaware's request for allowing commercial quota transfers among states.
- *Summer Flounder, Scup, and Black Sea Bass Board.* The Board approved a 1% increase to NY's commercial quota allocation, increasing it from 7% of the coastwide quota to 8%. This decision followed an appeal to the Policy Board regarding quota reallocation and CT obtaining additional quota in response to the growth of the stock in Long Island Sound.
- *Menhaden Board.* The Board initiated an addendum to consider changes to the state-by-state quota allocations, the episodic event set aside (EESA) program, and the incidental catch/small-scale fishery allowance.

- *Policy Board.* There were several overarching policy and guidance documents undergoing review. This included *de minimis* provisions, conservation equivalency, and the appeals process, which if revised have the potential to impact all the Commission's species management.

Nichola then discussed the a recent joint ASMFC/MAFMC meeting where the summer flounder, scup, sea bass, and bluefish specifications were set. These specifications set the commercial quotas and recreational harvest limits (RHL) for these species for 2022-2023. The 2023 limits for summer flounder, scup, and black sea bass could be revised by the ongoing commercial/recreational allocation amendment; the bluefish specifications already included its recently revised sector allocation.

In reviewing the RHLs, Nichola noted how the apparent increases or decreases to the limits do not always translate into regulatory liberalizations or restrictions under the current management approach. Rather fishing limits are based on comparing the RHL to the prior year(s) harvest in an attempt to fit the next year's harvest into the prescribed RHL. The resulting disconnect between species health and harvest restrictions was the source of frustration with recreational management program and prompted the ASMFC and MAFMC to consider new approach to management. This new approach is the so-called "harvest control rule" and it seeks to incorporate stock status indicators (e.g., biomass trend, recruitment, B/Bmsy, F/Fmsy) into predefined management steps for the setting of recreational measures. Four approaches were approved for further development. Nichola speculated a new management approach could be adopted for 2023.

Bill Amaru asked why the harvest control rule was limited to recreational fishery. Nichola stated the commercial fishery is quota managed the quota is directly tied to the status of the stock. Accordingly, there was not a strong of a disconnect between stock health and quota levels. Due to the way the recreational fishery is managed there have been increasing instances where stringent recreational catch limits constrained access to healthy fish stocks. Bill disagreed with Nichola's assessment and felt a similar approach should be considered for commercial fisheries.

Kalil Boghdan raised a statement made at the spring ASMFC meeting by the Striped Bass Board Chair, Patrick Keliher. Mr. Keliher advocated for the ASMFC to take aggressive action in response to the striped bass stock's downward trend. Kalil asked DMF to speak to their thought son the quota. Nichola stated the Chair was looking for the Board to prioritize management initiatives for Amendment 7 so the document could move through the management process.

NEFMC Meeting Updates

Melanie Griffin provided the Commission with several New England Fishery Management Council (NEFMC) related updates. This included newly appointed Council members (Michael Pierdinock for MA), recent and upcoming stock assessments, Atlantic Cod Stock Structure workshops, and the Sea Scallop Survey Working Group.

The next NEFMC meeting will occur in late September. The Council will work towards the development of specifications for several management plans (e.g., groundfish, scallops and skates) and take final action on the herring rebuilding plan (Framework 9).

Two ongoing federal public comment periods were relayed to the MFAC. First, comment was being accepting on the CLF petition for Secretarial Action on Atlantic Cod; comments are due by October 4. Second, comments were being accepted on the regional East Coast Climate Change Scenario Planning by October 6.

Shellfish Program Updates

PSP Closures

Chrissy Petitpas provided a brief presentation on this summer's PSP closures. The Nauset System, which is typically subject to annual springtime closures, was closed from March 17 to June 17 (92 days) for bi-valve shellfish species. The area remains closed to moon snail harvest. Chrissy then discussed some unexpected summertime closures on the north shore. She also reviewed PSP conditions and *Alexandrium* counts in the GOM in this year to those in prior years.

SMAST Contract for Hydrographic Modeling

Chrissy Petitpas discussed a \$100,000 earmark in the current fiscal year's state budget for the MFI to conduct hydrodynamic modeling around wastewater treatment plant sewage outfalls. Dr. Chen at SMAST will be using the Northeast Coastal Ocean Forecast System and the Finite Volume Community Ocean model to create these hydrodynamic models. Dan McKiernan added that DMF is hopeful this will allow for more precise and accurate closures around outfalls.

Shellfish Advisory Panel Codified in State Law

Director McKiernan briefly stated that the Shellfish Advisory Panel was codified by legislation. He was currently working on appointments and was hopeful the panel would meet twice annually beginning in 2022.

OTHER BUSINESS

Status of Sub-Committees

Jared Silva stated DMF plans to hold a State-Waters Groundfish Sub-Committee meeting before the next commission meeting to discuss time sensitive groundfish and protected species management issues. The Law Enforcement Sub-Committee would likely hold its annual meeting in November. DMF was delayed in convening the Striped Bass Sub-Committee and the Permitting Sub-Committee because of staffing constraints. DMF anticipated these committees would have data intensive needs, and the Statistics Program was currently working on DMF's ITP application, the CARES Act, and annual compliance reports. Once the work load lessened, the Statistics Program would shift their efforts towards the needs of these sub-committees and DMF could schedule meetings.

Future of Meetings

Jared stated that the September – December 2021 business meetings were initially scheduled for DFW's Westborough office. However, in light of the delta variant and continued constraints on meeting room capacity, DMF intended to continue to convene the MFAC via Zoom. The Governor's emergency order on the Open Meeting Law allowed this virtual format to continue through April 2022, should need be.

Commission Member Comments

Kalil Boghdan thanked DMF for the informational presentations.

Tim Brady stated he had the opportunity to spend a day with OCEARCH. He noted the organization was federally permitted to conduct white shark research, but could not obtain similar permits through DMF. Dan stated he would provide DMF's formal correspondence with OCEARCH regarding the agency's decision on their permit status.

Tim also thanked everyone involved for authorizing the for-hire bonus season for GOM cod.

Sooky Sawyer preferred law enforcement and DMF to pursue adjudicatory hearings rather than court cases for marine fishery violations. He, and other lobstermen, felt the lack of timely results from criminal proceedings encouraged non-compliance and the permit sanction process provided a stronger deterrent.

Lou Williams was glad to hear that the MA lobster and crab trap fishery was listed separately from the North Atlantic fishery on NOAA's LOF. Lou added he would like to see more media regarding the success of the new whale regulations.

Ray Kane thanked the commission members for their participation.

PUBLIC COMMENTS

No public comments were made.

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 Lou Williams. The motion was approved by unanimous consent.**

MEETING DOCUMENTS

- August MFAC Business Meeting Final Agenda
- June 2021 Draft MFAC Business Meeting Minutes
- Quota Monitoring Reports
- Menhaden Quota Management Update
- 2021 BSB In-Season Adjustment Memo
- HSC Trawler Limit Increase
- Proposal to Adjust Timing of Inshore Squid Fishery
- Proposal Affecting Winter Period Scup Limits
- ASMFC Summer 2021 Meeting Summary
- ASMFC and MAFMC Joint Meeting Summary
- June 2021 NEFMC Agenda and Motions
- 2016 Rules and Process Primer

UPCOMING MEETINGS

9AM
September 22, 2021
Via Zoom

9AM
October 28, 2021
Via Zoom

9AM
December 2, 2021
Via Zoom

Quota Monitored Species Update

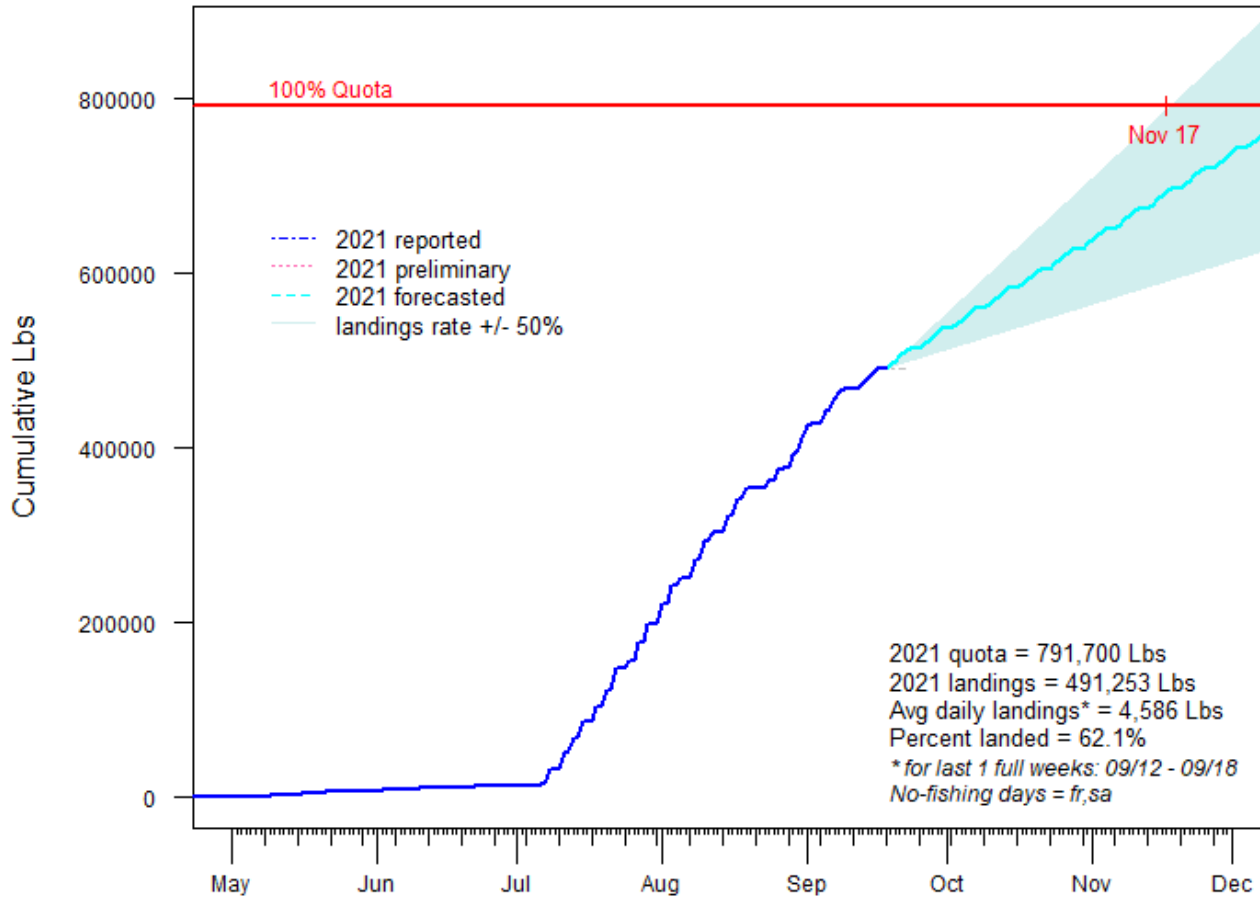
Data current as of 9/22/21 and are subject to change

MFAC meeting, 9/22/21

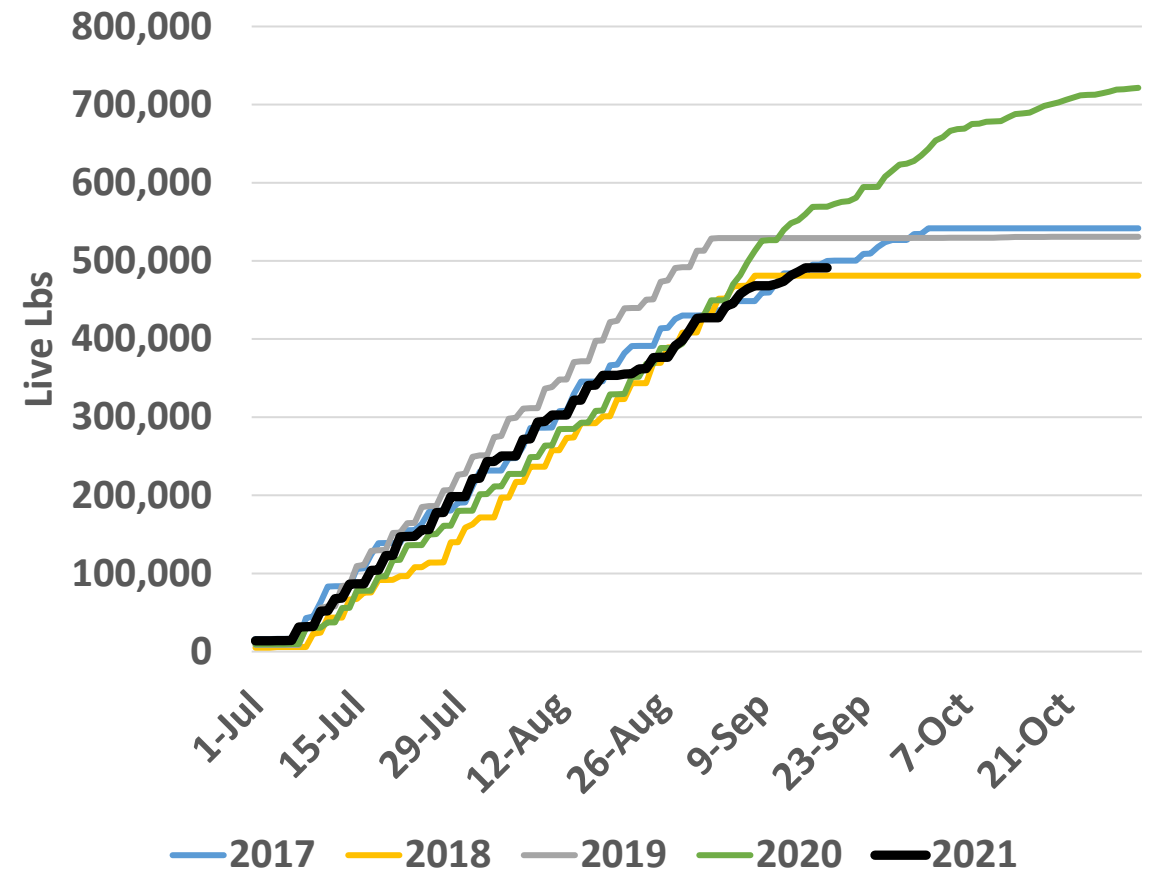
Black Sea Bass

2021 Black Sea Bass Quota Monitoring

as of September 22, 2021 08:43 AM



Annual Running Totals of Landings: Black Sea Bass

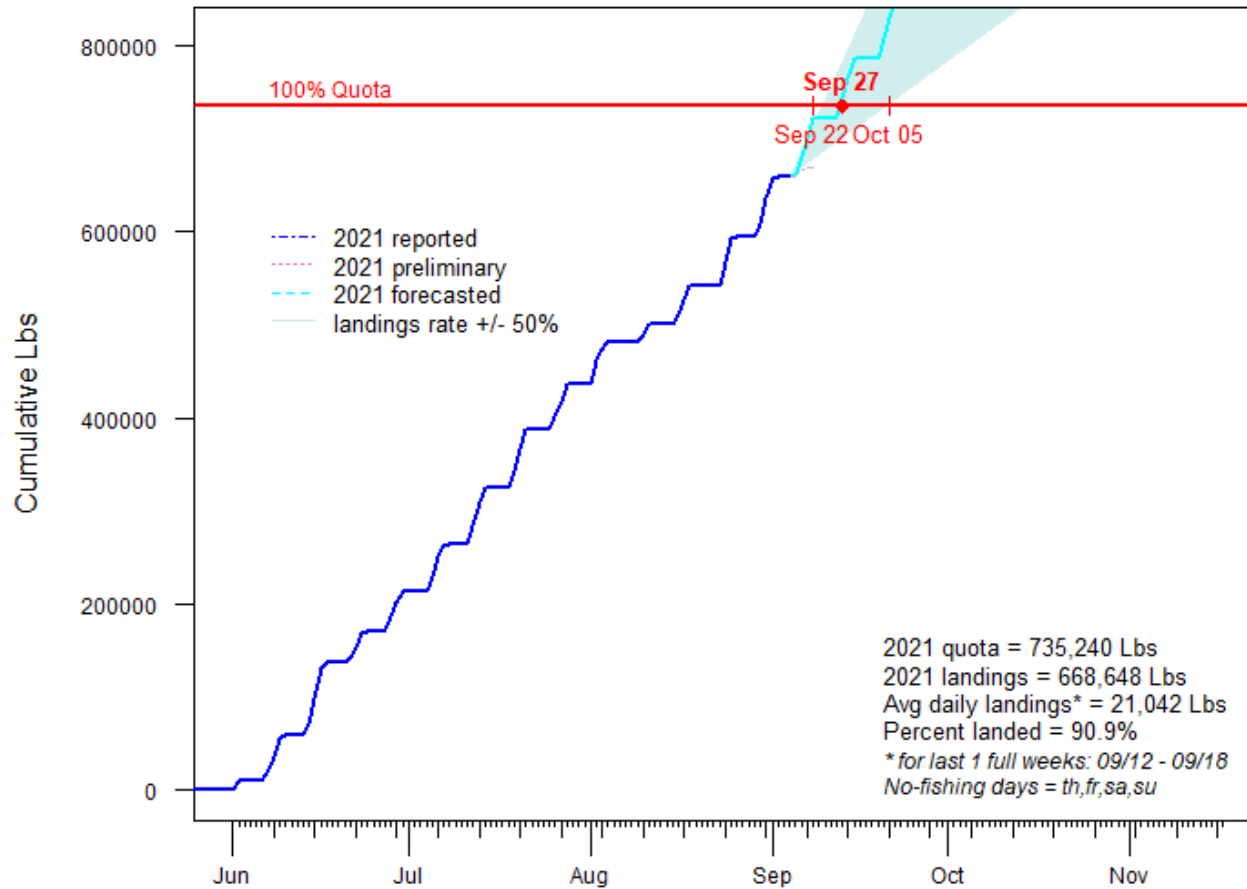


Quota significantly increased in 2020 with a small increase in 2021

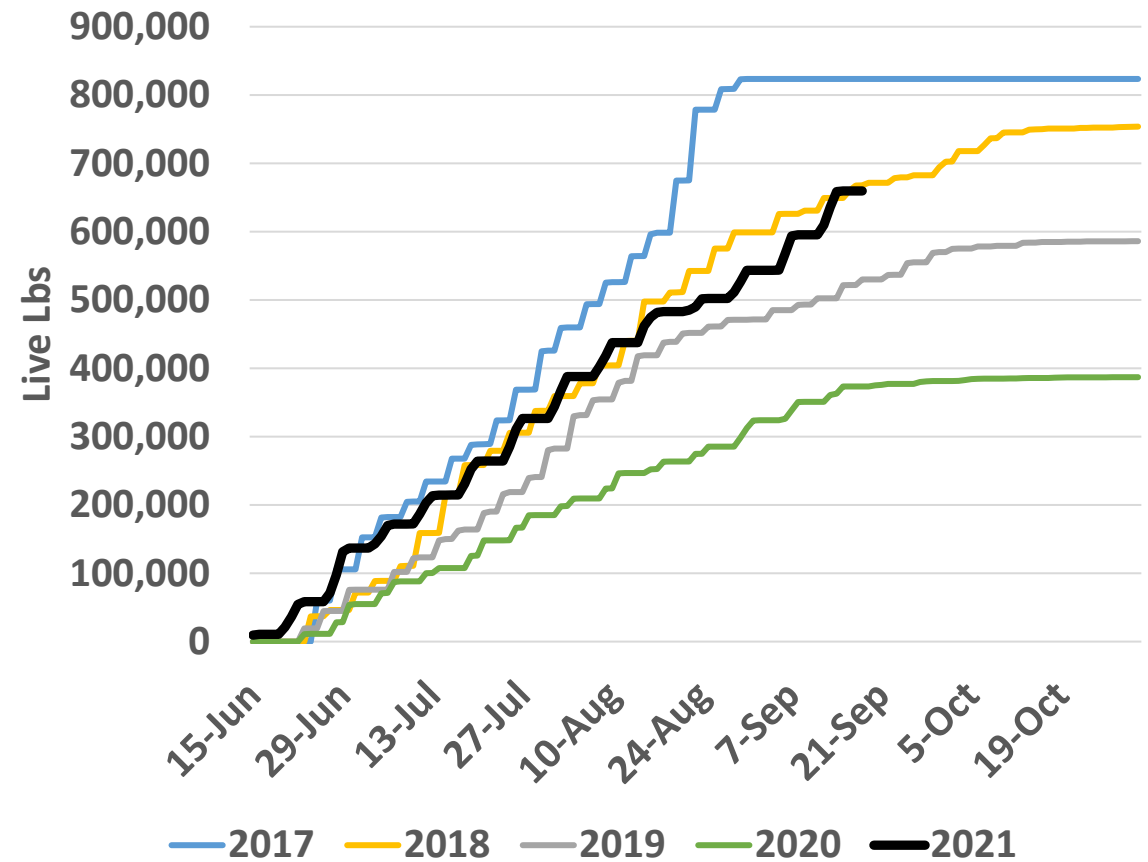
Striped Bass

2021 Striped Bass Quota Monitoring

as of September 22, 2021 08:47 AM



Annual Running Totals of Landings: Striped Bass



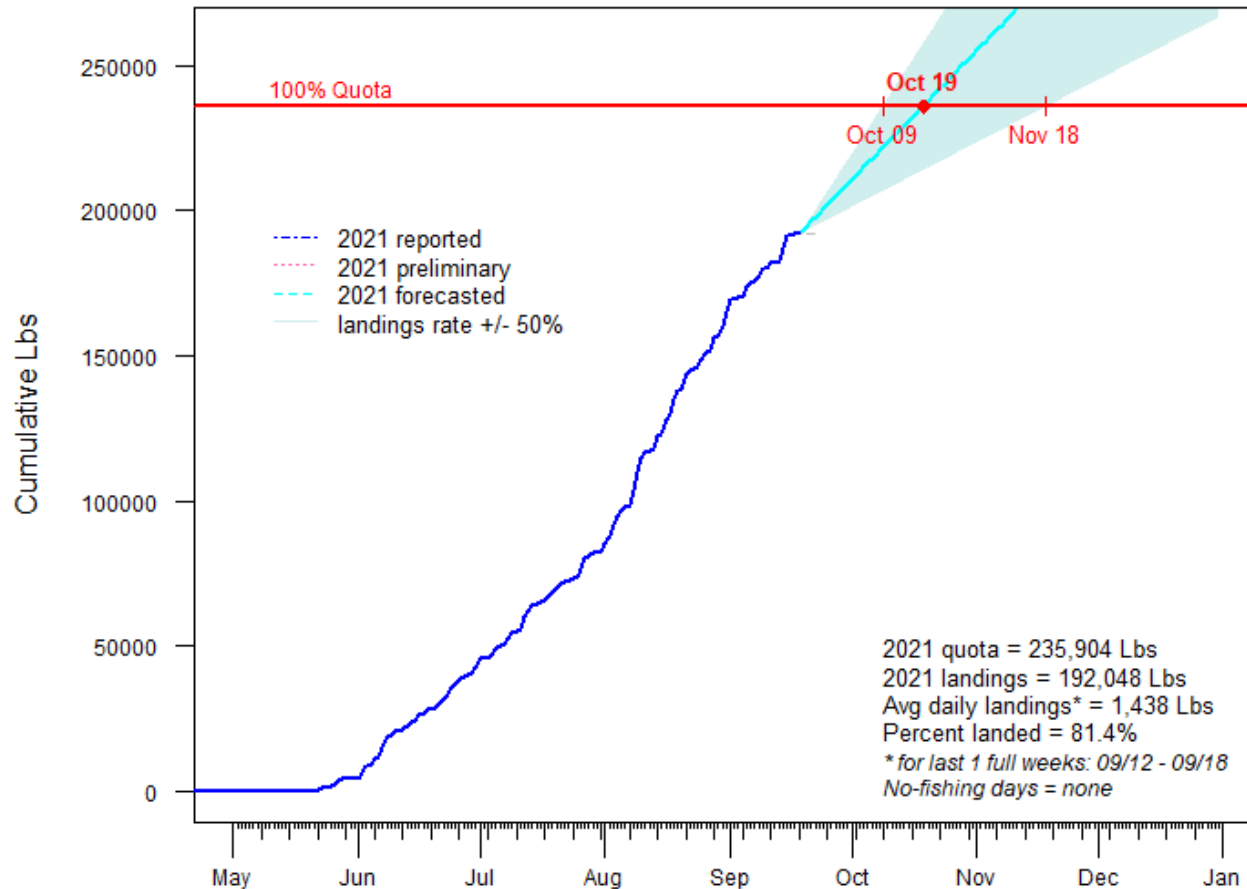
Quota decreased ~15% in 2020

Note: X-axis scale on the left figure is off by about two weeks. However, projection dates are accurate.

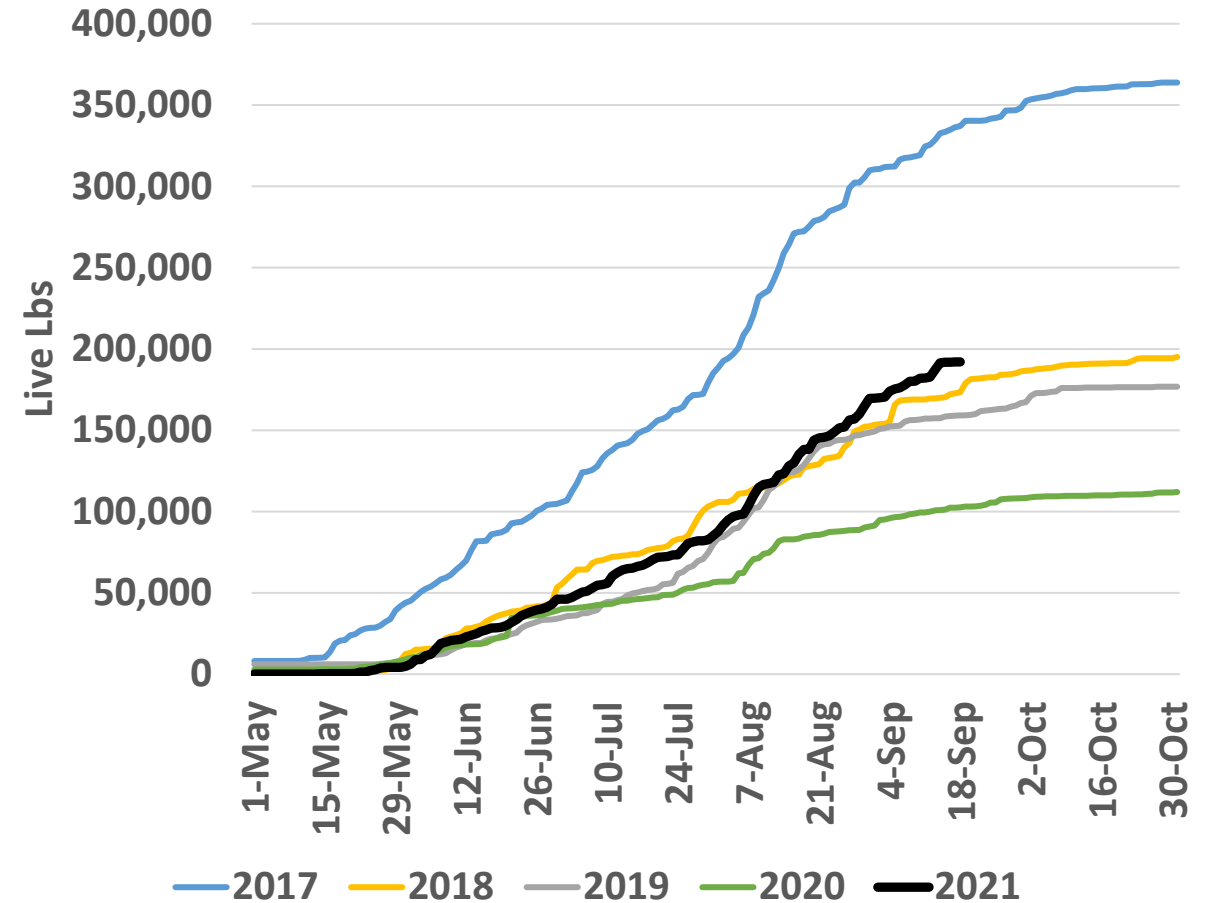
Bluefish

2021 Bluefish Quota Monitoring

as of September 22, 2021 08:42 AM



Annual Running Totals of Landings: Bluefish

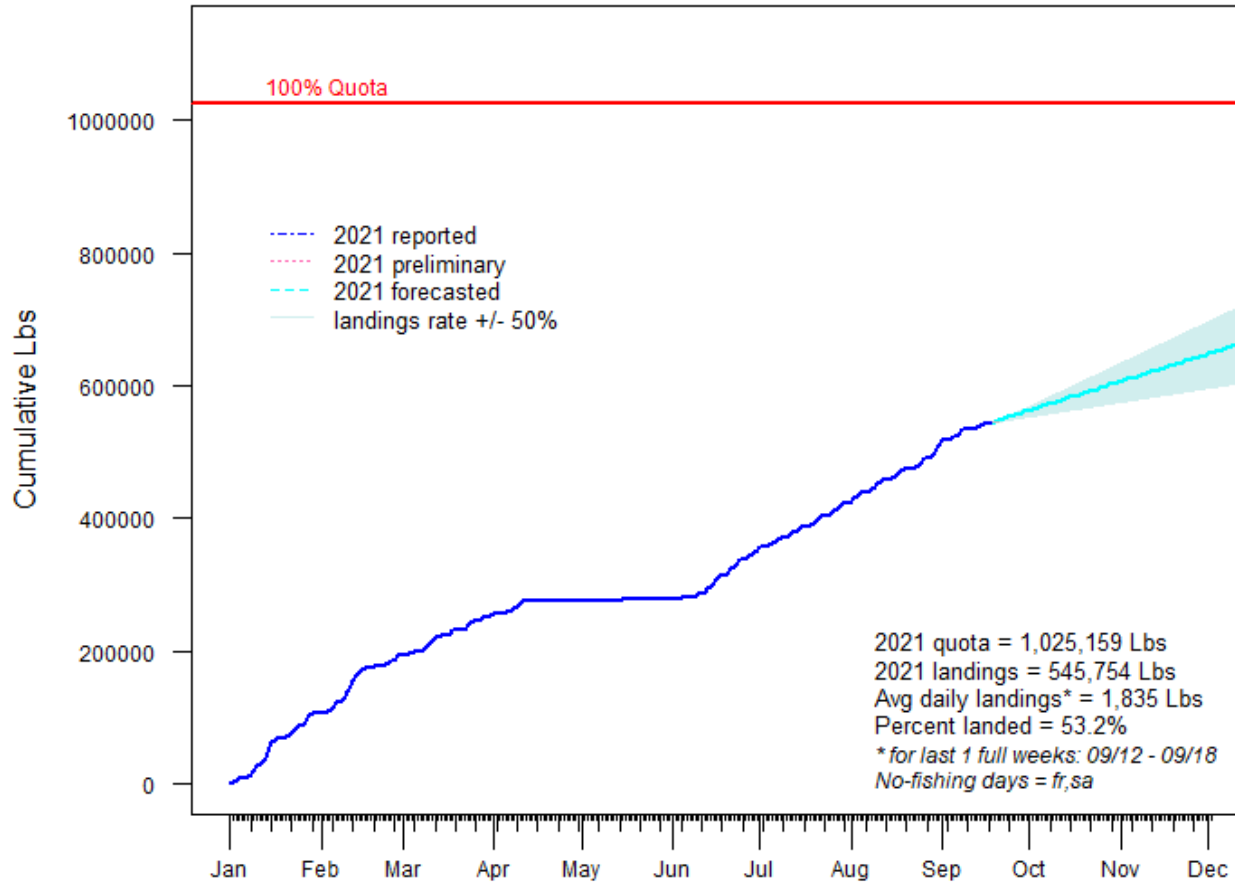


Quota significantly decreased in 2020

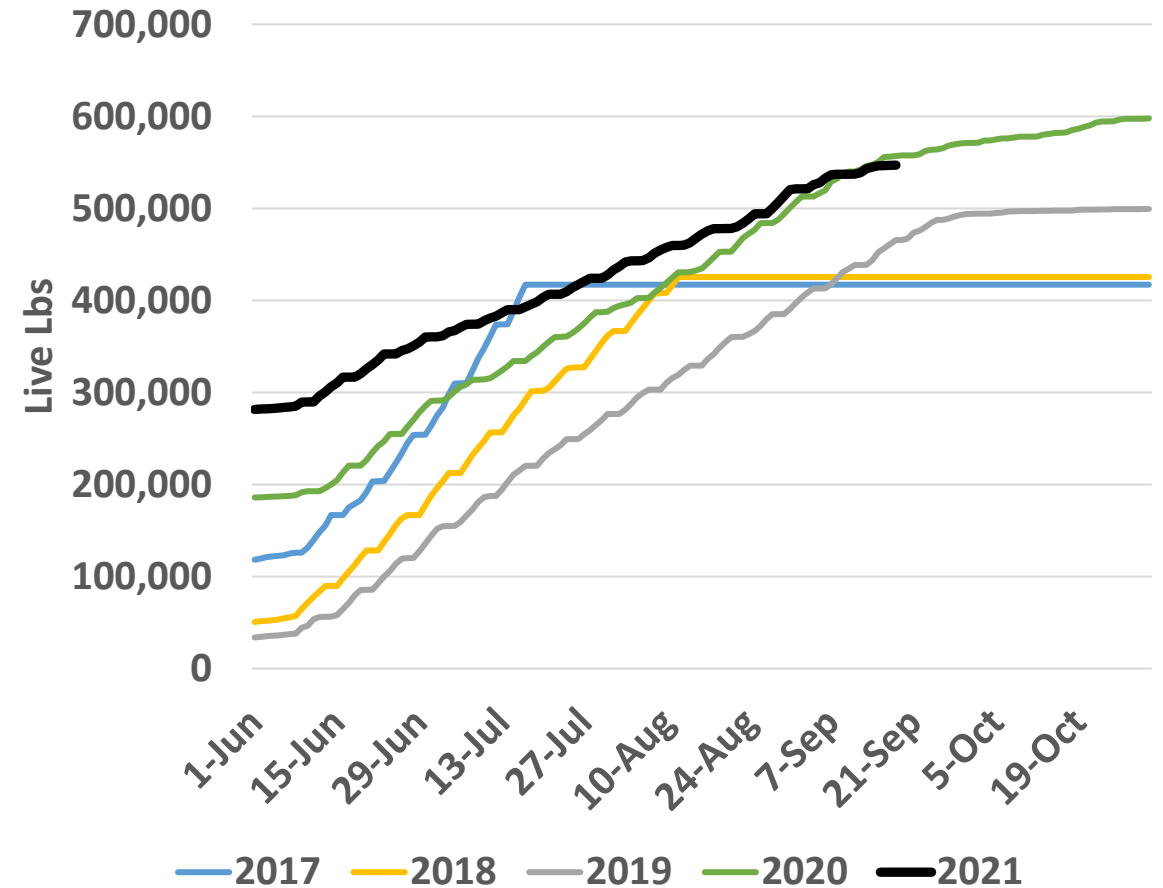
Summer Flounder (Fluke)

2021 Summer Flounder (Fluke) Quota Monitoring

as of September 22, 2021 08:46 AM



Annual Running Totals of Landings: Fluke

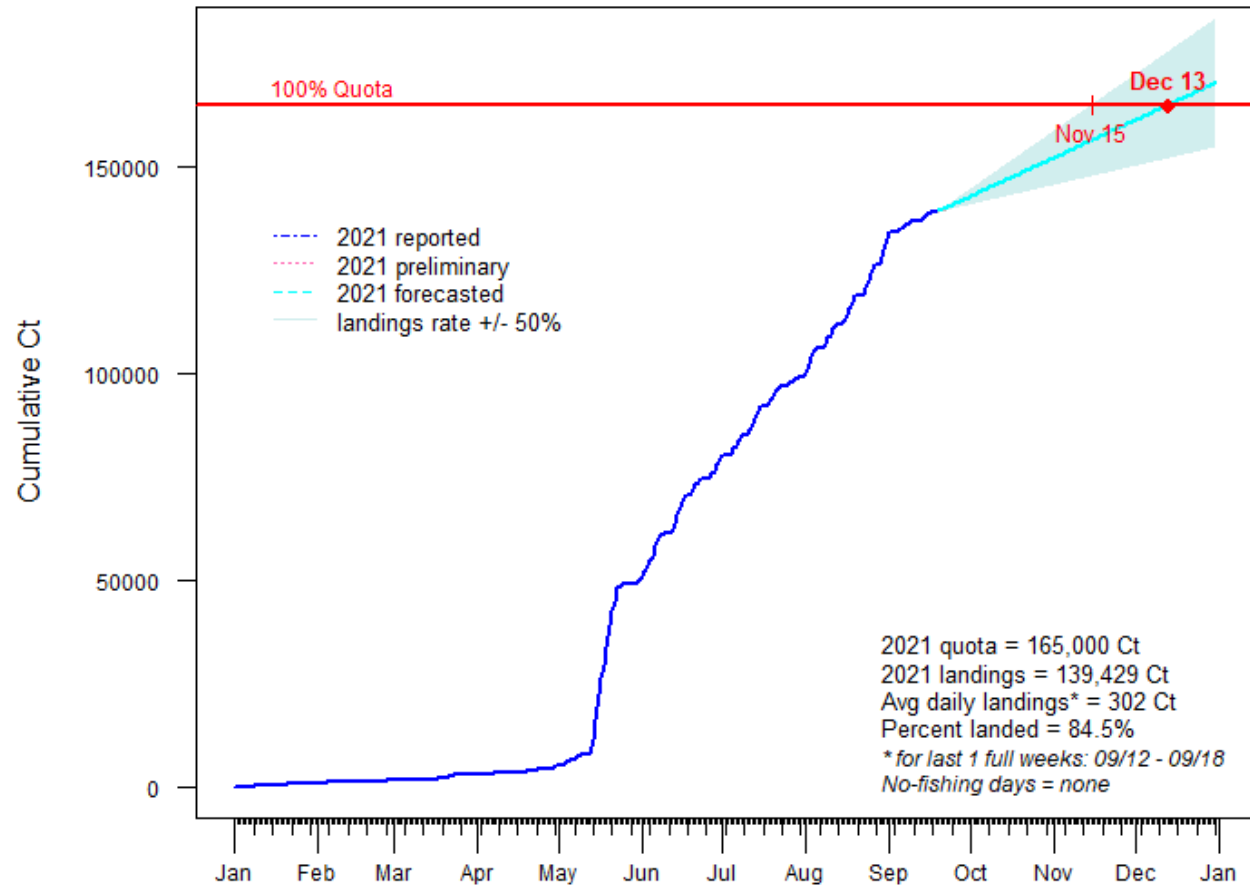


Quota increased almost 100% between 2018 & 2021

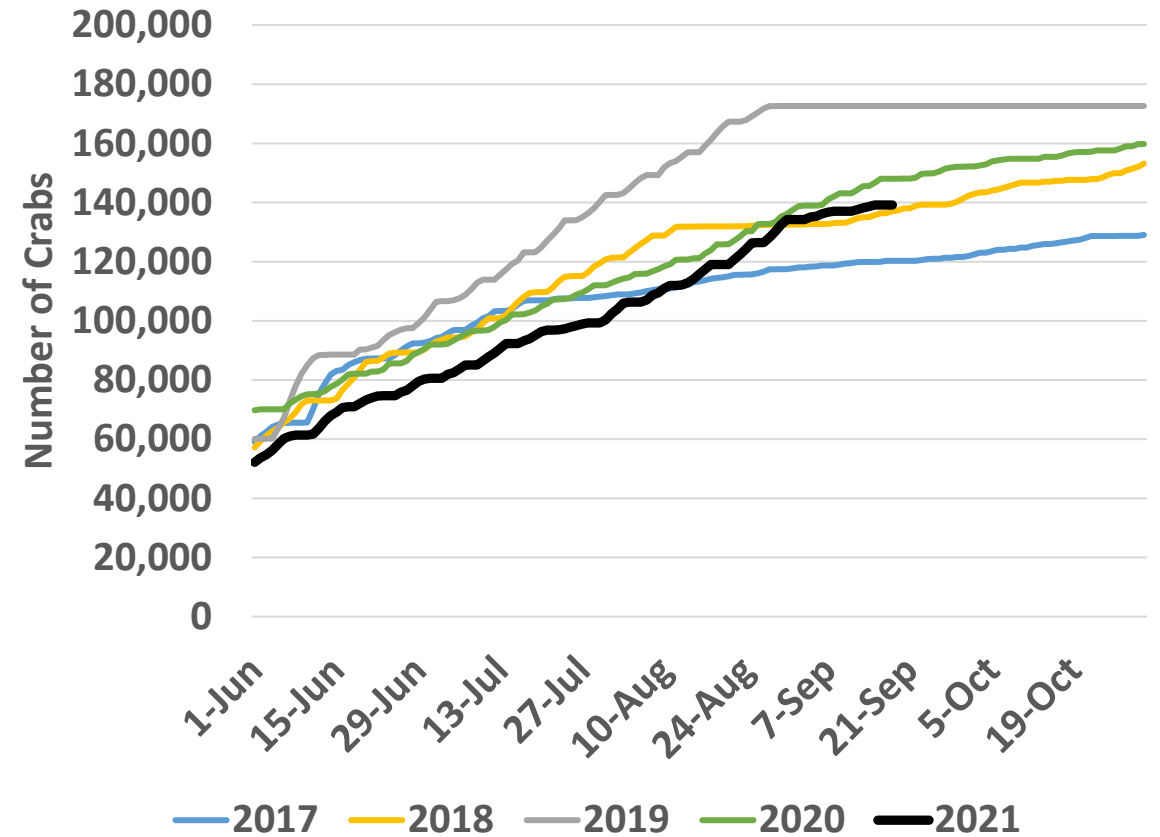
Horseshoe Crab

2021 Horseshoe Crab Quota Monitoring

as of September 22, 2021 08:48 AM



Annual Running Totals of Bait Landings: Horseshoe Crab

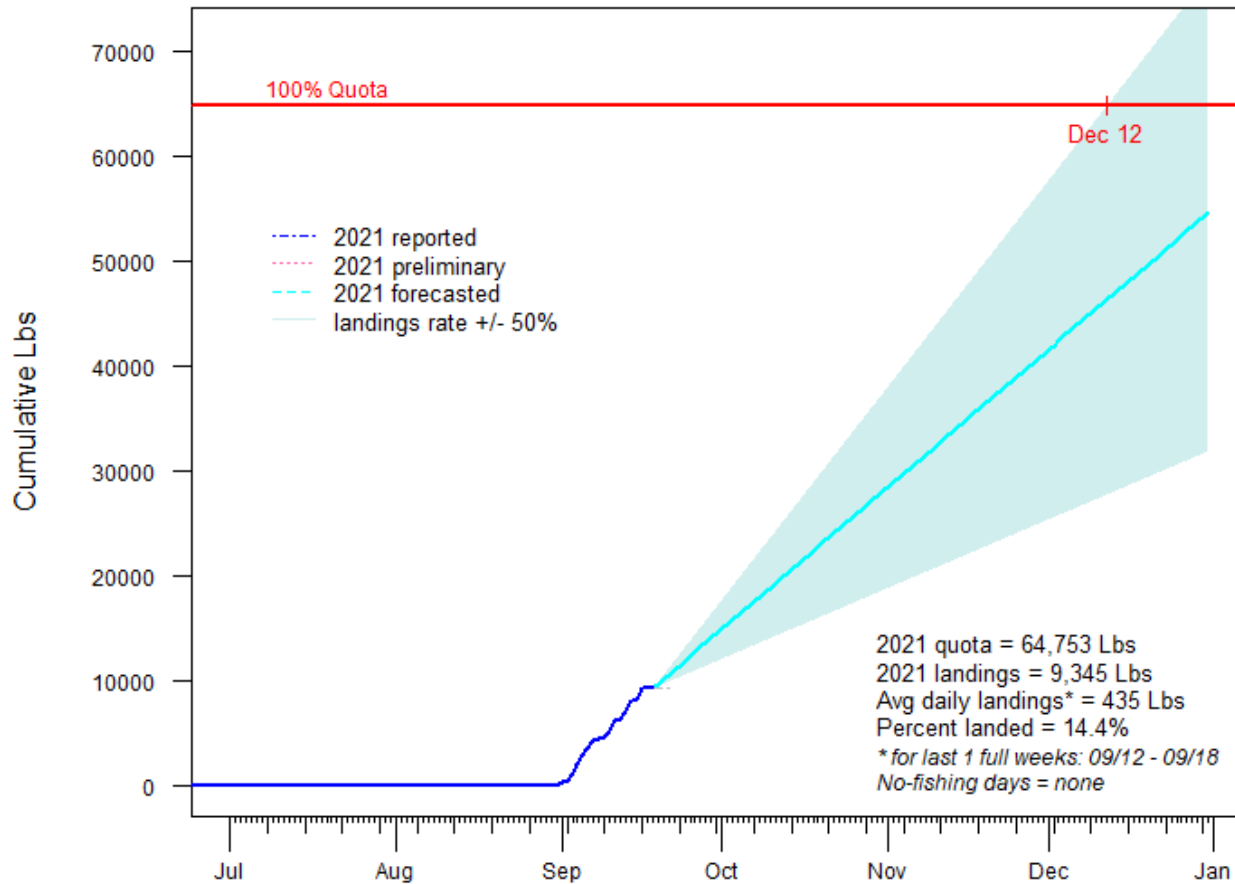


No change in quota over time series

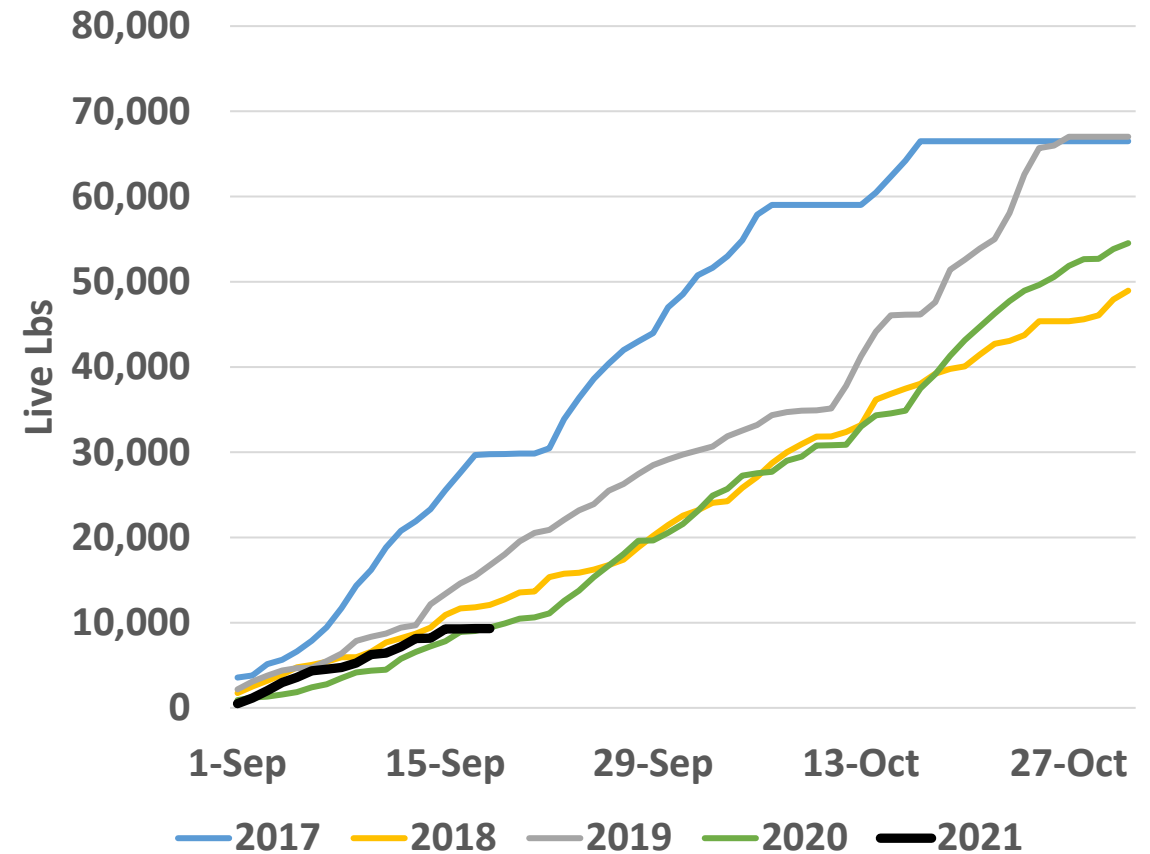
Tautog

2021 Tautog Quota Monitoring

as of September 22, 2021 08:47 AM



Annual Running Totals of Landings: Tautog

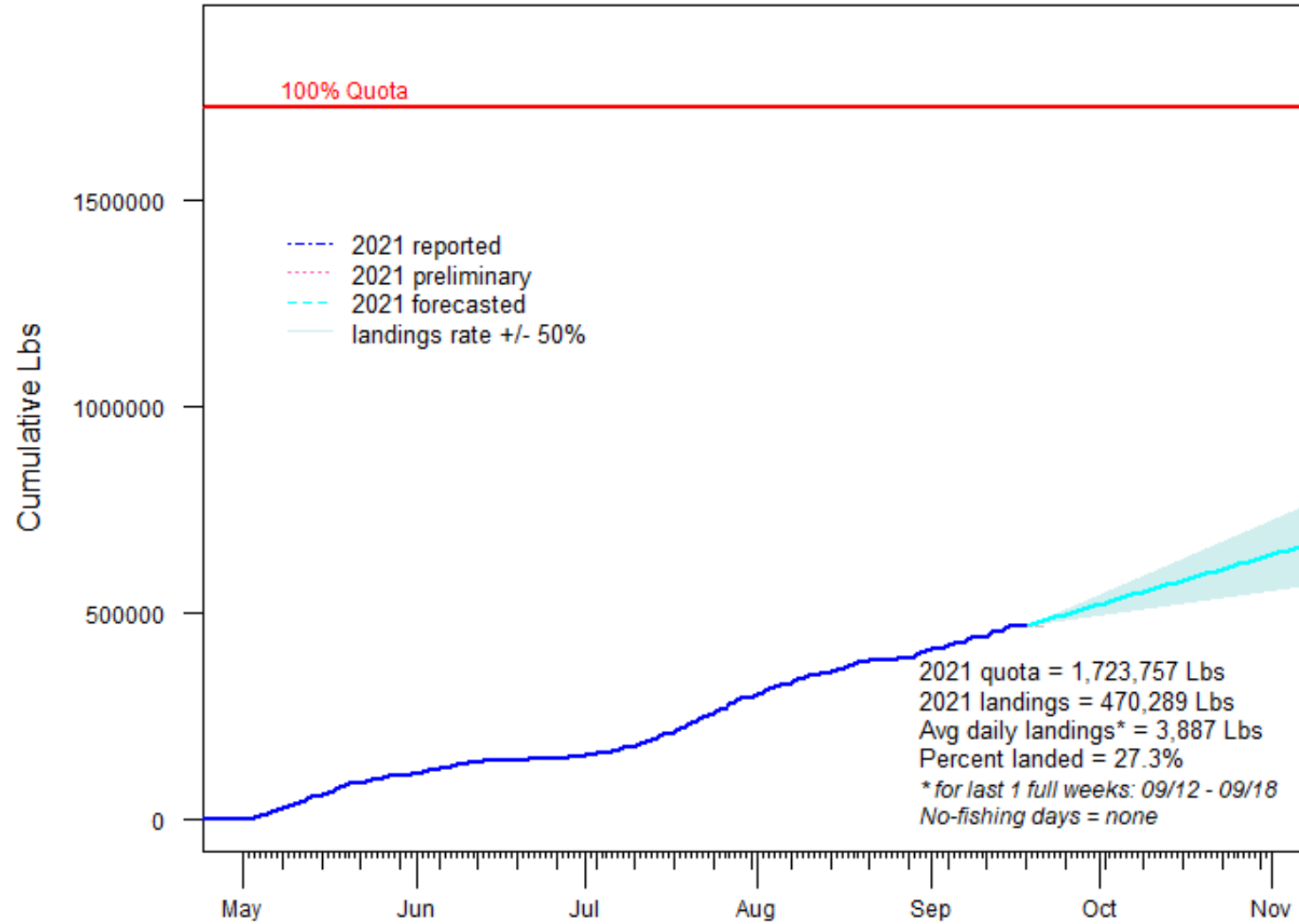


No change in quota over time series

Scup

2021 Scup Quota Monitoring

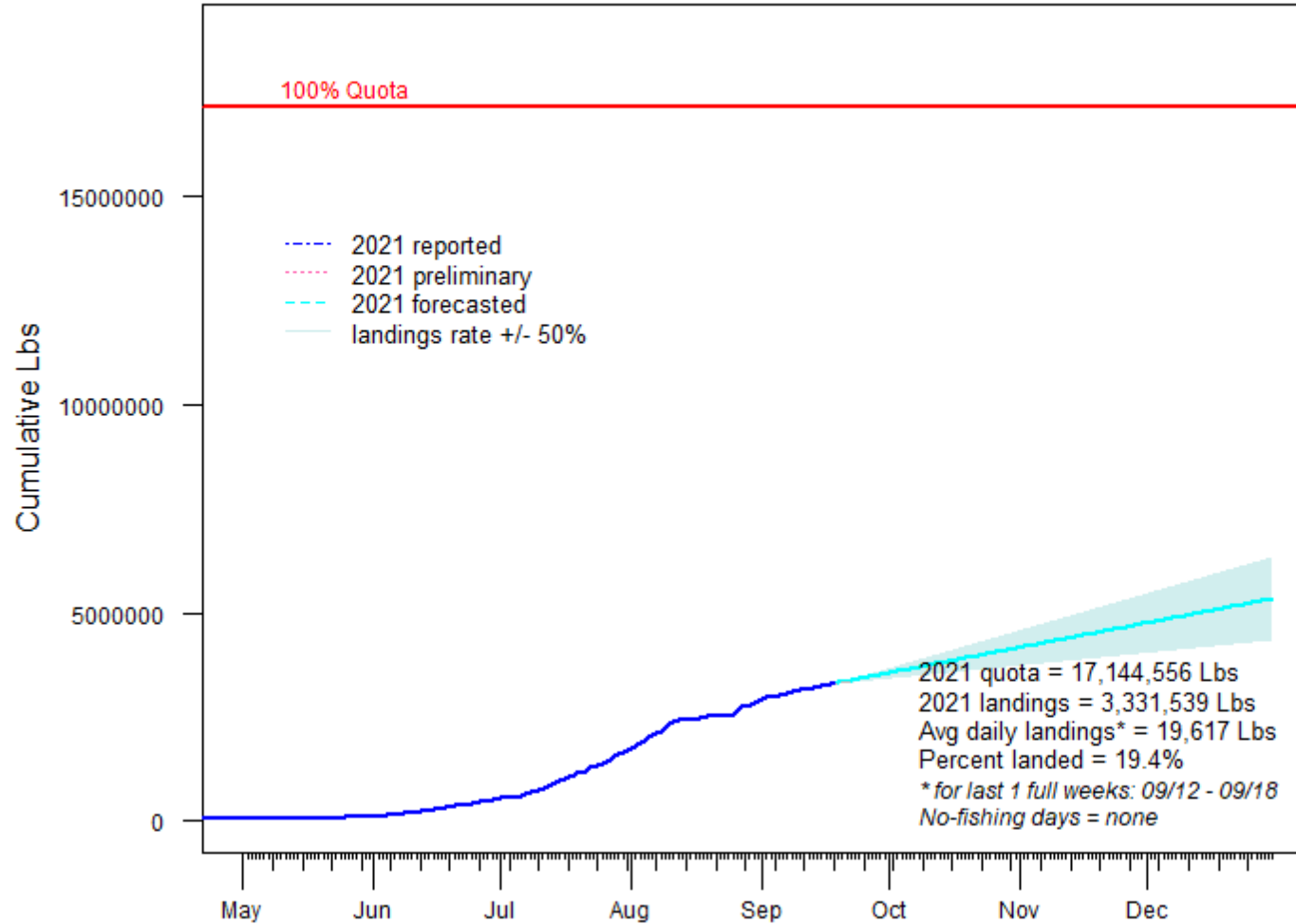
as of September 22, 2021 08:48 AM



Spiny Dogfish

2021 Spiny Dogfish Quota Monitoring

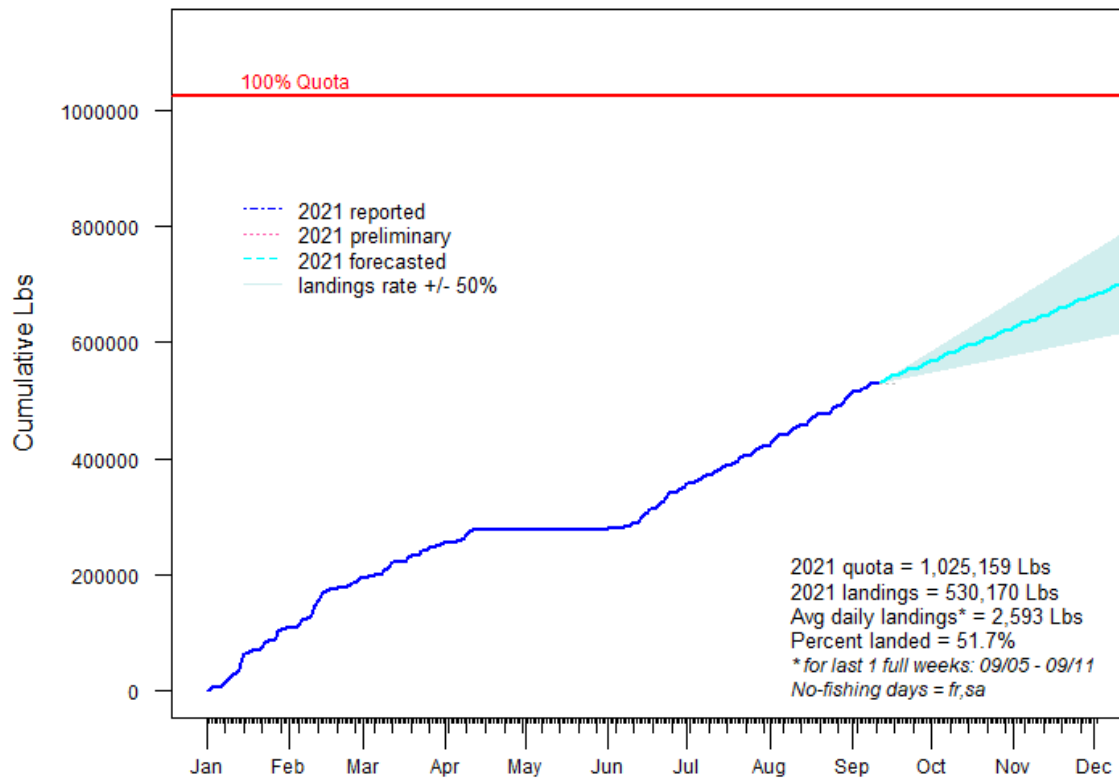
as of September 22, 2021 08:45 AM



From: [Lundy, Kimberly \(FWE\)](#)
To: [Silva, Jared \(FWE\)](#)
Subject: Fluke
Date: Friday, September 17, 2021 12:58:04 PM
Attachments: [image001.png](#)
[image002.png](#)

2021 FLOUNDER, SUMMER Quota Monitoring

as of September 17, 2021 12:23 PM



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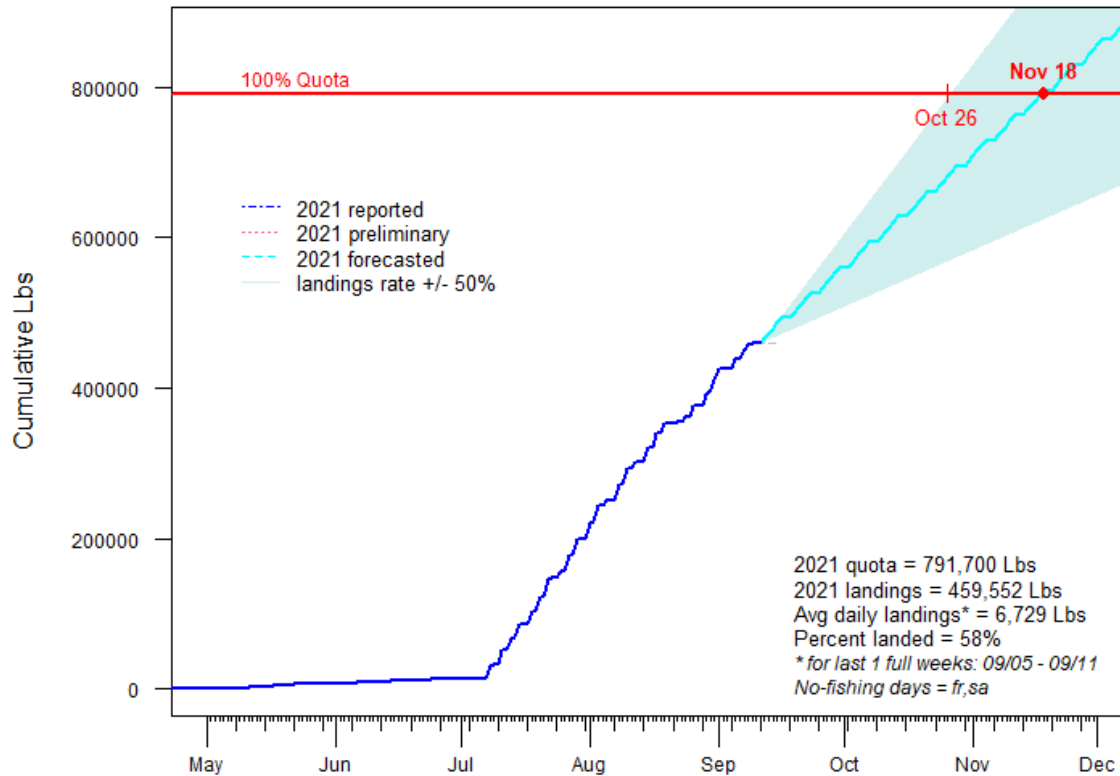
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Fax: 617.727.3337
www.mass.gov/marinefisheries



From: [Lundy, Kimberly \(FWE\)](#)
To: [FWE-DL - DMF Quota Monitoring](#); [Buchan, Nick \(FWE\)](#); [Schaffer, Scott \(FWE\)](#); [Moran, Patrick \(EEA\)](#); [brian kelly](#)
Subject: Quota Monitoring Update - Black Sea Bass
Date: Wednesday, September 15, 2021 3:16:11 PM
Attachments: [image001.png](#)
[image002.png](#)

2021 BASS, BLACK SEA Quota Monitoring

as of September 15, 2021 03:15 PM



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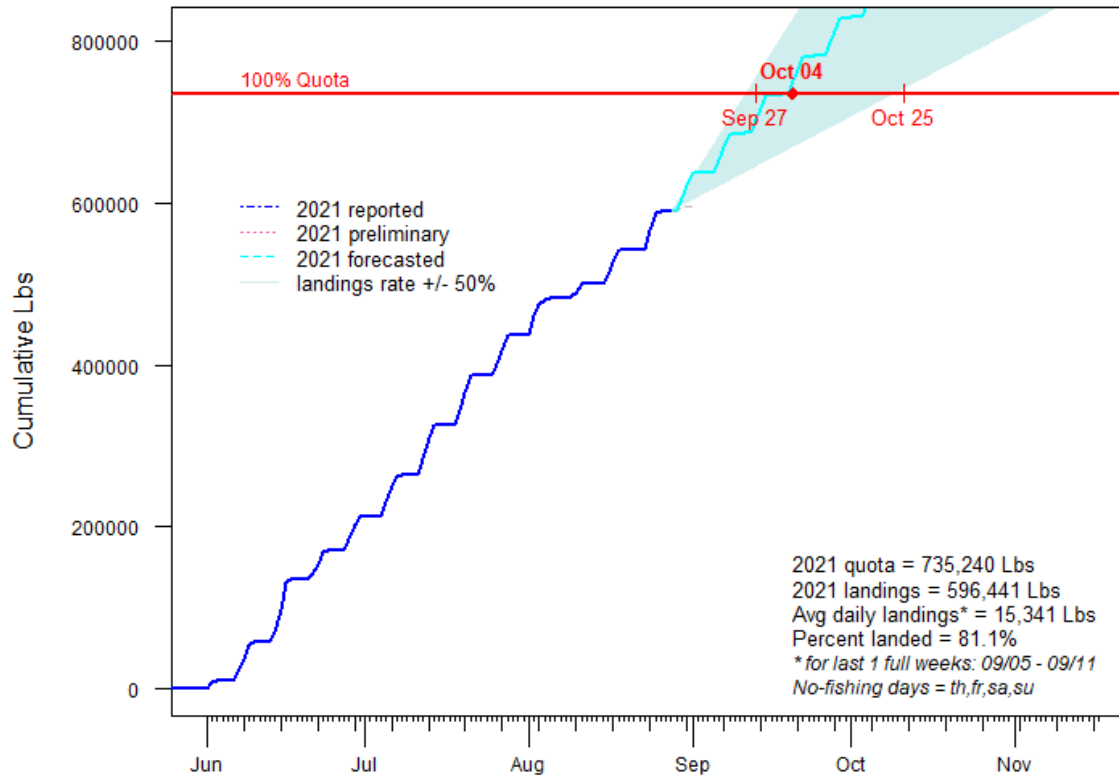
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From: [Lundy, Kimberly \(FWE\)](#)
To: [FWE-DL - DMF Quota Monitoring](#); [Buchan, Nick \(FWE\)](#); [Schaffer, Scott \(FWE\)](#); [Moran, Patrick \(EEA\)](#); [brian kelly](#)
Subject: Quota Monitoring Update - Striped Bass
Date: Wednesday, September 15, 2021 3:18:36 PM
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[image002.png](#)

2021 BASS, STRIPED Quota Monitoring

as of September 15, 2021 03:17 PM



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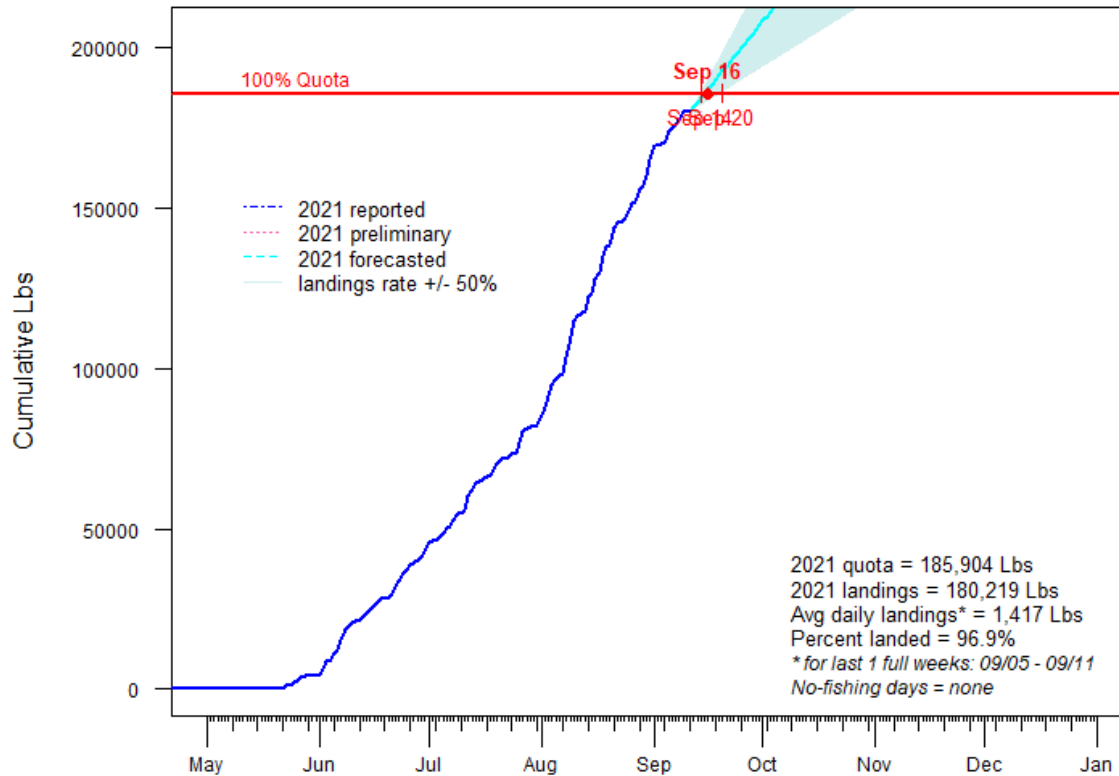
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From: [Lundy, Kimberly \(FWE\)](#)
To: [FWE-DL - DMF Quota Monitoring; Buchan, Nick \(FWE\); Schaffer, Scott \(FWE\); Moran, Patrick \(EEA\); brian kelly](#)
Subject: Quota Monitoring Update - Bluefish
Date: Wednesday, September 15, 2021 3:08:37 PM
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2021 BLUEFISH Quota Monitoring

as of September 15, 2021 03:07 PM



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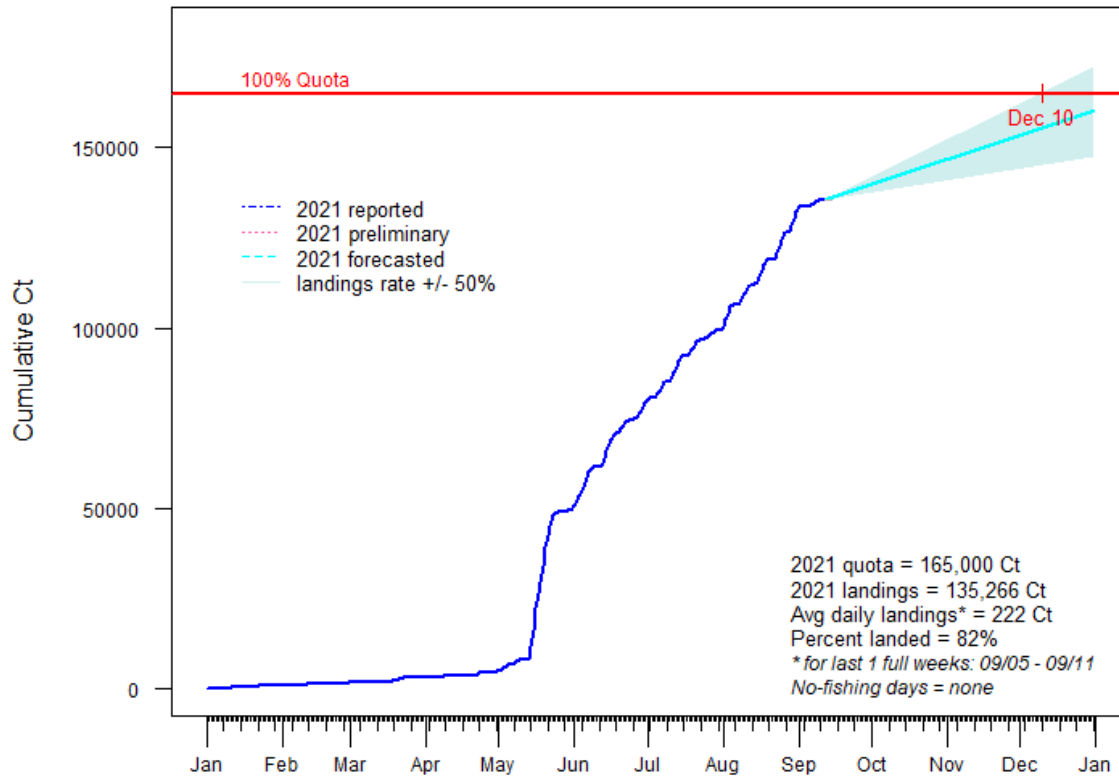
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From: [Lundy, Kimberly \(FWE\)](#)
To: [FWE-DL - DMF Quota Monitoring](#); [Buchan, Nick \(FWE\)](#); [Schaffer, Scott \(FWE\)](#); [Moran, Patrick \(EEA\)](#); [brian kelly](#)
Subject: Quota Monitoring Update - Horseshoe Crab
Date: Wednesday, September 15, 2021 3:14:11 PM
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2021 CRAB, HORSESHOE Quota Monitoring

as of September 15, 2021 03:13 PM



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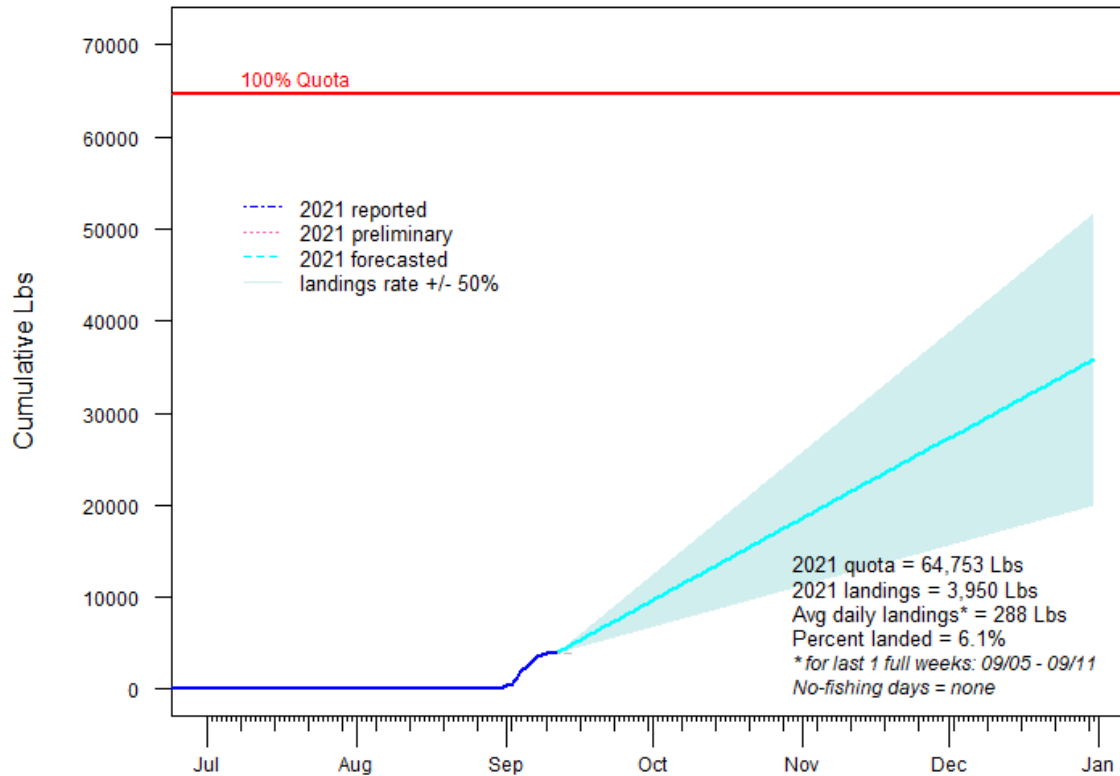
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From: [Lundy, Kimberly \(FWE\)](#)
To: [FWE-DL - DMF Quota Monitoring](#); [Buchan, Nick \(FWE\)](#); [Schaffer, Scott \(FWE\)](#); [Moran, Patrick \(EEA\)](#); [brian kelly](#)
Subject: Quota Monitoring Update - Tautog
Date: Wednesday, September 15, 2021 3:22:48 PM
Attachments: [image001.png](#)
[image002.png](#)

2021 TAUTOG Quota Monitoring

as of September 15, 2021 03:21 PM



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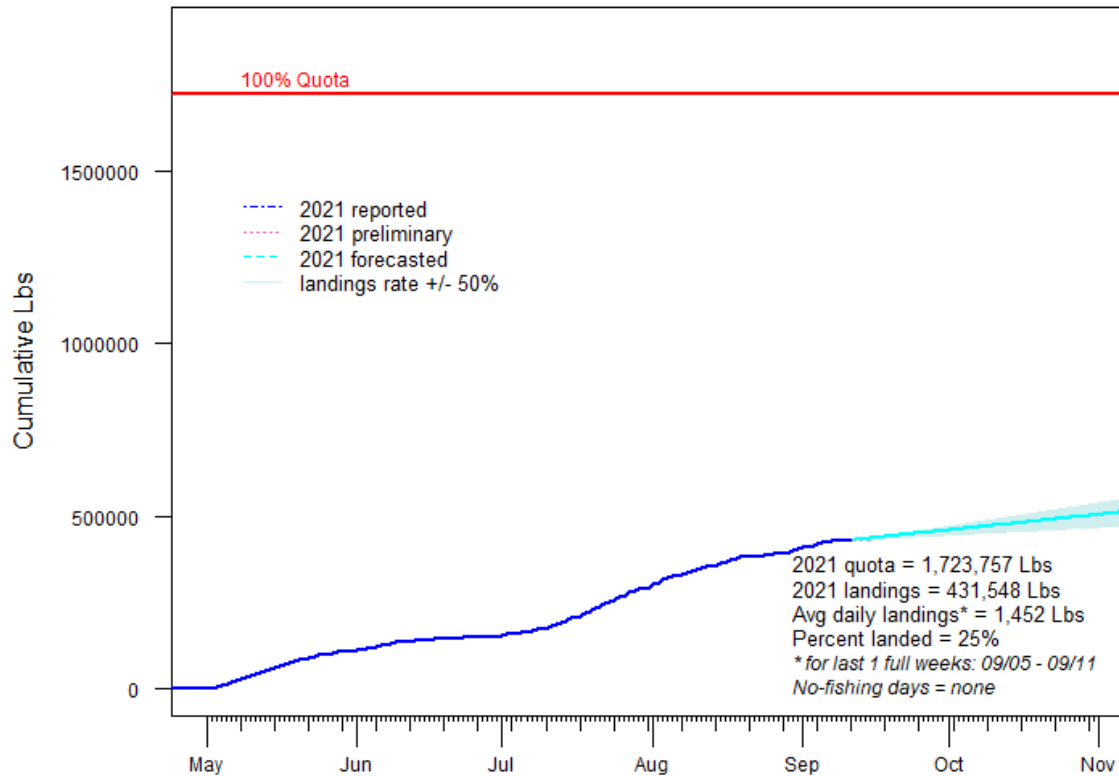
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From: [Lundy, Kimberly \(FWE\)](#)
To: [FWE-DL - DMF Quota Monitoring](#); [Buchan, Nick \(FWE\)](#); [Schaffer, Scott \(FWE\)](#); [Moran, Patrick \(EEA\)](#); [brian kelly](#)
Subject: Quota Monitoring Update - Scup
Date: Wednesday, September 15, 2021 3:12:23 PM
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2021 SCUP Quota Monitoring

as of September 15, 2021 03:11 PM



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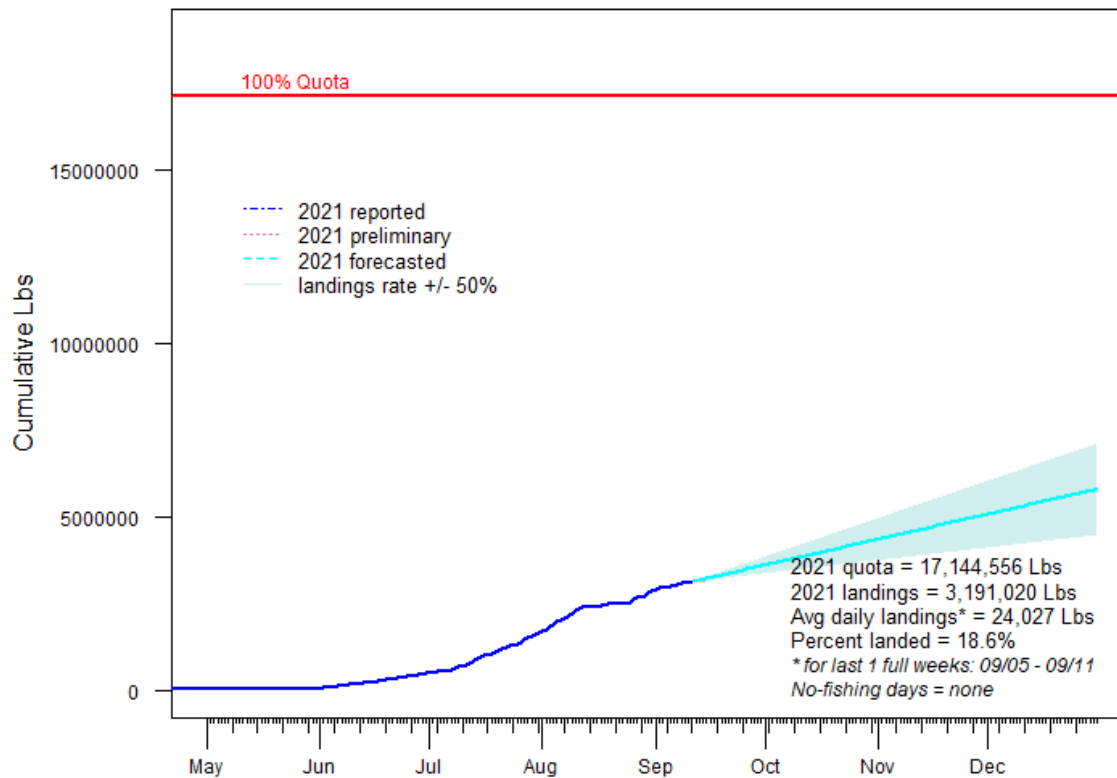
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From: [Lundy, Kimberly \(FWE\)](#)
To: [FWE-DL - DMF Quota Monitoring](#); [Buchan, Nick \(FWE\)](#); [Schaffer, Scott \(FWE\)](#); [Moran, Patrick \(EEA\)](#); [brian kelly](#)
Subject: Quota Monitoring Update - Dogfish
Date: Wednesday, September 15, 2021 3:20:46 PM
Attachments: [image001.png](#)
[image002.png](#)

2021 SHARK, DOGFISH, SPINY Quota Monitoring

as of September 15, 2021 03:19 PM



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KARYN E. POLITO
Lt. Governor

KATHLEEN A. THEOHARIDES
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director 
DATE: September 17, 2021
SUBJECT: In-Season Adjustments to 2021 Commercial Summer Flounder Limits

Recommendation:

I am recommending the MFAC vote in favor of the following in-season adjustments to the 2021 commercial summer flounder limits:

1. Effective September 26, 2021, increase the commercial possession and landing limit to 800 pounds per day and eliminate closed fishing days for all gear types. This increases the trip limit from 400 pounds to 800 pounds for net fishermen and 250 pounds to 800 pounds for hook and liners.
2. Effective October 10, 2021, increase the commercial possession and landing limit to 2,000 pounds per day for all gear types.

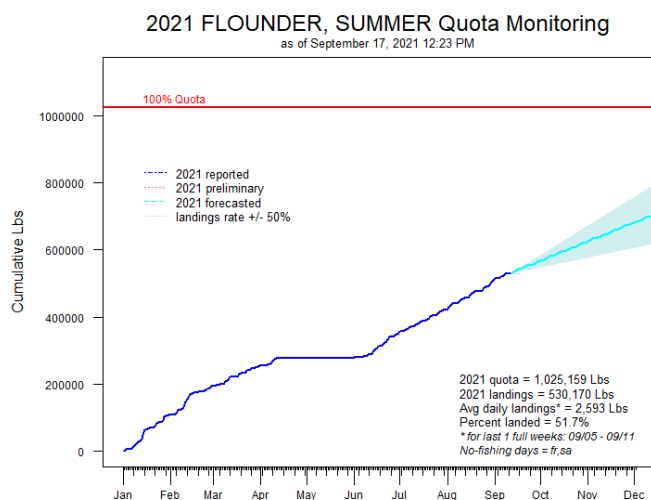
The lion's share of the benefits of this recommendation will be to the trawl fleet. These are the permit holders who can target the fish at the higher limits and pursue the fish offshore during their fall migration. Accordingly, this recommendation memo focuses primarily on the trawl fleet. Other gear types may also benefit from this change, but their overall contribution to landings are much smaller in scale. The inshore commercial hook and line fleet may take advantage of these recommended liberalizations, particularly the additional fishing days but most do not limit out at the existing 250 pound trip limit. Gillnetters in federal waters will also be able to retain fluke in accordance with these higher limits, but this gear type is prohibited in state waters south and west of Cape Cod from April 1 – November 15.

Note, the first aspect of recommendation is more liberal than the initial proposal. The initial proposal sought comment on increasing trip limits only to 600 pounds for late September and early October. The recommendation proposes an 800-pound limit during this period. This is in response to a persistent very low level of aggregate daily landings and public comment — particularly those that recommend actions to fully utilize the quotas.

Rationale

As of the most recent reporting week, the commercial summer flounder fishery has landed just over 50% of its 1,015,179-pound 2021 commercial quota (Figure 1¹). If current landing limits stay in place, we project the 2021 quota will be underutilized. The underutilization of this quota is being driven by a few factors, which I explore in more detail below.

**Fig. 1 –
2021 Quota Monitoring Graph for September 17, 2021**



We have seen a substantial increase in our commercial quota over the past five years (2017–2021), as it has risen from an all-time low of 385,988 pounds in 2017 to its current 1,025,159-pound level today, an amount not seen since 2011. This has occurred in response to the results of the stock assessment and a shift in species’ geographic distribution to the north and east. For 2020, DMF responded to these quota increases and implemented more liberal baseline regulatory limits.² However, these adjustments were not commensurate with the quota increases. Moreover, no action was taken in 2021 to amend the regulations in reaction to the 27.5% quota increase from 2020 (786,399

pounds). Over the past three seasons, DMF has relied on in-season adjustments to amend commercial fishing limits during the season in reaction to quota utilization and effort.

The current management system was developed in the 1990s. It was designed to allocate most of the state’s quota (70%) to the summertime directed inshore fishery. The summertime fishery was comprised of both trawlers and hook and line fishermen, but most of the landings came from the trawl fleet. The rules DMF and the MFAC developed to manage this fishery aimed to maintain a steady supply of fish to the market and balance various user group conflicts.

However, participation in the inshore trawl fishery appears to have changed in recent years. As recently as five years ago we had approximately 30 trawlers fishing the Sounds for fluke; now the fleet may be less than half that in any given year. This attrition helps explain why Massachusetts’ summertime fishery may have been able to take 70% of a million-pound quota under similar limits in 2011 but cannot do so today. The attrition is driven by a multitude of

¹ MA’s 2021 commercial summer flounder quota was initially set at 1,015,179 pounds. Earlier this year, DMF accommodated a safe harbor request from a NC vessel which resulted in landings totaling 9,980 pounds. NC then transferred this quota to MA to cover the landings. The quota and landings numbers in Figure 1 include the safe harbor landings and quota transfer.

² For the winter and fall time fisheries, January 1–April 22 and November 1–December 31 respectively, DMF established a 1,000-pound trip limit and allowed the harvest, possession, and landing of summer flounder seven days per week. For the directed summertime fishery (June 10–October 31), the trip limit for trawlers was increased from 300 to 400 pounds and for hook and liners from 200 to 250 pounds; the five-day fishing week (Sunday–Thursday) was maintained.

complex social, economic, and environmental reasons, which I address in greater detail in the last section of the memo and intend to investigate further this fall and winter.

The resource is not as abundant inshore as well. Recent stock assessments have documented both a northward and *eastward* shift in the biomass coastwide. Locally, both recreational and commercial fishermen have reported seeing fewer fish and smaller fish in state-waters, but more fish with a greater size distribution in adjacent federal waters (e.g., Nantucket Shoals) during the summer. As a result, we have received anecdotal reports from fishermen and dealers that summer flounder are being targeted south and east of Nantucket in federal waters this year. Moving into the fall period, we should expect fishing conditions to continue to wane inshore as the resource migrates southward.

With these factors in consideration, I think it is appropriate to liberalize the commercial fishing limits for summer flounder for the remainder of the calendar year. My recommendations attempt to balance comment received this year (and in past years) regarding in-season adjustments to summer flounder limits, address my understanding of the status and performance of the fishery at present, and adhere to DMF's mission of supporting and promoting commercial fishing through allowing the utilization of available quota and promoting the consumption of local seafood.

My first recommendation is to increase the possession and landing limit to 800 pounds and eliminate closed fishing days for all commercial fishermen beginning September 26. This amendment would accomplish several things. First, it incentivizes Massachusetts permit holders fishing in offshore waters to land their catch in Massachusetts ports and not steam to other states where they may be permitted to offload. Second, it better aligns the landing limit (and profitability) to the overhead associated with steaming further from port to target these fish. Third, it removes barriers to landing lawfully caught fish from the federal zone on Fridays and Saturdays. Lastly, it promotes fisherman safety by providing those vessels remaining in the inshore fleet with the ability to better choose their fishing days and not have to choose between fishing in poor sea conditions and forgoing a day's income. Though this recommended change, fishermen will be able to take advantage of the remaining fishing season. Moreover, states to our south—with substantially higher trip limits—reopen in the late fall and ex-vessel value tends to decline in response to increased supply. For instance, , NC and VA anticipate re-opening their ocean fisheries on November 1 with trip limits of about 12,000 pounds.

My second recommendation is to increase the possession and landing limit for all fishermen to 2,000 pounds on October 10 and have this limit remain in place throughout the rest of the year (or until the quota is taken). This effectively sequences the start of the fall fishery with the end of the recreational fishery. This should mitigate some potential user group conflict between the recreational fishery and the commercial fishery, should this trip limit increase result in more commercial fishing effort in adjacent federal waters (e.g., Nantucket Shoals). Without this adjustment, it is anticipated that the trip limit will increase to 1,000 pounds consistent with the baseline regulations. Last year, the limit was adjusted to 2,000 pounds effective November 1; however, the earlier increase on October 10 will better promote use of the quota without displacing recreational participants.

Public Comment

In proposing this in-season adjustment for 2021, DMF held a two-week written public comment period. Comment on the proposal was sparse, with a small number of comments coming from commercial fishermen, recreational fishermen, and dealers. Commercial fishermen and dealers generally supported the proposal, as it would provide them with the opportunity to utilize and profit from the quota available to the state. Certain inshore fishermen favored a smaller increase in trip limits to 600 pounds, but strongly supported the elimination of closed fishing days, as it allowed them to better address deteriorating fall weather. Red's Best, a principal buyer of summer flounder, advocated for more liberal trip limits as being necessary to maximize the value of the fishery and best utilize the remaining quota. This comment was particularly influential in my final recommendation. Several recreational fishermen objected to the proposal. These comments typically opposed such changes because of conservation concerns, blamed poor inshore fishing conditions on trawlers, and sought similar or commensurate changes to recreational fishing limits.

Additional Considerations and Future Management Initiatives

As stated above, the state's inshore fishery has become diminished in recent years due to a multitude of complex economic, social, and environmental reasons. Many fishermen are retiring from fishing or are pursuing other fishing opportunities that may be more profitable (e.g., scallops, mussels, lobster). Seasonal dockage cost and availability also constrain effort. Inshore fishing conditions have been poor with a lack of abundance of large fish in state-waters, the pervasive presence of "mung: (filamentous brown algae) impacting trawl gear, and conservation efforts to manage other species commonly caught in this mixed trawl fishery (e.g., whelks and horseshoe crabs). With fish redistributing further offshore, effort is also constrained by safety concerns, overhead associated with fuel costs, and the possession of federal fishing permits. These same factors that are impacting effort of existing fishermen, are also likely impacting the entrance of new fishermen.

As discussed at last month's business meeting, I prefer to rely less on in-season adjustments to manage quota utilization. I do not think this approach has benefited our constituents and I think it has caused unnecessary animosity between the recreational and commercial fishing sectors. I much prefer we work to develop a management approach that reconsiders the existing management structure and builds in liberalizations based on quota triggers at dates certain. This will allow commercial fishermen and dealers to better anticipate the rules and structure their operations accordingly.

To better investigate both of these issues, I intend to meet with members of the commercial fishing industry this fall to discuss how to manage the commercial fluke quota and the inshore commercial fishery moving forward. From this, I will work with staff to develop proposals to go out to public hearing this winter. Final recommendations will be provided to the MFAC in the late-winter or early-spring of 2022 with the goal of implementing an improved management scheme for next year. This will build on the ad-hoc industry work that began during December 2019. Issues that come up during this public process that are relevant to permitting will be provided to the MFAC's permitting sub-committee for their consideration.

Enclosed
August 27, 2021 Advisory
Public Comment



The Commonwealth of Massachusetts

Division of Marine Fisheries

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Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

August 28, 2021

Marine Fisheries Advisory

PUBLIC COMMENT SOUGHT ON IN-SEASON ADJUSTMENTS TO COMMERCIAL SUMMER FLOUNDER LIMITS FOR 2021

In response to fishery performance and quota utilization so far in 2021, DMF is proposing in-season adjustments to 2021 commercial fishing limits for summer flounder. As of August 25, Massachusetts has landed 435,188 pounds of its 1,015,179-pound 2021 quota (45%).

Accordingly, DMF is seeking to liberalize commercial summer flounder limits to enhance the utilization of the state's quota. The proposals are as follows:

- Open Fishing Days. During the period of September 24–October 31, eliminate the Friday and Saturday closed fishing days and allow commercial fishermen to fish for, retain, possess, and land summer flounder seven days per week.

This will allow federal permit holders fishing offshore additional flexibility to bring fish to Massachusetts ports that were caught lawfully in federal waters. Additionally, those small number of vessels remaining in the inshore fishery, will be provided with additional open fishing days during the early-fall period to account for potential days lost to weather; this small boat fishery is frequently limited by worsening seasonal weather during this period.

- Trip Limits. During the period of September 23–October 9, increase the commercial summer flounder trawl limits from 400 to 600 pounds. Then during the period of October 10–December 31 or until 100% of the annual quota is taken (whichever occurs sooner), increase the commercial summer flounder trip limit to 2,000 pounds. This effectively opens the November 1–December 31 offshore fishery three weeks earlier—after the end of the recreational fishery—and increases the anticipated possession and landing limit for this period from 1,000 pounds to 2,000 pounds.

This will increase the allowable possession and landing limit for federally permitted vessels fishing offshore, thereby encouraging these vessels to land their catch in Massachusetts ports. For those small number of vessels remaining in the inshore trawl fishery, this action will provide them with higher trip limits during the early-fall period when these fish remain in our waters. This will offset the economic impacts associated with deteriorating fall weather and additional steaming time to fishing grounds due to the seasonal migration of this resource offshore. Additionally, it may reduce regulatory discarding among these inshore trawlers when they reach their summer flounder trip limit.

but continue to fish and target other species (e.g., knobbed whelk) when they may be a bycatch of summer flounder

The state's commercial summer flounder quota, as allocated by the Atlantic States Marine Fisheries Commission, was increased from 786,399 pounds in 2020 to 1,015,179 pounds in 2021 (29%). This occurred in response to robust stock conditions and a shift in geographic distribution of the resource to the north and east. However, despite this sizeable quota increase, DMF did not take action to adjust commercial fishing limits at the start of the fishing year, instead favoring to make in-season adjustments in response to fishery performance. At this time, DMF seeks to make in-season adjustments to benefit the inshore trawl fishery during late-September and early-October and the offshore fishery that occurs during the fall and winter months in the federal zone.

Instructions for Public Comment

DMF is seeking written public comments on the proposals described above. Of specific interest is whether the proposed adjustments should occur earlier or later in the season or whether additional adjustments and trip limit increases are necessary. DMF will be accepting public comment on these proposals through Friday, September 10, 2021. All comments are to be submitted to DMF by e-mail (marine.fish@mass.gov) to the attention of Director McKiernan.

Public comment will be considered in DMF's final recommendation to the Marine Fisheries Advisory Commission (MFAC). The MFAC will review the public comments and vote on DMF's final recommendation at their September 22, 2021 business meeting. If approved by the MFAC, the in-season adjustments will go into effect on September 23, 2021 for the remainder of 2021 fishing season, unless otherwise amended.

For more information about the management of marine fisheries in Massachusetts, contact DMF at 617-626-1520 or visit our website at www.mass.gov/marinefisheries.

From: [Rory O'Donnell](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Attn Dan McKiernan and Summer Flounder
Date: Friday, August 27, 2021 2:00:11 PM

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Good Afternoon Dan,

I appreciate the state looking into an increase of this fisheries current landing status. After a significant increase in the overall summer quota flounder coast wide we stayed in a position to not change our stance on what landings needed to be in order to fill this amount. We clearly do not have the small boat effort this year or last year like we did in the previous five years. We are in a position to support both our inshore summer fleet and offshore winter fleet with correct landing management. I feel that a single day landing limit should be set at 800lbs a day in the current structure along with the two day tagging program in place. This will leave sufficient quote to also have a minimum of a 2K lb landing limit starting October 1 for the "offshore" fishery. As a dealer we need to make sure there is maximum value returned to the fishermen of the commonwealth, extending our landing limits through out the winter at low levels does not do this. States with lager landing limits will be opening in November and prices will trend downward as they do every year. Please take this all into consideration as we want nothing more to show a strong landings for the state in this fishery. Please feel free to reach out to me if you have any questions.

Best regards,

Rory O'Donnell
--

Rory O'Donnell
Lead Buyer
Office: 857-259-4885
Cell: 781-413-6171
Fax: 617-4280030



From: [Jared Auerbach](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Attn. Director McKiernan - Fluke Comments
Date: Monday, August 30, 2021 9:49:27 AM

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Director McKiernan,

First of all, I want to be clear that I believe our goal should always be to facilitate the harvesting of the full quotas.

I do not think we have taken the necessary steps so far this year to harvest the entirety of the fluke quota. This is concerning.

I think we need to be even more aggressive than the current proposal.

There is not much up-side to cut this close. The financial risk of not raising limits enough and falling short of the quota is great. I do not think we should risk falling short of the quota.

Thank you very much.

Jared

Jared Auerbach
Chief Executive Officer

Mobile: 1 617 413 4981 • Fax: 1 617 428 0030 • jared@redsbest.com
WildFish LLC • 37 Boston Fish Pier, Boston MA 02210
www.redsbest.com



From: [David Aguiar](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Flounder comments
Date: Friday, August 27, 2021 9:14:47 AM

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As a long time recreational flounder fisherman, I would suggest that the limits are NOT increased in any way (Commercial or recreational) for the remainder of the season and into next year. The fish could use a rest to allow numbers and size to move in the right direction. The fleet seems to be doing OK without fine tuning for bigger catch's.

From: cryonic316@aol.com
To: [Fish, Marine \(FWE\)](#)
Subject: Fluke adjustment I feel sept.1 we should go to seven days a week at 400lb. And readjust in 3weeks to 600lb. If needed my reason it's hurricane season. Thank you
Date: Sunday, August 29, 2021 3:10:12 PM

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From: Psu57@msn.com
To: [Fish, Marine \(FWE\)](#)
Cc: [McKiernan, Dan \(FWE\)](#)
Subject: Fluke adjustments
Date: Saturday, August 28, 2021 8:55:05 PM

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Good afternoon dan, this is Paul unangst from Marshfield mass, I have been fluke fishing in Nantucket sound since 1985. I have been in touch with Jared off and on about what I thought would help catch the fluke quota that we have and the most important thing you could do is get rid of the days off. we very seldom are able to fish the 5 days we have to go because of the windy conditions in the sound. So many of the good weather days come on those days we are not allowed to go fishing. I would recommend getting rid of the days off in the future starting right now. I am not really asking to go fishing 7 days a week but would like to get my 5 days in that we are supposed to have. This fishery has changed drastically over the last 5 years with so many boats leaving because of they way it is set up, i would say there is a 50% reduction in boats. I can guarantee you we will never catch are quota next year if we do not get rid of the days off. As far as the amount we can catch in a day going to 600 lbs might help a little bit but it would have to be a flat calm day and everything go right which doesn't happen that much in the sound.

Thanks Paul unangst

Sent from my iPad

From: [Paul](#)
To: [Fish, Marine \(FWE\)](#)
Subject: fluke changes
Date: Friday, August 27, 2021 9:49:51 AM

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Thank you for the opportunity to comment on the proposed changes to the fluke fishery. I strong oppose any liberal changes to the policy. The best thing that could happen is that the quota is not met and the fishery has an added chance to recover. Capt. Paul Osmon

From: [Joseph Gomes](#)
To: [Fish, Marine \(FWE\)](#)
Date: Monday, September 6, 2021 4:14:22 PM

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In regard to the changes suggested for the fall flounder fishery, on what figures does ASMF base their contention that the fishery expanded so that the quota may be raised? On the matter of extending the season to accommodate weather etc I feel this is completely unwarranted. Will you extend my recreational opportunities simply because my truck was down and I was ill and so unable to fish for flounder? What exactly do you set as a recreational quota? How do you arrive at it? Who ascertains the health of the fish stocks and how do they count them???

Fisheries science is more than pulling a flounder out of your hat or setting a quota to please a commercial fishing interest.

Thanks for your time, J. GOMES

From: [Tom Dowd](#)
To: [Fish, Marine \(FWE\)](#)
Subject: of course it should have been done earlier
Date: Saturday, August 28, 2021 10:11:31 AM

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Sent from my iPhone
thomas dowd

From: [Frank Torbey](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Summer Flounder
Date: Friday, August 27, 2021 10:45:18 AM

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Marine Fisheries,

I completely disagree with the additional open fishing days and the trip limits. The trawlers have significantly impacted the summer flounder fishing throughout Nantucket/Vineyard Sound and east and south of Nantucket. For example, no summer flounder on Lucas shoal in Vineyard sound. The trawlers wiped out the flounder south of Nantucket so many of us are having the worst year fishing for flounder. This aggressive trawler fishing is significantly impacting recreational fishing.

Frank Torbey



The Commonwealth of Massachusetts

Division of Marine Fisheries

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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director

DATE: September 20, 2021

SUBJECT: 2021 Winter II Commercial Scup Limits

Recommendation

I am recommending that for the 2021 Winter II Period (October 1–December 31), the MFAC vote in favor of adopting a 21,000-pound possession and landing limit. This is commensurate with the federal trip limit to be established by NOAA Fisheries for this period. If approved, this possession and landing limit will be adopted by declaration for October 1, 2021.

Note that the recommended 21,000-pound possession and landing limit is less than the 22,500-pound trip limit proposed in DMF's September 9 public comment notice. This is because the final accounting for the quota underage from Winter I being rolled over into Winter II is less than initially anticipated. The management plan allows for the Winter II trip limit to increase by 1,500 pounds from the baseline of 12,000 pounds for every 500,000 pounds of quota rolled over to Winter II period.

Rationale

If approved, this action will allow commercial vessels to harvest, possess, and land up to 21,000 pounds of scup per trip, consistent with federal rules. Principally, this will allow vessels fishing offshore to possess and land in Massachusetts ports scup that were lawfully harvested in federal waters. Note that this action technically sets a 21,000-pound harvest limit for vessels operating in state waters as well. However, DMF does not expect vessels fishing inshore will be operating at this capacity given restrictions on vessel length (72' maximum) and trawl net mesh (6.5" minimum in the cod end), and the seasonal availability of scup in our waters.

Background

The annual coastwide commercial scup quota is allocated to three distinct quota management periods: (1) the federally managed Winter I period (January 1–April 30; 45.11%); (2) the state managed summertime period (May 1–September 30; 38.95%); and the federally managed Winter II period (October 1–December 31; 15.94%). The 2021 coastwide quota is 20.5 million pounds (mlb), resulting in roughly 9.2, 8.0 and 3.3 mlb allocated to the three periods respectively.

For the Winter II period, the Mid-Atlantic Council has set a 12,000-pound baseline trip limit since 2014 based on the magnitude of the period's quota. Under the fishery management plan, when unused quota from the Winter I period is rolled over to the Winter II period, the baseline Winter II trip limit is increased by 1,500 pounds for every 500,000 pounds being rolled over. NOAA Fisheries has reported about 5.8 mlb of scup was landed during the Winter I period, resulting in a rollover of roughly 3.4 mlb to the Winter II quota. Due to this increase in the Winter II quota, the federal trip limit will be set above its baseline at 21,000 pounds.

Public Process and Public Comment

This state action is being taken consistent with DMF's regulations for management of the Winter II scup fishery at 322 CMR 6.27(3)(e) and the declaratory process set forth at 322 CMR 6.41(2)(d). This allows DMF, with approval of the MFAC, to set these limits concurrent with a two-week public comment process.

DMF put its initial proposal out to public comment on September 9. To date, we have only received a single public comment. This single public comment received was from a shore fisherman who broadly objected to the proposed action. This nominal level of interest is not unusual given this action will only set state limits commensurate with federal rules and there is only limited scup fishing activity in state-waters during the October 1–December 31 period.

While this objection did not cite specific reasons, we have previously received objections to setting the winter period scup limits from recreational fishermen. These prior comments cited the status of the resource and recreational fishing access. I do not share concerns about the status of the scup resource, as it is estimated to be at 200% of its biomass target. The scup quota is consistently underutilized on a coastwide basis, and this is largely attributable to low ex-vessel value driven by a limited consumer demand. As a result of consistent quota underutilization, some quantity of commercial quota may be redirected to the recreational fishery through the MAFMC's pending Commercial/Recreational Reallocation Amendment. This may result in higher recreational harvest limits and more liberal recreational fishing limits for this species.

Despite this comment in objection to this action, I am moving forward my recommendation, as it will allow offshore fishermen to land fish lawfully taken in the federal zone in Massachusetts ports. I do not expect it will increase inshore scup fishing effort due to existing restrictions and the availability of the resource in our waters at this time of year.

I acknowledge that it is a bit awkward to provide the MFAC with a final recommendation on a topic while the public comment period is ongoing. To avoid this, we typically try to conclude the public comment period prior to an action by the MFAC. In this specific instance, doing so has been made difficult by the late timing of NOAA Fisheries' announcement of the Winter II limit. However, the regulations governing the declaratory process allow for this to occur. Given the imminent start of the Winter II fishery, the purpose and extent of the proposal, and the nominal interest in it, I am comfortable with this approach. I also prefer it to delaying action to the October 28 business meeting and preventing the state from having a landing limit consistent with the federal trip limit for one month of this three-month quota period. I am also hopeful that we will have new rules implemented in early 2022 that will allow us to avoid having to use

declaratory authority to set state possession and landing limits during the federally managed winter periods.

Attachment

September 9, 2021 DMF Advisory
Public Comment



The Commonwealth of Massachusetts

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DANIEL J. MCKIERNAN
Director

September 9, 2021

Marine Fisheries Advisory

DMF PROPOSES TO ADOPT POSSESSION AND LANDING LIMIT TO COMPLEMENT FEDERAL WINTER II SCUP TRIP LIMIT

The Division of Marine Fisheries is proposing to complement the federal commercial scup trip limit for the Winter II period (October 1–December 31). While NOAA Fisheries has not yet announced the federal trip limit for this period, DMF anticipates it may be set at 22,500 pounds. The Winter II period is managed with a coastwide quota and trip limit given that the fishery occurs primarily in federal waters. This action is intended to allow those vessels fishing offshore to possess and land in Massachusetts ports scup that were lawfully caught in federal waters.

For 2021, the initial Winter II quota is 3.26 million pounds and the baseline federal trip limit for the period is 12,000 pounds. However, the federal trip limit increases from the baseline by 1,500 pounds for every 500,000 pounds of scup quota that is not landed during the Winter I period (January 1–April 30) and is consequentially rolled into the Winter II quota. Based on preliminary coastwide landings information, as much as 3.5–3.99 million pounds of unused Winter I quota may be added to the Winter II quota. As a result, DMF anticipates NOAA Fisheries will set the 2021 Winter II trip limit at 22,500 pounds; however, DMF intends to adopt whatever the final limit is as established by NOAA Fisheries based on their more complete Winter I landings tally.

Instructions for Public Comment

Public comment is now being sought on the proposed action to set the state's Winter II scup possession and landing limit commensurate with the federal trip limit for this period. Public comment will be accepted through 5PM on Thursday, September 23, 2021. All comments are to be submitted to DMF by e-mail (marine.fish@mass.gov) to the attention of Director McKiernan.

Public comment will be considered in DMF's final recommendation to the Marine Fisheries Advisory Commission (MFAC). If the recommendation is approved by the MFAC, the Winter II scup limits will be effective on October 1, 2021.

For more information about the management of marine fisheries in Massachusetts, contact DMF at 617-626-1520 or visit our website at www.mass.gov/marinefisheries.

From: [Chris Adler](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Scup quota increase, attention of Director McKiernan
Date: Thursday, September 9, 2021 11:01:30 AM

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Director,

As an avid recreational surf fisherman I strongly disagree with this increase.

Chris Adler
Worcester, MA



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Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director 
DATE: September 17, 2021
SUBJECT: Proposal to Amend Mandatory Trap Tag Installation Date for Lobster Traps

Proposal

Amend the deadline for affixing current year trap tags by requiring all commercial lobster traps to have current year trap tags installed into them by May 1 for all LCMAs.

Background

DMF has established a date certain for commercial lobster trap fishermen to install trap tags into their lobster traps for the current calendar year. For the Outer Cape Cod Lobster Conservation Management Area (OCCLCMA) the date certain was March 16, which coincided with the end of historic January 15 – March 15 seasonal trap closure in this area to control effort and harvest. For LCMA1, LCMA 2, and LCMA 3, this date certain has been June 1. This coincides with the time of year that the lobster trap fishery begins in earnest in the LCMAs.

We implemented a new seasonal right whale trap closure of February 1 – May 15 for 2021. This closure may be extended past or rescinded before May 15 based on the presence and absence of right whales in Massachusetts waters. With this closure now affecting a large proportion of MA Coastal Lobster Permit holders, it is appropriate to propose to sequence the trap tag installation date with the presumptive earliest end of this closure (May 1).

Therefore, I am proposing move the trap tag installation date to May 1 for all LCMAs effective this coming year. This will ensure that all the traps going in the water after the whale closure will be tagged with current year trap tags. This is likely occurring in LCMA 1 and OCCLCMA already, as fishermen are working on their gear during this period. For LCMA2, this will require these fishermen to change out their trap tags one month earlier. Note: For offshore lobster vessels fishing in and LCMA3, the federal deadline for affixing trap tags is already May 1, so no change is anticipated.

Timeline

DMF intends to take this proposal out to public hearing this fall for implementation in early 2022.

Enclosed

Draft strikethrough language

322 CMR 6.31(1)

(d) Official commercial lobster trap tags shall be purchased by permit holders directly from a manufacturer selected by the Division according to established competitive bidding procedures. New tags for the following year will be available after December 1 **and must be purchased by May 1. Any traps being fished on or after May 1 must have a current year trap tag installed in the trap. ~~and must be purchased and installed in the traps before~~**

~~1. March 16 of the following year for traps fished in the Outer Cape Cod Lobster Conservation Management Area; and~~

~~2. June 1 of the following year for traps fished in Lobster Conservation Management st Areas 1, 2 and 3.~~



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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director 
DATE: September 17, 2021
SUBJECT: Permitting Clarifications Regarding Seasonal Lobster Permit and Permit Fees

Proposal

1. Consistent with state law at G.L. c. 130, s. 38, amend 322 CMR 7.01(2)(f) to clearly state the seasonal lobster permit is to be issued to residents only.
2. On behalf of the Executive Office of Administration and Finance (ANF), request that DMF's permit fees at 801 CMR 4.00 be updated.

Seasonal Lobster Permit

G.L. c. 130, s. 38 is the state law that establishes DMF's lobster permits and the requirements to obtain such a permit. DMF's has interpreted this law to establish the Seasonal Lobster Permit ("Student Permit") as resident only. Its "resident only" status is reflected in our commercial fisherman application, as it does not provide for a non-resident option.

However, some confusion exists regarding this residency requirement. The causes for this confusion may be two-fold. First, ANF regulations at 801 CMR 4.00, list a non-resident fee for all permits, including this resident only permit. Second, administrative staff may not have properly vetted applications in the past resulting in a small number of these permits being historically issued to non-residents.

While the residency requirement of the statute supersedes any grey area in state regulations, it is appropriate to eliminate any points of confusion moving forward. Accordingly, I am proposing to clearly state the permit is resident-only in regulation, consistent with the law. Additionally, I am proposing to ANF to strike the non-resident permit from their regulations at 801 CMR 4.00.

DMF Permitting Fees

ANF regulations establish fee schedules for executive branch agencies at 801 CMR 4.00. These fee schedules may be amended by the legislature or by ANF. When a state agency moves to adjust its fees, it consults ANF on the fee change and then the agency takes the fee change out to public hearing on behalf of ANF. However, the legislature may also adjust the fees an agency

may charge independent of ANF. In these instances, it is possible that there may be a discrepancy between what the agency may charge by law and what the regulations set as the fee.

This is also an opportunity to reconcile the published permit fees with state law and current practice. On behalf of ANF, DMF last amended its permitting fees in 2014. This was principally done in response to a budget amendment that allowed DMF to assess a surcharge on all lobster permits to provide direct funding for the ventless trap survey. As a result, DMF moved forward and increased commercial coastal and offshore lobster permit fees by \$50 annually and student lobster and recreational lobster permit fees by \$15 annually. This also provided the agency an opportunity to correct discrepancies between what DMF was allowed to charge for certain permits pursuant to legislative acts in 1989 and 1991 and what the ANF regulations set as the fee for those permits. Unfortunately, in finalizing these regulations, it appears that some of the fee figures may have been transposed and other permit fees eliminated. As I am proposing to ANF to strike the non-resident student lobster fee from their regulations, I want to take this opportunity to correct certain fees that are inconsistent with what DMF has historically been charging and what is listed in our permit applications.

Timeline and Role of the MFAC

DMF intends to take this proposal out to public hearing this fall for implementation in early 2022. As this is a permit and permit fee matter, MFAC approval is not required. However, I am seeking your input on this proposal now, and will seek it again after public comment is received with regards to my anticipated final action.

Enclosed

Draft strikethrough language

Draft Strikethrough Language

322 CMR 7.01(2) Commercial Fisherman Permits. In order to harvest, possess or land fish, shellfish or bait for commercial purposes, the following permits are required for the following fishing activities:

(f) Seasonal Lobster. Authorizes only the named individual to harvest, possess and land lobsters for commercial purposes, to be issued only to full-time students 12 years of age or older and conditioned to authorize the harvest, possession and landing of lobsters for commercial purposes only from June 15 to September 15 of each year and further conditioned to the use of not more than 25 lobster traps. **DMF may issue seasonal lobster permits to Massachusetts residents only, and limits the issuance of the permits to no more than 150 during any single calendar year. DMF may issue up to 150 seasonal lobster permits for use during any single calendar year.**

8.01 CMR 4.00 Fees

322 Division of Marine Fisheries

- (1) Coastal Lobster Resident \$310 annual Non-resident **(renewal only) 570 annual**
- (2) Offshore Lobster/Boat 100'+ Resident 310 annual Non-resident 570 annual
- (3) Boat 60-99 feet Resident **260 195** annual Non-resident **520 390** annual
- (4) Boat under 60 feet Resident **195 130** annual Non-resident **390 260** annual
- (5) Rod and Reel Resident 35 annual Non-resident 100 annual
- (6) Non-commercial Lobster Resident 55 annual Non-resident **property holder 75 annual**
- (7) Shellfish and Rod and Reel Resident 55 annual Non-resident 130 annual
- (8) Shellfish **and Seaworms** Resident 40 annual Non-resident 80 annual
- (9) Wholesale Resident 130 annual Non-resident 260 annual
- (10) Retail Resident **40 65** annual Non-resident **130 80** annual
- (11) Master Digger Resident 250 annual Non-resident 500 annual
- (12) Subordinate Digger Resident \$100 annual Non-resident 200 annual
- (13) Regulated Fishery Resident 30 annual Non-resident 60 annual
- (14) Bait Dealer Resident 65 annual Non-resident 130 annual
- (15) Individual Resident 65 annual Non-resident 130 annual
- (16) Seasonal Lobster Resident 80 annual **Non-resident 145 annual**
- (17) Coastal Commercial Lobster Transfer 50 annual
- (18) Shellfish Depuration 6 half-bushel
- (19) Recreational Saltwater Fishing Permit 10 annual
- (20) Recreational Charter Permit Resident 65 annual Non-resident 130 annual
- (21) Recreational Head Boat Permit Resident 130 annual Non-resident 260 annual
- (22) **Special Project Permit Resident 10 annual Non-Resident 20 annual**



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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: September 17, 2021

SUBJECT: Clarification to Buoy Line Marking Rules for Commercial Lobster Trap Gear

Proposal

DMF seeks to clarify its recently filed buoy line marking regulations affecting commercial lobster trap gear for trap gear set seaward of the waters under the jurisdiction of the Commonwealth in LCMA 1, LCMA2, and the Outer Cape Cod LCMA. In addition to the recently adopted requirements (effective February 1, 2022), DMF seeks to clarify that all buoy lines being fished in federal waters must have a solid or non-solid green mark of at least 1' length adjacent to all red marks of at least 1' length and prohibit having green marks in buoy lines fished in state waters.

This is being proposed to prevent gear being fished in federal waters as being wrongly identifiable as state waters gear. Should an entanglement occur, such a misidentification may result in the misattribution of the entanglement to the state waters fishery. Not only would this jeopardize DMF's ongoing ITP application it could also place the future of the fishery at risk.

I anticipate this proposal will go out to public hearing this fall and will be implemented by February 1, 2021 consistent with the other buoy line marking rules.

Background

At the June 2021 MFAC business meeting, the Commission unanimously approved new buoy line marking regulations for Massachusetts commercial lobster trap gear. As DMF was moving forward these regulations, NOAA Fisheries was finalizing amendments to the Atlantic Large Whale Take Reduction Plan, which also addressed buoy line marking for this fishery. Accordingly, DMF worked closely with NOAA Fisheries to have the state and federal regulatory proposals dovetail to prevent conflicting regulatory provisions and unnecessary confusion.

In recent weeks, DMF has been reviewing NOAA Fisheries draft guide to buoy line marking, which will become a primary resource for state and federal waters lobster trap fishermen. Despite our prior best efforts, in our review of their guide we have determined there is a slight difference between state and federal rules. This may create some regulatory grey area and could

potentially lead to gear being misidentified as coming from state-waters should an entanglement occur.

To be more specific, regulations for state-waters require at least four 2' red marks with two marks occurring in the top 50% of the buoy line, two red marks occurring in the bottom 50% of the buoy line, and there being no more than 60' of buoy line between red marks. While regulations for federal waters require at least three marks comprised of at least 1' of red and 1' of green in the top, middle, and bottom third of the buoy line.

Fishermen who hold a state and federal trap allocations typically move their gear across the jurisdictional boundary during the season to follow the migration of lobsters. The regulations are designed to allow gear to be moved from the state zone to the federal zone without requiring a separate set of buoy lines for each jurisdiction. Instead, fishermen only need to install a non-solid green mark of at least 1' (e.g., tracer) next to certain existing red marks to comply with federal buoy line marking rules. However, when fishing in state waters, fishermen may be required to fish four or more red marks in their buoy lines depending on the depth of the water they are fishing. Under existing rules, when this gear is then moved into federal waters, not all red marks are required to have corresponding green mark. If an entanglement were to occur in federal waters, it is conceivable that the remnant gear on the whale may only contain red marks without an adjacent green mark. This would wrongly indicate the gear came from state waters. Consistent with this logic, gear being moved from federal waters into state waters could be readily misidentified as federal waters gear should the green mark not be removed.

Rationale

To address this, I am seeking to clarify our buoy line marking rules. This proposal will affect only those fishermen whose vessel holds a federal lobster permit and the owner/operator also holds a Coastal Lobster Permit. These permit holders will be required to modify their gear as they move it in and out of state waters to ensure it is identifiable to the zone they are fishing.

For federal waters, this would require all red marks bear an adjacent corresponding green mark. Therefore, if a buoy line is moving from state waters to federal waters and is rigged with more than the three red marks required by the federal rule then all additional red marks also must have a green mark adjacent to it. Effectively, they will have more marks in their buoy lines than what is minimally required by the federal rule. In a similar vein, when moving gear from federal waters to state waters, all green marks that indicate federal waters gear will have to be removed from the buoy line.

This change is necessary to ensure that gear being fished in a certain federal waters or state waters is identifiable to that zone and cannot be misconstrued as coming from the other. This is particularly critical for the state waters fishery. Ensuring that gear set in the federal zone is not potentially wrongly identifiable as state waters gear will protect the state-waters fishery from having potential entanglements misattributed to it. Such an entanglement would risk the future of MA's lobster trap fishery and the state's Incidental take Permit application.

This should not impose a substantial burden on this subset of affected fishermen. Given the bathymetry of state-waters, it should only require these fishermen add one or two additional non-

solid green marks (e.g., tracers) to their buoy lines when moving gear from state to federal waters and remove one or two additional non-solid green marks when moving gear from federal waters into state waters. This can readily be complied with by the use of tracers and is likely preferred to having to fish two sets of buoy lines.

Enclosed

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Draft Strikethrough Language

8. New Buoy Line Marking Requirements for the Commercial Lobster and Crab Trap Fisheries in 2022. Effective February 1, 2022 the following buoy line marking requirements shall apply to lobster trap and crab trap gear:

a. Commercial Lobster Gear Seaward of the Waters Under the Jurisdiction of the Commonwealth LCMA1, LCMA2, and Outer Cape Cod LCMA. Any vessel registered under the laws of the Commonwealth with a Homeport in Massachusetts fishing commercial lobster trap gear seaward of the waters under the jurisdiction of the Commonwealth, within LCMA1, LCMA2 and the Outer Cape Cod LCMA, as defined at 322 CMR 6.33, shall mark their buoy lines with at least five color coded marks in the following configuration:

- i. There shall be one solid red mark that is at least three feet in length within the first 12 feet of the buoy line extending through the water column from the buoy to the trap.
- ii. No more than one foot below the three foot solid red mark, which occurs in the first 12 feet of the buoy line extending through the water column from the buoy to the trap, there shall be one solid green mark that is at least one foot in length .
- iii. After the first 12 feet of the buoy line, there shall be at least one mark in each third of the remaining buoy line extending down to the trap. Each mark shall be at least two feet long and comprised of a solid or non-solid red mark measuring at least one foot in length and a solid or non-solid green mark measuring at least one foot in length. The red and the green marks do not need to be adjacent but shall not be more than six inches apart.
- iv. If the color of the buoy line is red or red and white striped, then a solid white mark of the same size shall be substituted for the red mark.
- v. All red marks in the buoy line shall bear a corresponding green mark within six inches of the red mark.**

b. Commercial Lobster and Crab Trap Gear in the Waters Under the Jurisdiction of the Commonwealth within LCMA1, LCMA2, and Outer Cape Cod LCMA. Commercial fishermen who hold a Coastal Lobster Permit, issued pursuant to 322 CMR 7.01(2), and are fishing lobster and crab trap gear in the waters under the jurisdiction of the Commonwealth within LCMA1, LCMA2, and the Outer Cape Cod LCMA, as defined at 322 CMR 6.33, shall mark their buoy lines with at least five color coded marks in the following configuration:

- i. There shall be one solid red mark that is at least three feet in length within the first 12 feet of the buoy line extending through the water column from the buoy to the trap.
- ii. After the first 12 feet of the buoy line, there shall be at least four two foot solid or non-solid red marks in the remaining buoy line extending down to the trap with two of the red marks occurring in the top 50% of the buoy line and the other two red marks occurring in the bottom 50% of the buoy line.
- iii. There shall be no length of buoy line greater than 60 feet without a red mark.
- iv. If the color of the buoy line is red or red and white striped, then a solid white mark of the same size shall be substituted for the red mark.
- v. There shall be no marks in the buoy line that are green, silver, grey, purple, or yellow.**

Atlantic Large Whale Take Reduction Plan Changes for Lobster and Jonah Crab Fisheries Final Rule

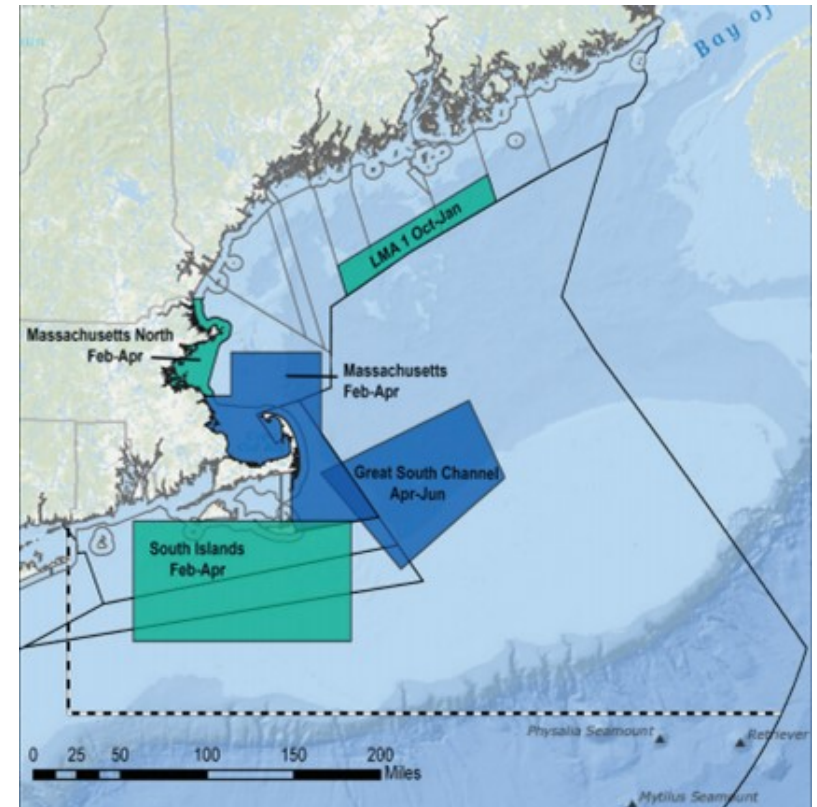
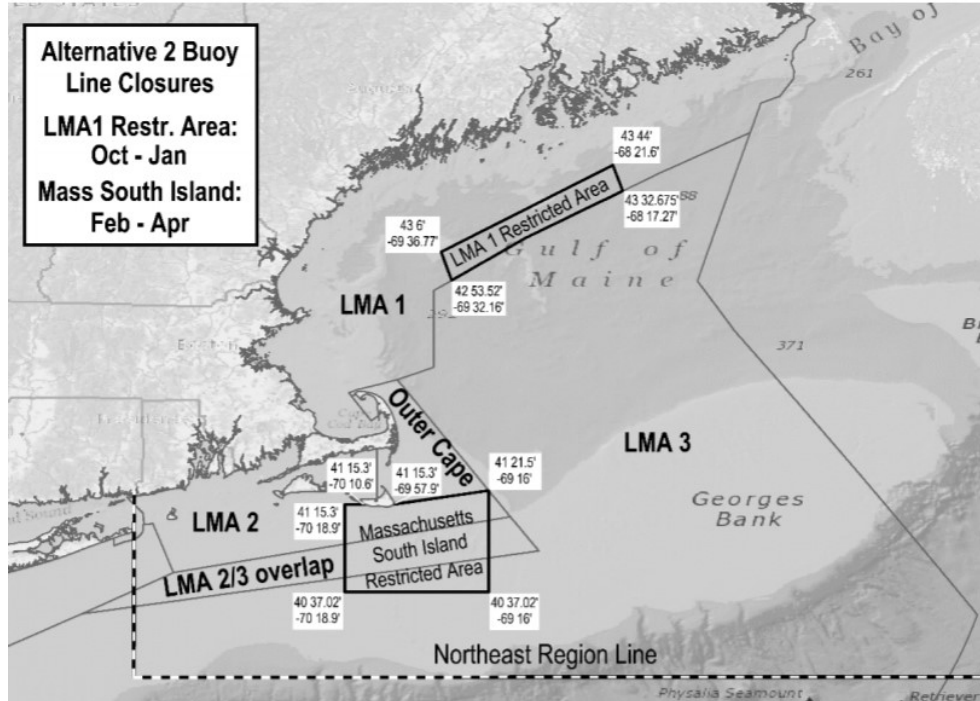


NMFS released the final rule for amendments to ALWTRP that will affect lobster and Jonah crab fishermen in Massachusetts. DMF adopted nearly all of the federal changes in advance of final rule. The final rule is similar to proposed rule;

- NMFS adopted the expanded Massachusetts North Restricted Area (Feb 1 – April 30), which was implemented by DMF in March 2021.
- NMFS adopted DMF's weak rope regulations for state waters.
 - Weak insertion every 60 ft or fully weak rope in the top 75% of the buoy line.
 - Implemented by DMF in May 2021
- NMFS closely mirrored DMF's new gear marking requirements.
 - DMF's gear marking in state waters is more restrictive than federal rule
 - Necessitated by Incidental Take Permit application
- Trap/pot fishermen can fish with ropeless gear in the closed area, if authorized by NMFS (and DMF if in state waters).

Final Rule – South Island Restricted Area

- South Island Restricted Area prohibits trap/pot fishing with buoy lines from Feb 1 – April 30 each year.
 - In the draft rule, the South Island closure only included waters south of Nantucket. The closure in the final rule also includes waters south and southwest of Martha's Vineyard.
- South Island closure will affect MA fishermen fishing in federal waters portions of LMA 2
 - Primary fishermen out of New Bedford, Fairhaven and Westport





Outreach on Final Rule

- **NMFS published updated fact sheet with DMF input:**

https://media.fisheries.noaa.gov/2021-09/ALWTP%20Summary%20of%20Changes%2009162021_3.pdf

- **Highlights state waters and federal water specific regulations**
 - Time/area closures
 - Weak rope and contrivance measure
 - Gear marking requirements
- **DMF working with NMFS to publish a MA specific fact sheet**

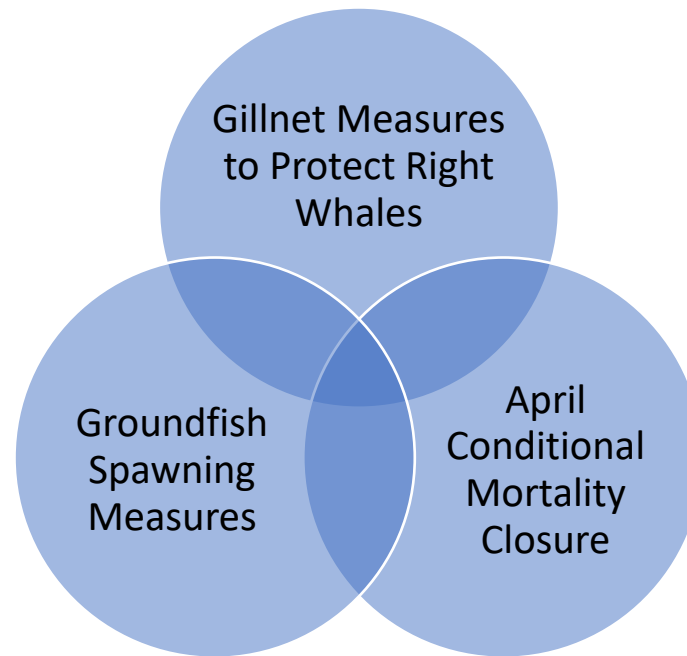


Gear Marking

- **New rules go into effect on February 1, 2022**
- **DMF is working with industry to develop best practices for gear marking**
- **DMF will host gear marking outreach and gear distribution events across the state starting in January**
- **Dual permit holders (state and federal) will have two different gear marking requirements depending on where they are fishing**
 - DMF seeking additional federal funds along with other states to assist dual permit holders

MFC Groundfish Sub-Committee

Formed to provide suggestions on how to better manage the state waters commercial groundfish fishery



Anticipated Outcomes & Timeline

Anticipated Outcomes:

Discussion of:

- Cod spawning closure to commercial groundfish fishing from April 15-30 between 42°00'N and MA/NH border west of 70°30'W.
- Expanded January 1 – May 15 gillnet closure to protect North Atlantic Right Whales to match spatial extent of trap closure.
- Review other groundfish aspects of groundfish management to address access.

Next Steps/Timeline:

- September 22: Brief full MFAC on Sub-committee's discussion
- September – October: DMF continues to develop proposals
- October 28: MFAC consider proposals for public hearing
- Late fall public hearings
- Winter rulemaking



April 15-30 Spawning Closure

Background:

- Spring MA Bay Spawning Protection Area adopted by NOAA as part of Omnibus Habitat Amendment 2
- Closure applies to those waters between 42°00'N (Plymouth) and 42°30'N (Marblehead) west of 70°30'W
- Closure applies to certain fishing activities, including commercial groundfish fishing by federal permit holders and use of gears capable of catching groundfish.
- Designed to protect known inshore cod spawning aggregations (IBS 1 and IBS 2).

Federal Spring MA Bay Spawning Protection Closure



April 15-30 Spawning Closure

Discussion Points:

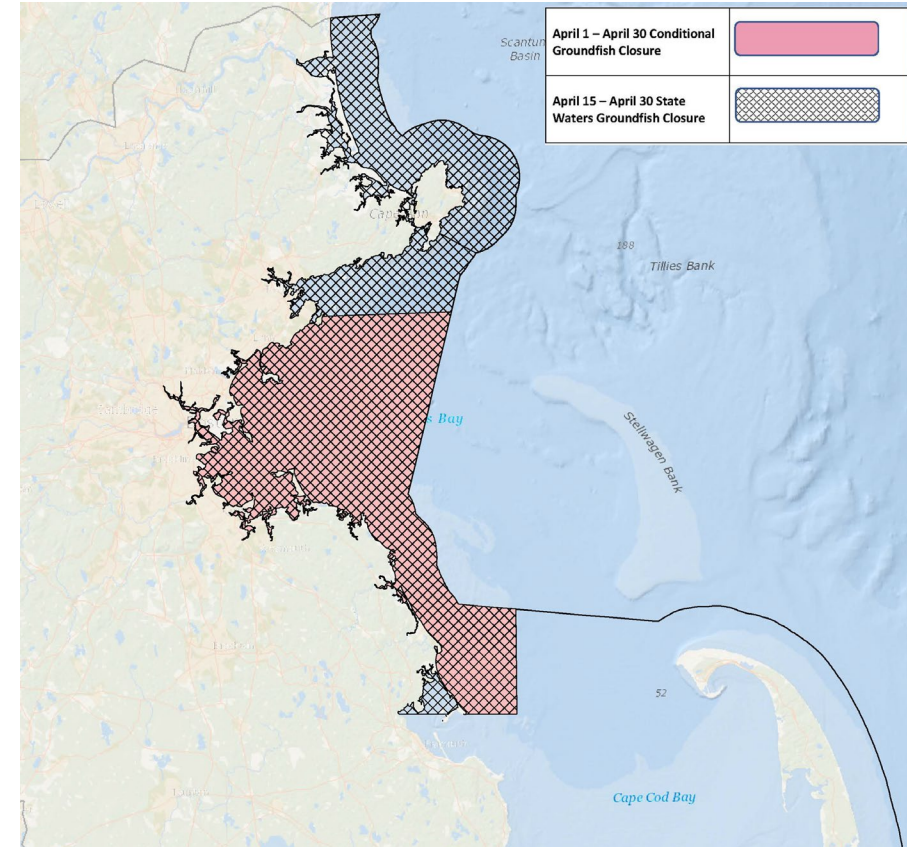
- Adopt similar closure affecting GE fleet to protect spawning cod aggregations (IBS 1 and IBS 2).
- Expand closure to include state-waters north of 42°30'N to MA/NH border to protect historic spawning cod aggregations (IBS 1).
- Eliminate conditional April closure between 42°00'N to 42°30'N west of 70°30'W

Proposed Regulatory Change:

- (2) April in Massachusetts Bay from Plymouth to New Hampshire Border. ~~Marblehead.~~ Except as provided at 322 CMR 8.05(9), from ~~April 1~~ **April 15** through April 30, it **shall be is**-unlawful for commercial fishermen to fish for, possess, or land regulated groundfish species taken within the waters under the jurisdiction of the Commonwealth between 42°00' north latitude **to the Massachusetts/New Hampshire Border** ~~and 42/30' north latitude~~ west of 70/30' west longitude

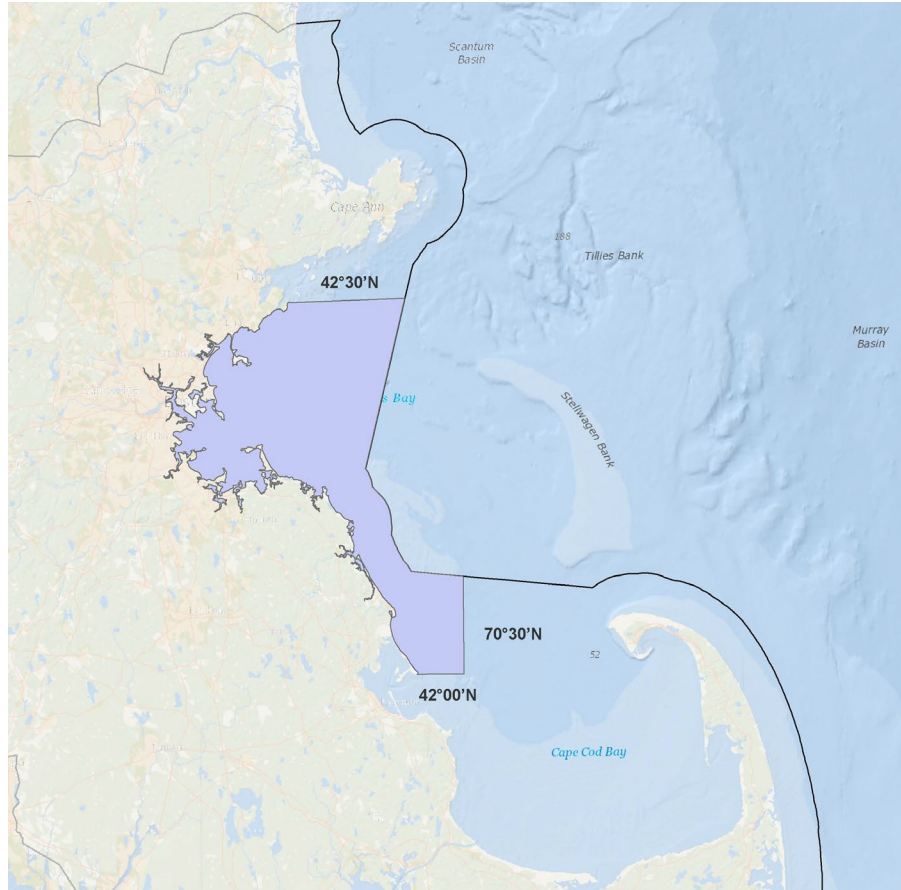
~~The Director may annually rescind this April closure in accordance with the Declaration Process set forth at 322 CMR 6.41(2). This action may be taken if, based on the Division's review of relevant data, it determines that rescinding the closure will not result in an exceedance of the annual federally allocated state-waters sub-component for regulated groundfish stocks during the federal fishing year of May 1 through April 30 or federal conservation objectives are not compromised.~~

Existing April Closure vs Potential Closure

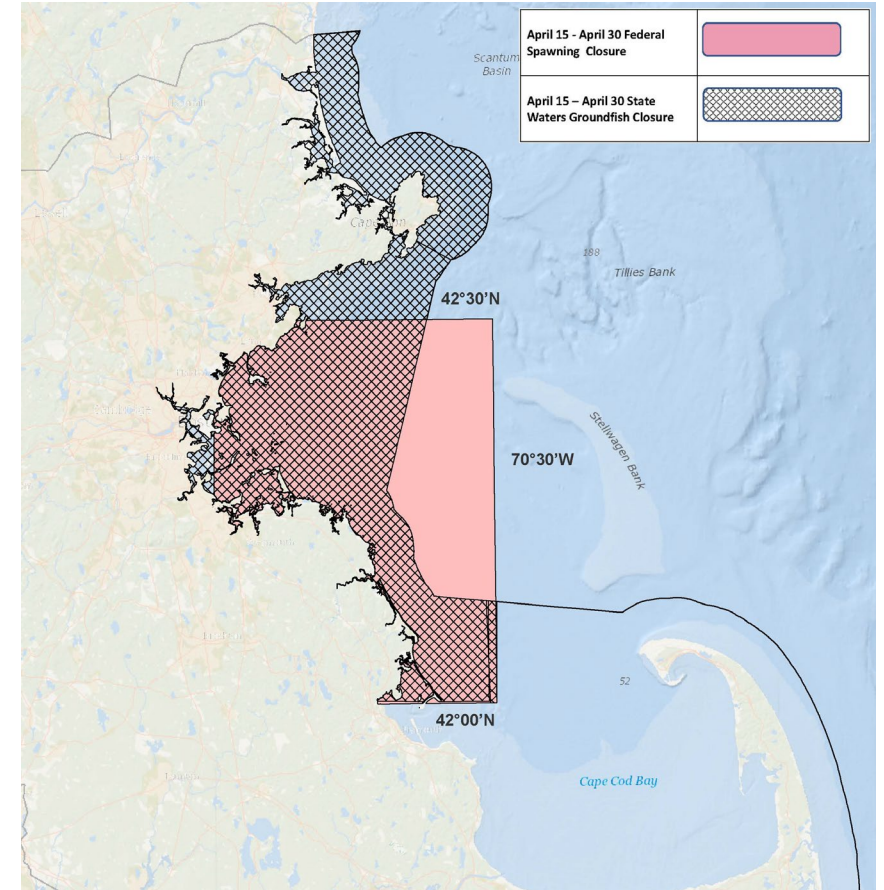


April 15-30 Spawning Closure

Existing April 1 – April 30 Condition Closure



April 15 – April 30 Spawning Closures



Gillnet Closure to Protect Right Whales

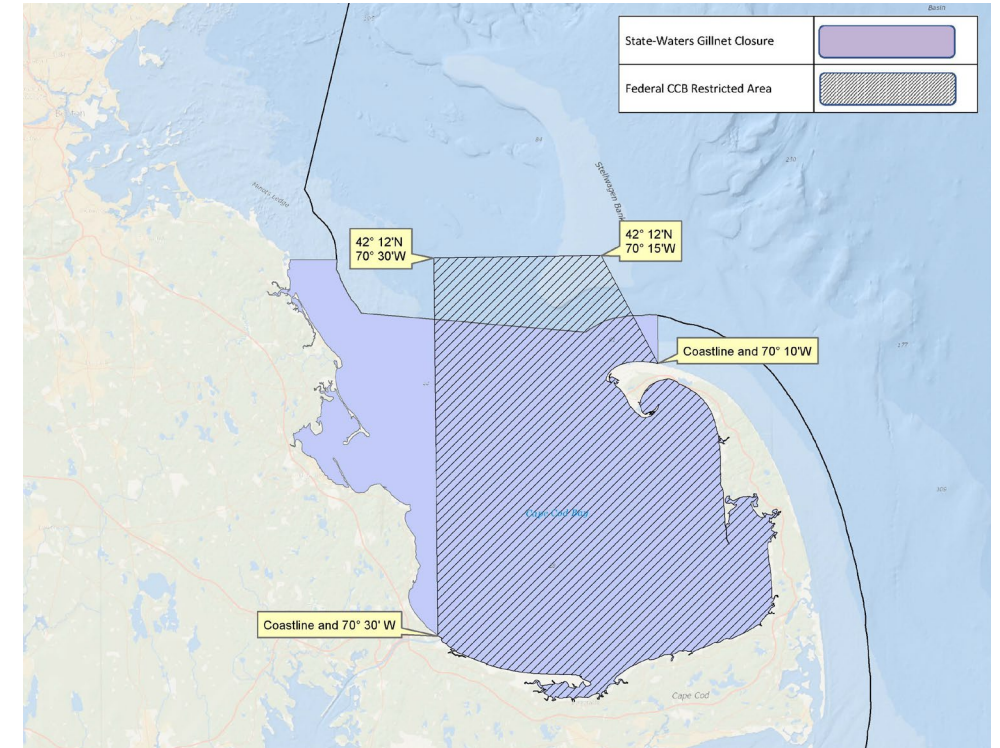
Background:

- Long-standing January 1 - May 15 federal closure (ALWTRP) within the Cape Cod Bay Restricted Area.
- DMF adopted complementary closure and modified it to include those state-waters of western Cape Cod Bay west of 70°30' W.

Current Regulation

322 CMR 12.04(1) Gillnet Closure to Protect Right Whales in Cape Cod Bay. From January 1 through May 15 it shall be unlawful to fish, store or abandon gillnets within those waters under the jurisdiction of the Commonwealth beginning at 42° 12' north latitude and the shoreline; thence due east to where it intersects with the state-federal waters line; thence following the state waters line in an easterly direction to where it intersects with 70° 10' west longitude; thence due south to where 70° 10 west longitude intersects with the coastline of Cape Cod; thence following the shoreline along Cape Cod and South Shore back to the starting point at 42° 12' north latitude and the shoreline.

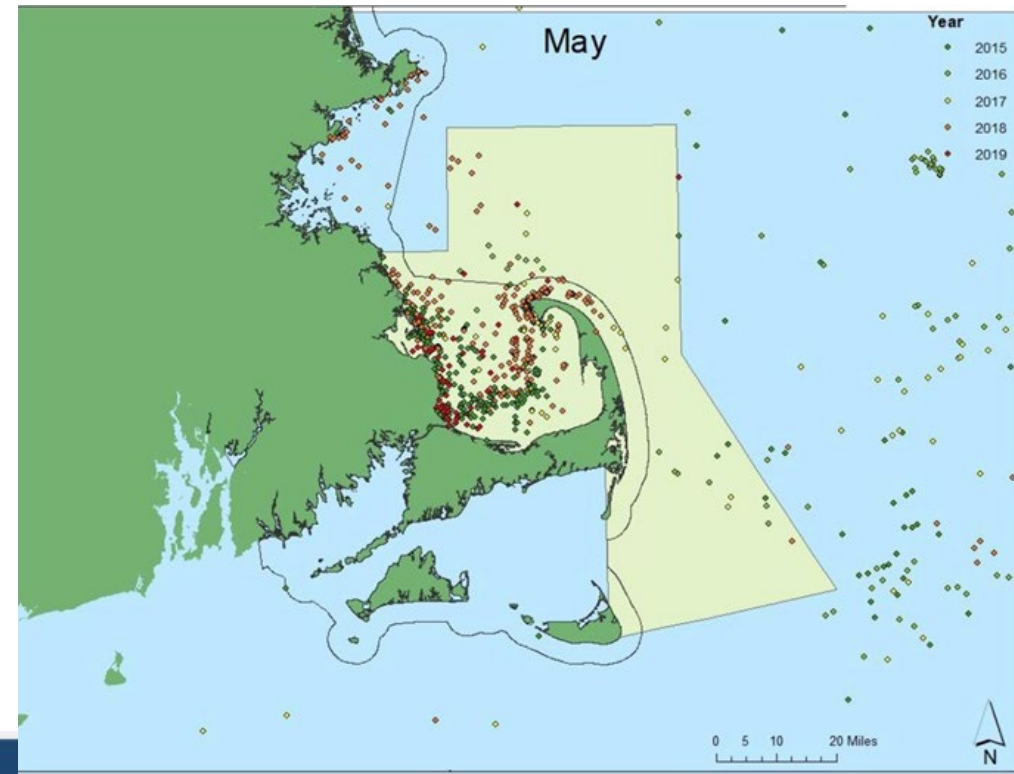
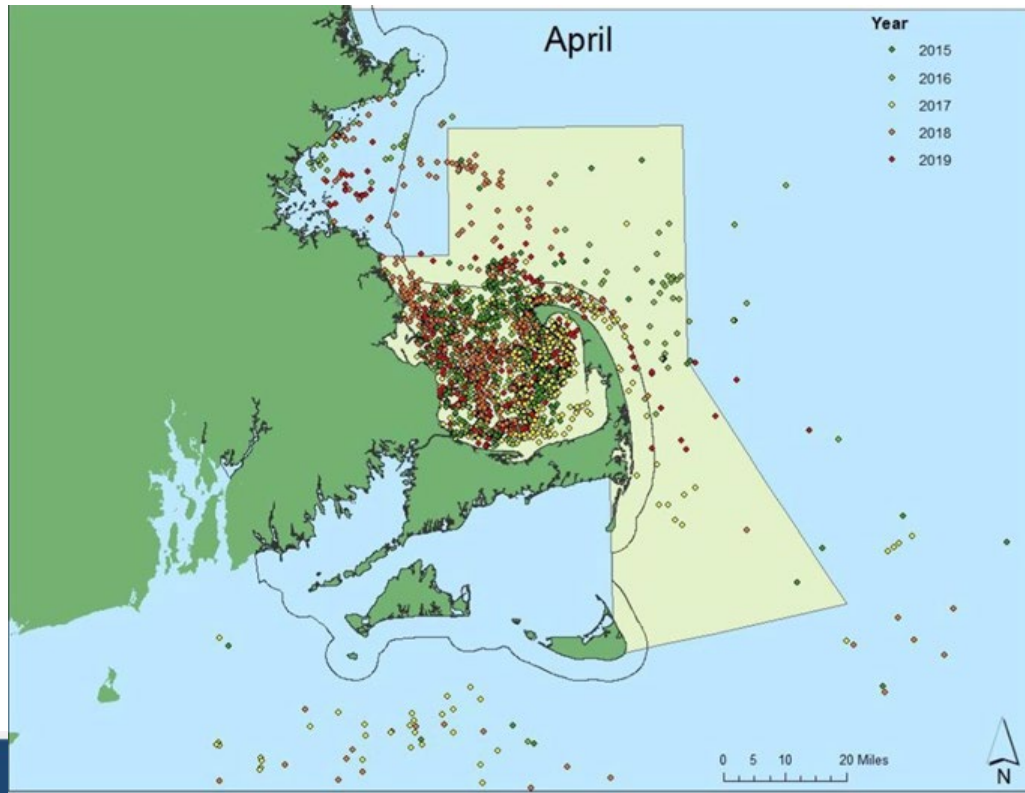
Existing State and Federal Gillnet Closure



Gillnet Closure to Protect Right Whales

Concerns

- Despite small size of state-waters gillnet fleet (~6 permit holders), spatial co-occurrence with right whales exists during April and May in MA Bay. Poses risk of entanglement to right whales.
- Gillnet entanglement could jeopardize ITP application and future of fixed gear fishing in MA.

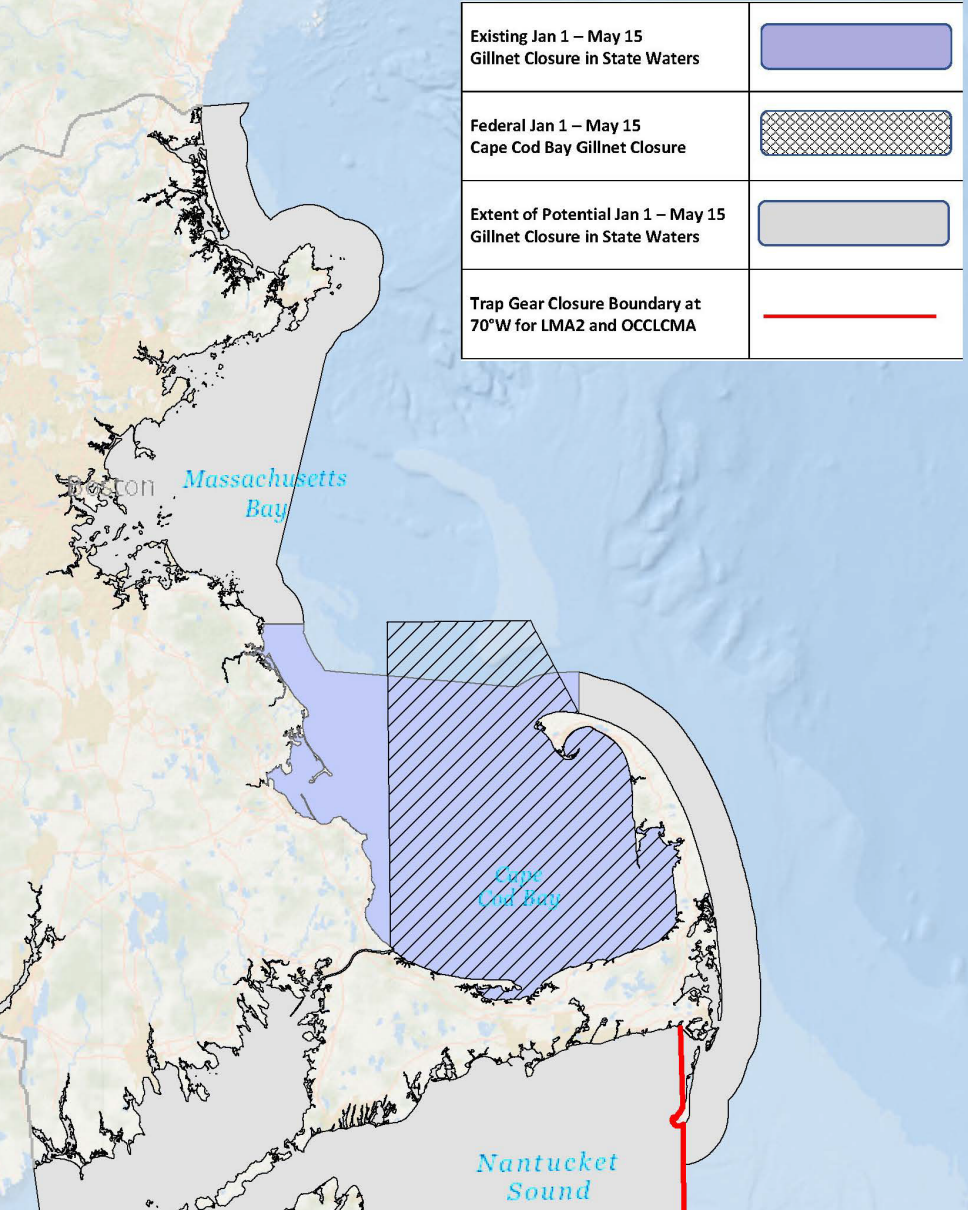


Gillnet Closure to Protect Right Whales

Discussion Points

- NOAA reconvened ALTWTRT to reduce risk posed by NE Gillnet Fishery to right whales. Focus has been on spatial closures and gear modifications.
- Consistent with ITP application DMF should be at least as restrictive as ALWTRP and DMF should get out ahead of NOAA.
- Expanding closure to include MA Bay would eliminate a large amount of the remaining entanglement risk posed by this fishery. Gillnetting not occurring during season in area except for April/May due to other management measures and seasonal availability.
- Expanding closure to match trap closure area or all state waters, would substantially increase area affected without significantly altering fishing activity. Little to no gillnet activity is occurring seasonally in Ipswich Bay, east of Cape Cod, and south and west of Cape Cod.
- Allow for dynamic reopening/extension, similar to trap fishery. Let's DMF extend closure if whales remain and rescind closure early if whales depart for all waters outside of CCB Restricted Area (subject to overarching federal closure).





Gillnet Closure to Protect Right Whales

- Proposed Regulatory Change:
- 322 CMR 12.04(1) Gillnet Closure to Protect Right Whales in Cape Cod Bay. From January 1 through May 15 it shall be unlawful to fish, store or abandon gillnets within ~~all those~~ waters under the jurisdiction of the Commonwealth. **This closure may be extended past or rescinded before May 15 based on the presence or absence of right whales, in accordance with the process set forth at 322 CMR 12.04(3).** ~~beginning at 42° 12' north latitude and the shoreline; thence due east to where it intersects with the state-federal waters line; thence following the state waters line in an easterly direction to where it intersects with 70° 10' west longitude; thence due south to where 70° 10' west longitude intersects with the coastline of Cape Cod; thence following the shoreline along Cape Cod and South Shore back to the starting point at 42° 12' north latitude and the shoreline.~~

Groundfish Protection Closures

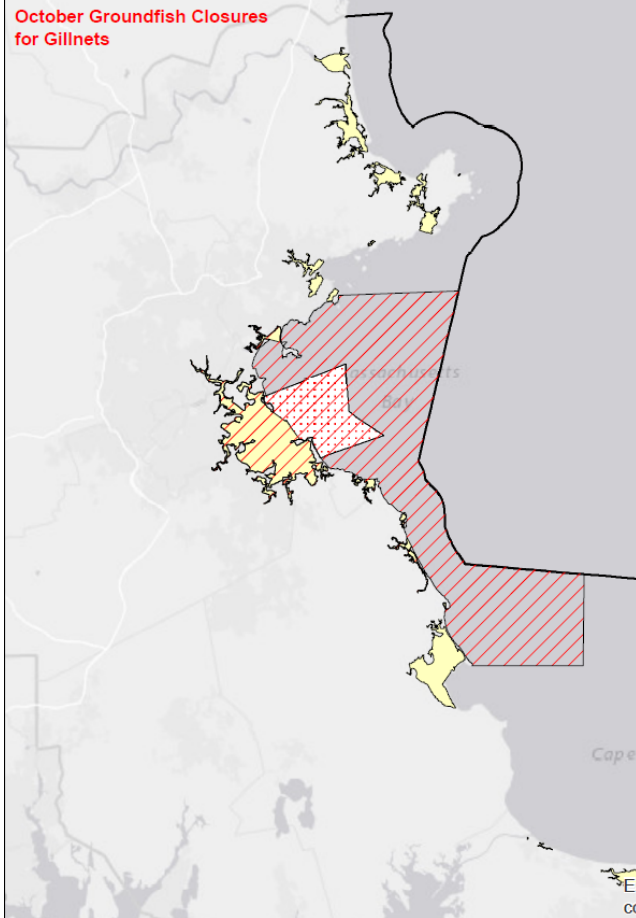
Discussion Points

- Recognizing impacts of new closures, interest in modifying existing rules to allow for additional access without impacting overarching conservation management program.
- DMF has historically matched federal October common pool groundfish closure between 42°00'N and 42°30' N west of 70°24'W. IBS 1 and IBS 2 demonstrate no spawning cod in area in October. Rescinding mortality closure could be considered.
- DMF has historic May 15 - October 31 Outer Boston Harbor gillnet closure. Adopted in 1980s to address unanticipated increase in lobster gillnet fishing activity. Rescinding gear closure could be considered.
- With adoption of April 15 – April 30 spawning protection, conditional closure can be permanently rescinded allowing for trawling and angling from April 1 - April 14. Gillnetting would remain prohibited due to right whale protections.
- Review trip limits. Wary of doing too much at once and exceeding set-asides in Y1 of new program. Note upcoming (2023) cod research track and incorporation of cod stock structure work.



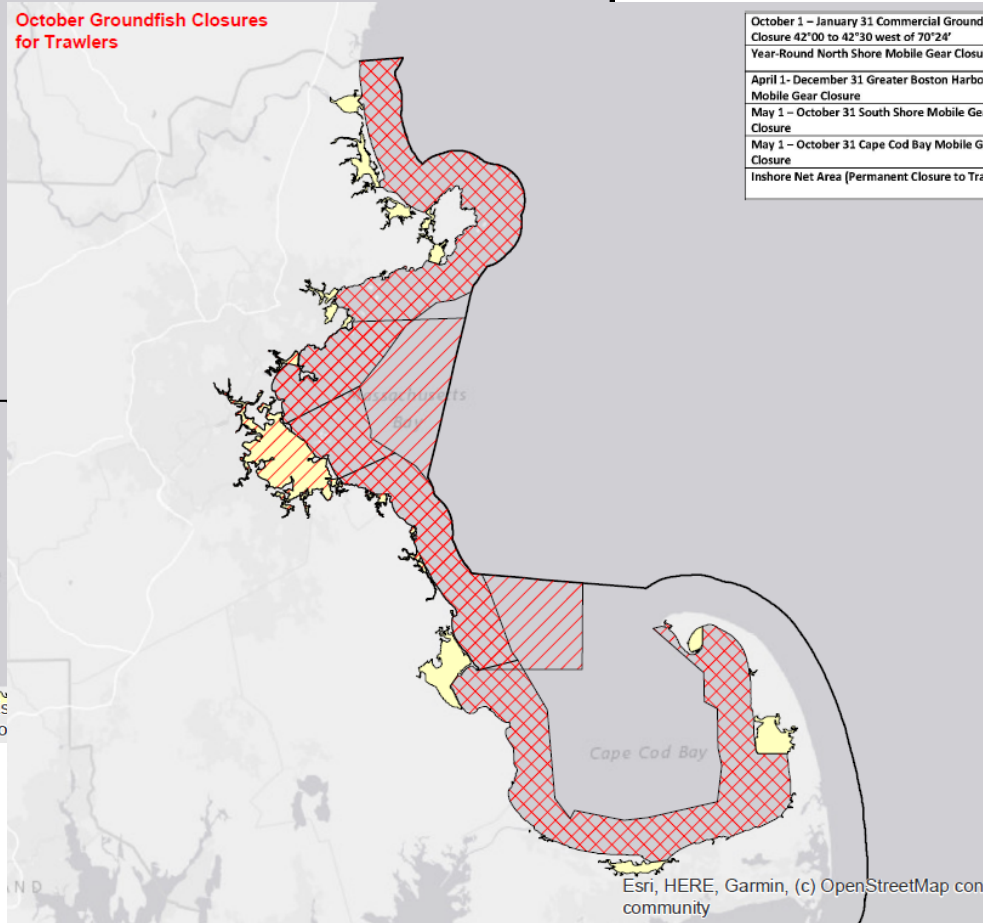
October Groundfish Closures for Gillnets

October 1 – January 31 Commercial Groundfish Closure 42°00' to 42°30' west of 70°24'	
May 15 – October 31 Greater Boston Harbor Gillnet Closure	
Inshore Net Area (Permanent Closure to Sink Gillnets)	



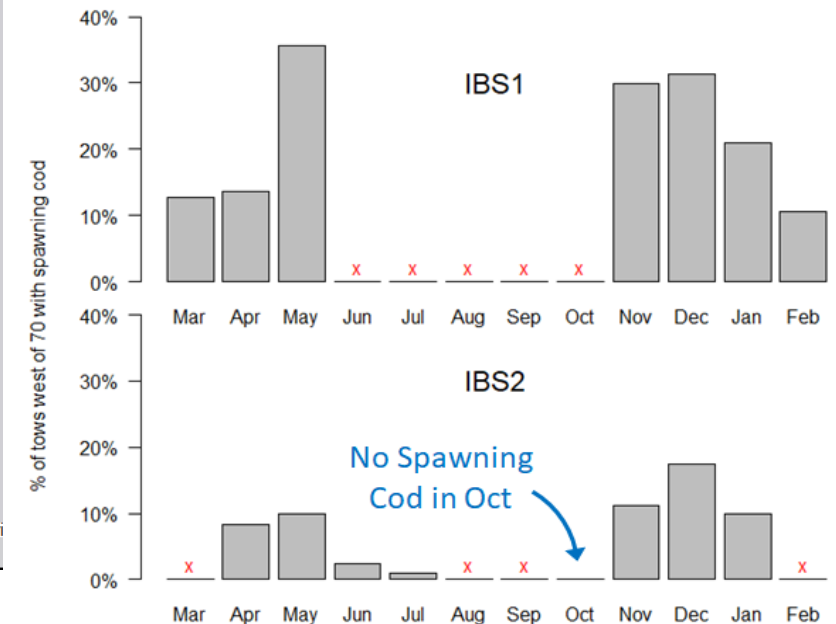
October Groundfish Closures for Trawlers

October 1 – January 31 Commercial Groundfish Closure 42°00' to 42°30' west of 70°24'	
Year-Round North Shore Mobile Gear Closure	
April 1 - December 31 Greater Boston Harbor Mobile Gear Closure	
May 1 – October 31 South Shore Mobile Gear Closure	
May 1 – October 31 Cape Cod Bay Mobile Gear Closure	
Inshore Net Area (Permanent Closure to Trawls)	

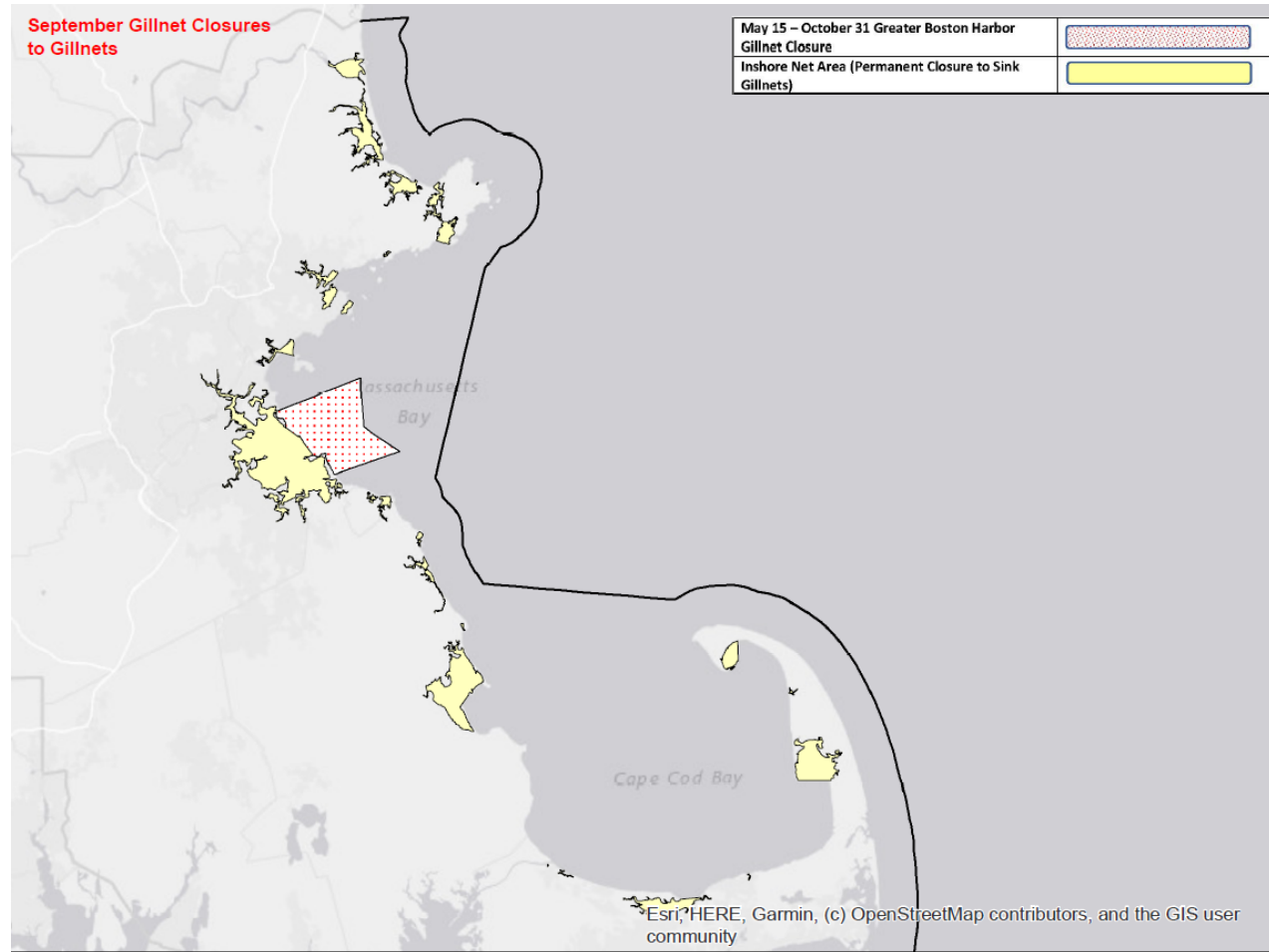


October Closures/IBS

% of Tows with Spawning Cod



Outer Boston Harbor Gillnet Closure



September 17, 2021

Massachusetts Division
of Marine Fisheries

