



**MARINE FISHERIES ADVISORY COMMISSION
BUSINESS MEETING AGENDA**

9:00 AM

September 24, 2020

Held Virtually Via Zoom

Webinar Link: <https://us02web.zoom.us/j/83605224656>

Dial In: 1-929-436-2866

Webinar ID: 836 0522 4656

1. Introductions and Announcements (9:00 – 9:10)
 - a. Review and Approval of the September 24, 2020 Business Meeting Agenda
 - b. Review and Approval of the August 20, 2020 Draft Business Meeting Minutes
2. Comments (9:10 – 9:30)
 - a. Chairman
 - b. Commissioner
 - c. Director
 - d. Law Enforcement
3. Action to Set 2020 Winter II Scup Trip Limits Items (9:30 – 9:45)
4. Future Rule Making for Winter 2021 (9:45 – 10:15)
 - a. Turtle Excluder Devices for Blue Crab Traps
 - b. Recreational GOM Cod and Haddock Rules
 - c. Housekeeping
 - i. Retail Boat Clarification on Histamine Producing Species
 - ii. Ghost Panel Size for Fish Pots
5. Discussion Items (10:15 – 11:30)
 - a. Shellfish Updates
 - i. Challenges Related to FDA Compliance
 - ii. Update on MSI Committee Reports
 - b. Issues Related to COVID-19 and the Seafood and Fishing Industry
 - i. CARES Act Fisheries Relief Program Update
 - ii. Comments from Commission Members
 - c. Draft Policy on Transfer of Black Sea Bass and Fluke Endorsements for Rod and Reel Fishermen
 - d. MFAC Sub-Committees
 - i. Convening the Law Enforcement Sub-Committee
 - ii. Forming and Convening a Commercial Striped Bass Sub-Committee
 - iii. Forming and Convening a Permitting Sub-Committee
6. Other Business (11:30 - 12:00)
 - a. Commission Member Comments
 - b. Public Comment
7. Adjourn (12:00)

Future Meeting Dates

**9AM
October 29, 2020
Location TBD**

**9AM
November 19, 2020
Location TBD**

**9AM
December 10, 2020
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.

MARINE FISHERIES ADVISORY COMMISSION

August 20, 2020

Held Virtually via Zoom

In attendance:

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

Division of Marine Fisheries: Daniel McKiernan, Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Jared Silva; Nichola Meserve; Melanie Griffin; Story Reed; Julia Kaplan; Bob Glenn; Anna Webb; Kelly Whitmore; Maggie Nazarene; and Jeff Kennedy

Department of Fish and Game: Ron Amidon, Commissioner; Mary Lee King, Deputy Commissioner; and Mark Reil, Director of Legislative Affairs.

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

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane called the August 20, 2020 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

REVIEW AND APPROVAL OF AUGUST 20, 2020 BUSINESS MEETING AGENDA

No changes to the August 20, 2020 MFAC business meeting agenda were proposed.

Chairman Kane asked for a motion to approve the draft agenda. Bill Doyle made a motion to approve. The motion was seconded by Tim Brady. The motion was approved by unanimous consent.

REVIEW AND APPROVAL OF MAY 21, 2020 AND JUNE 18, 2020 DRAFT BUSINESS MEETING MINUTES

Due to technical issues, a motion to approve the May 21, 2020 MFAC business meeting minutes was not made in the June 18, 2020 business meeting. Accordingly, Chairman Kane asked if there were any amendments to the May 21, 2020 MFAC draft business meeting minutes. No comments were made.

Ray Kane asked for a motion to approve the May 21, 2020 meeting minutes. Sooky made motion to approve the May meeting minutes. Bill Doyle seconded the motion. Motion was approved by unanimous consent.

Mike Pierdinock requested a minor modification to his comment on page 10 regarding recreational fisheries and potential mitigation funding from wind energy development projects. Jared Silva indicated that he would make this edit in the final meeting minutes.

Ray Kane asked for a motion to approve the June 18, 2020 MFAC business meeting minutes, as amended by Mike Pierdinock. Tim Brady made a motion to approve the June 18, 2020 MFAC business meeting minutes. Sooky seconded the motion. The motion was approved by unanimous consent.

CHAIRMAN'S COMMENTS

Chairman Kane hoped that everyone was staying healthy and enjoying their summer.

COMMISSIONER'S COMMENTS

Commissioner Ron Amidon first discussed fishing and boating access. There were several issues brewing related to public boat ramps. Foremost among these issues was that allowing boat ramps to remain was contributing to public health concerns regarding recreational boaters rafting together. This issue was of particular concern in Gloucester. Additionally, there were local parking issues related to the use of boat ramps. In response, there were some calls to close state-run boat ramps. However, this action was not supported and instead a task force was developed to allow boating access sites to operate safely. The Commissioner and Mike Pierdinock were involved in these efforts. With regards to the Deer Island fishing pier, the MWRA and DMF were aiming to host a grand opening event at the end of September or early October; this event was previously delayed due to the pandemic.

The Commissioner then mentioned several other items. First, he congratulated DMF on the rollout of DMF Cares Disaster Relief Program. Additionally, he noted that he had received positive public feedback regarding DMF's action to close the Cape Cod Canal to commercial striped bass fishing and extension of the recreational for-hire black sea bass season.

DIRECTOR'S COMMENTS

Director McKiernan began his comments by noting DMF's Shellfish Program was facing a series of ongoing challenges related to new and emerging federal mandates from FDA. He anticipated discussing these issues with the MFAC at their September business meeting.

Dan then stated that Governor Baker wrote to Secretary of Commerce Wilbur Ross requesting action be taken to issue a federal disaster declaration for the Atlantic sea herring fishery. Maine made a similar request about a month ago, which was focused strictly on the commercial fishery in Management Area 1A. Governor Baker's request focused on the herring fishery in its entirety.

LAW ENFORCEMENT COMMENTS

Lt. Matt Bass handled the comments for MEP. His opening remarks focused on enforcement, noting a couple of arrests on the Cape Cod Canal due to striped bass violations. He then moved on to discuss shellfish violations of the Vp. Control Plan on the South Shore, as well as MEP's focus on boating safety issues related to the pandemic. He noted there was an increase in boating accidents this summer, possibly driven by pandemic related increases in boating activity. Lastly, he discussed personnel. MEP had three officers graduate from the police academy, who are now in training, and the agency is in the early stages of hiring seven more officers.

Mike P. asked for clarification on MEP's ability to seize and confiscate gear, vessels, and vehicles involved in marine fishery violations. Lt. Bass noted that this was typically limited to the confiscation of fishing gear. When seizing assets, there were issues related to the agency's storage capacity and the financial impacts of the seizure on the accused. This effectively constrains their ability to seize vessels and vehicles in most cases. Captain Clayton noted that MEP's inability to store large property is a constraining factor in seizing certain items.

Sooky mentioned enforcement issues with the lobster fishery in lower Cape Cod Bay and allegations that a particular lobsterman was violating trawl length and trap limit regulations. Sooky stated that local lobstermen were frustrated with MEP's response to the situation. Lt. Bass indicated that he would follow up with Sooky after the meeting.

Update on Performance of 2020 Quota Monitored Fisheries

Story Reed provided an update on fishery performance in certain 2020 quota monitored fisheries.

- Scup remained underutilized in 2020 with landings down slightly compared to recent years.
- The wintertime Period I fishery took about 25% of the annual summer flounder quota. With summertime landings factored in, about 55% of the quota had been landed. Story noted that there was reduced participation in this year's summertime fishery, likely in response to a number of factors including the pandemic, market, and environmental issues.
- About 70% of the state's horseshoe crab quota had been taken. This appeared to be driven by early summer hand harvest landings. Summertime trawl fishery landings have been slow due to reduced participation in the summer flounder trawl fishery.
- About 35% of the black sea bass quota had been landed. Compared to last year, landings are about 30,000 pounds off to-date. Price was also depressed this year, which could be the result of a pandemic related loss of restaurant markets.
- About 35% of the striped bass quota had been landed. Striped bass catch rates are down compared to recent years, particularly around Cape Cod. However, catch rates have been strong off Boston and the North Shore and most of this year's landings are attributable this geographic area.

- About 42% of the bluefish quota had been taken. This was driven by a recent substantial increase in catch rates. In 2015 and 2016, there were similar trends within the bluefish fishery of a later spike and landings.
- Massachusetts was on track to close its menhaden fishery in July. However, the state received quota transfers that allowed the fishery to remain open through August 6. As of August 7, 100% of the quota was taken. As a considerable abundance of menhaden remained in state-waters, DMF then applied to the ASMFC to participate in the Episodic Event Set-Aside (EESA).

Nichola discussed MA's enrollment into the EESA fishery. Under the ASMFC's Menhaden FMP, 1% of the annual coastwide commercial quota is set aside for the northeast states' use should they utilize their available state-specific quota and unusually high abundances of menhaden remain available in state waters prior to September 1. DMF closed the state's quota managed menhaden fishery effective August 7, having projected that full utilization of the state's (transfer-adjusted) quota would occur then. The agency then applied to the ASMFC to enroll in the EESA program. Effective August 17, DMF re-opened the limited entry fishery under the EESA quota. Roughly 425,000 pounds of the 4.76 million-pound EESA remained available, with only Massachusetts participating in the program at the time. Nichola noted that once 100% of the EESA is taken and the set-aside fishery is closed, DMF may look for additional quota transfers if menhaden remain in state-waters in substantial numbers.

Mike P. asked for clarification regarding the scale of the EESA. Nichola stated the EESA was 1% of the overall coastwide menhaden quota, and for 2020 was set at about 4.76 million pounds. Nichola added that ME enrolled in the EESA program earlier in the summer and utilized most of the available set-aside. The fishery in ME has since waned and about 425,000-pounds of the EESA remained available to northeast states. MA was now fishing on this remaining allocation.

Mike P. asked if the pandemic was having impact on the menhaden market. Nichola noted that there was demand for menhaden. Given the current state of the herring resource and herring fishery, it was likely that lobstermen turned to menhaden for bait. Chairman Kane mentioned menhaden is used throughout the Atlantic coast as bait for trap and rod and reel fisheries.

Mike P. then asked if any other states were taking advantage of the EESA. Nichola noted that ME had earlier in the year, but now MA was the only state actively participating in the program.

Mike P. expressed concerns that continued extraction in MA may cause local forage depletion and impact fall fishing for striped bass and tuna. Nichola stated that the EESA was part of the coastwide quota and this quota was set conservatively and with consideration for menhaden's role as forage. Director McKiernan noted that there were large abundances of menhaden throughout state-waters and only a small amount of the EESA remained available for harvest. He added that DMF was also requiring that vessels participating in this fishery fish at a more restrictive 25,000-pound trip limit

(rather than the 120,000-pound limit allowed by the EESA regulations). This was being done to maximize the number of fishing days afforded to participating small scale purse seiners, facilitate the accurate monitoring of the EESA, and to balance the needs of the commercial bait fishery with menhaden's role as a forage species.

Sooky Sawyer added that recent weather events may have impacted the availability of menhaden. He noted the nor'easter blew in cold water and the menhaden that were available around Gloucester Harbor had become less abundant. Prior to the storm, the purse seiners fishing around Gloucester were taking their 25,000-pound limit inside the harbor.

Capt. Clayton asked if the pandemic's impact on fishery performance would provide conservation benefits. The Director stated it was difficult to project what this would mean for stock conditions over the long term. He noted that for certain commercial fisheries harvest may be down due to low ex-vessel value, but there was also anecdotal evidence to suggest that recreational fishing effort had increased this summer.

ACTION ITEMS

In-Season Adjustments to Commercial Fishing Limits for Quota Managed Species

The Director stated that DMF built into its regulations the ability to make in-season adjustments to commercial fishing limits for quota managed species. This allows fisheries to open the season with more conservative limits that can help prevent market gluts and maintain a steady flow of fish into commerce throughout the summertime season. Then if quota remains available towards the end of the season, limits can be adjusted to provide additional access to the quota before the weather worsens and fish migrate out of our waters.

Several memoranda were provided to the MFAC detailing recommended in-season adjustments to commercial striped bass, black sea bass, and summer flounder limits. These recommendations were developed based on fishery performance as of August 10 and ongoing discussions among staff with dealers and commercial fishermen. Dan reminded the MFAC that he forecasted making such adjustments back in April when the MFAC voted up the 2020 commercial fishing limits for these species. McKiernan added that DMF accepted public comment on these actions and there was a lot of opposition from recreational fishermen to the making any in-season adjustment to the commercial striped bass fishery that would enhance access.

Striped Bass

The Director recommended the MFAC vote in favor of adding two open fishing days – Tuesdays and Thursdays – to the commercial striped bass fishery effective September 1 for the remainder of the 2020 fishing year. This would increase the number of potential fishing days between now and the end of October from 19 to 36. DMF did not recommend going to seven-days per week in October, as proposed in the August 10 advisory, in response to concerns raised in public comment by recreational fishermen.

McKiernan indicated that part of the reason why the commercial fishery failed to achieve its quota in recent years was that the current management system. This system was implemented when there were better fishing and stock conditions, and it was designed to spread the quota out over the season to prevent market gluts. Under current circumstances, these same rules limited the functionality of the commercial fishery.

The Director stated that regardless of the outcome this recommendation, he was interested in a comprehensive review of the management and performance of the commercial striped bass fishery. To this end, he suggested convening a MFAC sub-committee later this year to begin these discussions.

Kalil Boghdan – noting the lack of a commercial striped bass fisherman on the MFAC and the usefulness of past industry working groups – questioned whether outside interests should also participate in the sub-committee. Dan stated his preference was to first work through select members of the MFAC and then work through the public.

The Director recommended having the commission members weigh in individually before moving a motion on the recommendation.

Kalil Boghdan stated that while he generally supported commercial fishing, he could not vote in favor of any recommendation to increase the 2020 commercial striped bass limits. While DMF explained that declining performance was likely the result of a number of factors (e.g., stock conditions, predation, environment, weather, effort, markets), he did not feel like the relative effects of each factor were well understood. Given the results of the most recent stock assessment, he was concerned that poor performance was being driven by stock conditions and increasing access may negatively impact recovery. Comments from fishermen regarding the performance of the fishery around Cape Cod and the availability of larger fish in the area furthered these concerns. Lastly, he was not convinced that the recommended action would have a substantial positive economic impact on commercial fishermen given current performance and therefore the risk became even more difficult to justify.

Tim Brady agreed with Kalil.

Mike P. indicated that he could not vote in favor of DMF's current recommendation. He was in communication with a number of commercial and recreational fishermen regarding the recommendation. The comments he heard from recreational fishermen mirrored the concerns raised by Tim and Kalil. However, even among the commercial fishermen he spoke with, there was little support for increasing access this year.

He noted fishermen from both sectors expressed frustration regarding the fishery's current performance. Reports were that the number of large fish throughout state-waters were down and their presence around Cape Cod were greatly diminished compared to recent years. Some commercial fishermen indicated that it was difficult to target large fish and they were picking through quantities of sub-legal sized fish to catch a keeper. Mike P. highlighted that inshore water temperature may be a critical factor in

this, as larger fish are more sensitive to water temperature and aggregations of large fish were being found in the cooler and deeper waters around Boston and Cape Ann (as well as off Block Island).

Bill Doyle and Sooky Sawyer supported the Director's recommendation.

Chairman Kane stated that he spoke with several commercial fishermen who supported DMF's recommendation.

Ray Kane asked Dr. Mike Armstrong to address some of the concerns expressed in public comment and by MFAC members regarding the status of fishery. Armstrong stated that the stock assessment shows the stock is overfished with overfishing occurring. It also demonstrates that the overall number of larger fish is diminished compared to recent peak years. However, the quota is set with consideration for these factors.

He added that stock condition is also only part of the story regarding fishery performance. Another factor is the impacts of environment on geographic distribution. The presence of large fish off Cape Cod is influenced by a number of environmental factors. Warm waters increase metabolic demands on striped bass, particularly on larger fish. With the inshore waters along Cape Cod Bay and Nantucket Sound exceeding 70°F, it is likely that the fish that typically aggregate in this area are moving offshore to deeper and colder waters. Additionally, the presence of predators like seals and white sharks along Cape Cod is also likely having a disruptive impact on the striped bass fishery in the area.

Armstrong then discussed concerns about the state's commercial striped bass fishery taking large fecund females. He felt this concern was generally overstated given that SSB is factored into setting the quota. Moreover, by going to a recreational slot limit, the harvest of large females has been greatly reduced coastwide. He noted that prior to this year, most of the harvest of these fish was attributable to the recreational sector.

Kalil and Mike P. then asked about permitting. The Director indicated that past analyses show that DMF issues about 4,000 permits a year and about 1,000 land some quantity of striped bass. McKiernan noted that Mike Armstrong and Story Reed were expected to update DMF's running commercial striped bass performance analysis and permitting would be a subject of the sub-committee meeting.

Mike P asked if MA could potentially lose its quota if it were unused. Dan noted that this was possible but unlikely. Any such redistribution would have to occur through a change in the ASMFC's FMP. Ray Kane was more concerned about a potential reallocation. He stated that DE was pushing for additional quota allocation and was concerned that this could come from MA if the state continued to underutilize its quota.

Based on initial feedback, the Director modified his recommendation. Rather than adding Tuesdays and Thursdays, McKiernan recommended adding just Tuesday. He

noted that some commercial fishermen have complained that the current two-day per week schedule does not allow them to fish overnight across two consecutive open fishing days. Instead they have to fish, land, and sell the fish on the same day, which can have a constraining effect on effort. Overnight fishing could be accommodated by adding Tuesdays. Dan speculated that this may allow for more profitable and safer fishing activity. He also noted that it also allowed DMF to explore the idea on an interim basis, as it may deserve consideration in future rule making.

The Chairman asked if there were any additional comments on the Director's modified recommendation.

Mike P. indicated that for the reasons previously stated he would not support adding additional days and would support status quo. However, rather than voting against the measure he would abstain from voting on the modified recommendation.

The Director amended his recommendation so that effective September 1, 2020, Tuesdays will be added to the commercial striped bass week going to three open fishing days per week (Mon-Wed).

Ray Kane asked for a motion to approve the recommendation. Sooky moved to approve the recommendation. Bill Doyle seconded the motion. The motion proceeded to a roll call vote with Sooky Sawyer and Bill Doyle voting in favor of the motion; Kalil Boghdan and Tim Brady voting against the motion; and Mike Pierdinock abstaining. Chairman Kane broke the tie by voting in favor of the motion. The motion passed 3-2-1.

After this vote, Bill Doyle temporarily left the meeting. A quorum remained with Chairman Kane, Mike Pierdinock, Sooky Sawyer, Tim Brady, and Kalil Boghdan remaining.

Summer Flounder

The Director recommended that the MFAC vote in favor of the following in-season adjustments to the 2020 commercial Period II summer flounder limits: (1) an increase in the trawl fishery trip limit from 400 pounds to 600 pounds during the period of August 23 – October 3 at the existing five-days per week (Sundays through Thursdays); and (2) beginning October 4, increase the commercial trip limit to 1,000 pounds and allow commercial fishing seven-days per week (adding Fridays and Saturdays). If approved, those vessels participating in the Period II summer flounder pilot program would be allowed to land up to 1,200 pounds of summer flounder taken in 600-pound increments over a two-consecutive-day trip.

Kalil Boghdan asked for DMF to provide additional information regarding the status of the summer flounder stock. Nichola Meserve responded that the summer flounder stock assessment indicates that the stock is not overfished and overfishing is not occurring, with the biomass about midway between target and threshold levels. SSB has been declining due to poor recruitment. The coastwide commercial quota is set to increase by

8% in 2021 (due to the Council's revised risk policy) and MA is expected to see an additional increase under the new commercial reallocation methodology scheduled for implementation.

Kalil then asked if MA was on target to harvest the quota. DMF's quota monitoring graph indicated that the quota was likely to be taken in late November if catch rates remained status quo. Dan indicated that this action would give greater access to the offshore fleet earlier in the season. He noted that declining performance from the inshore fleet contributed to reduced summertime landings over the past two years; this was likely due to a number of economic and environmental factors, which were outlined in the memorandum.

Lt. Colonel Moran wanted clarification that the fluke landing window would remain in place independent of any potential in-season adjustment. Jared Silva confirmed the fluke landing window would remain intact.

Mike P. asked if DMF could estimate percent landings by gear type. Jared Silva stated that trawl gear has historically been the dominant gear type in this fishery, with seasonal rod and reel landings during the summer. Story stated that DMF cannot yet provide exact figures for this year. Available quota monitoring data relies on SAFIS dealer data, which is often unreliable for gear type. Harvester data, which is more reliable for gear type, is not available in real-time and could not be audited for this year until the middle of 2021. That said, Story and Jared both confirmed that participation in the inshore trawl fishery is down by about 30% based on quota monitoring data and pilot program participation. Based on his interactions with fishery participants and dealers, Jared suspected that current landings were being driven by offshore fishing effort and not the inshore fishery.

Mike Pierdinock wanted clarification that landings are coming from federal waters and counting against our quota. Jared confirmed this.

Mike P. added that he supported the Director's recommendation. However, he was concerned about additional commercial fishing effort in state-waters and how this may impact the inshore recreational summer flounder fishery. To implement such would impact the seasonal availability of the recreational resource in the nearshore waters around the Cape and Islands, where such negative impacts would not be evident if there was no increase in commercial fishing effort.

Ray Kane called for a motion to approve the Director's recommendation. Sooky Sawyer made a motion to approve. Mike P seconded the motion. The motion proceeded to a roll call vote and passed unanimously.

Black Sea Bass

The Director recommended that the MFAC vote in favor of the following in-season adjustments to the 2020 directed commercial black sea bass limits: (1) adding Mondays and Wednesdays as open fishing days beginning on August 31; (2) adding Fridays and

Saturdays as open fishing days beginning October 2; (3) increasing the pot fishery trip limit by 25% from 400 pounds to 500 pounds effective August 31; and (4) increasing the hook and line fishery trip limit by 25% from 200 pounds to 250 pounds effective August 31.

Mike P. noted the market for black sea bass was soft this year. He thought this was likely attributable to the pandemic's impact on certain business sectors (e.g., restaurants). Ray Kane agreed, noting that most of our commercial landings are distributed through New York and the local markets for the product are underdeveloped. That said, Chairman Kane preferred providing commercial fishermen access to the allocation and letting the market dictate effort. Mike P. concurred with Ray Kane.

There were no further comments.

Ray Kane asked for a motion to approve the Director's recommendation. Mike P. made a motion to approve. Tim Brady seconded the motion. The motion proceeded to a roll call vote and passed unanimously.

Final Recommendation to Close the Cape Cod Canal to Commercial Striped Bass Fishing

The Director reminded the MFAC that DMF filed an emergency regulation on June 3, 2020 to close the Cape Cod Canal to commercial striped bass fishing. This included prohibitions on: (1) retaining any striped bass measuring 35" or greater; (2) retaining more than one striped bass; or (3) being in possession of any such fish within 1,000 feet of the Canal's shoreline with exceptions for fish lawfully caught outside the Canal being transported to market. The regulation was set to expire on September 3, 2020 at the conclusion of the 90-day emergency period. At this time, the Director recommended that the MFAC vote in favor of adopting DMF's recent emergency action to close the Cape Cod Canal to commercial striped bass fishing as a final regulation; DMF was not proposing any modifications be made to the final regulation from the emergency action. This would make the current closure a final regulation and if subsequent changes are warranted, they would be subject to future rulemaking.

The Director noted that written public comment and the public comment received at the August 3 hearing were overwhelmingly supportive of the action.

Sooky Sawyer wondered if the commercial striped bass fishery would have performed better this year were it not for this action. Story Reed stated that trip level reports from recent years indicate that only about 5% of the commercial catch is effectively reported as coming from the Canal. Accordingly, the impact of this closure on the performance of the 2020 commercial fishery was likely minimal.

Lt. Colonel Moran stated MEP supported the recommendation.

Mike P. added that many anglers have reached out to him in support of this recommendation. He did not view this as a conservation effort, but rather a measure to

limit certain fishing activities that were causing broader public access issues. He was optimistic that this would quell some of these public access issues and further restrictions would not be placed on Canal fishing activity moving forward.

Ray Kane asked for a motion to approve the final recommendation. Mike Pierdinock made motion to approve. Sooky seconded the motion. The motion proceeded to a roll call vote and passed unanimously.

DISCUSSION ITEMS

Incidental Take Permit Application and Future Rule Making Affecting Fixed Gear

Bob Glenn, a senior DMF biologist, provided the MFAC with a presentation and update on DMF's application for an Incidental Take Permit (ITP) for fixed gear fisheries. By way of background, in 2019, the State (and DMF) were sued by Max Strahan. The claim was that DMF's licensing and regulation of fixed gear and vertical buoy lines violated the Endangered Species Act (ESA, as they cause takes of endangered whales and turtles through buoy line entanglements. In April, a federal court found Mr. Strahan was likely to prevail on his claim and ordered to apply for an ITP under Section 10 of the ESA.

Bob then provided an overview of the ITP application process. He also informed the MFAC of certain regulatory actions the state may have to take to obtain an ITP. This included a seasonal (February 1 – April 30) trap gear closure throughout all state waters; extending existing gillnet closures in Cape Cod Bay; a maximum buoy line diameter of 3/8"; 1,700 pound breaking strength requirement for buoy lines; and limitations of the issuance of season lobster licenses.

Kalil Boghdan thanked Bob Glenn for the presentation. Bob and Kalil then discussed the cause of recent right whale mortalities and the frequency of entanglements.

Mike P. and Bob then discussed how DMF's ITP permit application interfaced with the Atlantic Large Whale Take Reduction Plan and ongoing state-federal conservation efforts. Bob indicated that in response to the federal court decision, DMF had to remove additional risk from its fisheries and further distinguish its conservation program from other jurisdictions.

Mike P. then expressed concern over seasonally closing all state-waters to trap gear if there is no evidence that this gear puts right whales at risk, as they do not frequent these areas. Bob Glenn noted that such actions are likely necessary for DMF to obtain a no injury determination with NOAA Fisheries. This determination could enhance the likelihood of a successful ITP application. Bob also opined that, in comparison to potential alternatives, losing trap fisheries state-wide from February 1 – April 30 would enhance DMF's ability to pursue a successful ITP application with limited economic impact on the lobster fishery.

Kalil Boghdan asked if the ITP application would also address boating activity, as ship strikes are another cause of death to right whales. Bob stated DMF is not planning to

implement additional speed reductions in the Cape Cod Bay during the winter and early spring. The current rules protect these whales when they are aggregated in the Bay.

Update on Issues Related to COVID-19 and Impacts on the Fishing and Seafood Industries

CARES Act Fisheries Relief in MA

Kevin Creighton provided a brief presentation to update the MFAC on DMF's CARES Act relief program. The presentation focused on application and appeal period timelines and timelines for potential payments. The head boat fleet application and appeals period was complete and payments had occurred. The charter boat and aquaculture application and appeals process was ongoing and DMF anticipated payments would be made to these entities in mid-September. The application period for the seafood processing and commercial fishing sectors were forthcoming. DMF anticipated the application period for seafood processors would occur from late-August through mid-September and the period for the commercial fishing sector would occur from mid-September to mid-October.

Kalil asked about minimum activity eligibility criteria for for-hire charter boat operators. Kevin stated they had to take at least 50 for-hire trips in a calendar year from 2017 to 2019 to be considered eligible for relief. Kevin anticipated that only about 200 charter boat would qualify; DMF typically issues more than 800 permits annually. However, applications were sent to all 2020 permit holders.

The Director added that each sector, with input from their sector working groups, established certain activity filters and scalars. The filters were developed to establish minimum eligibility criteria to ensure monies went to active industry members. The scalar is used to determine how much relief will be distributed to eligible permit holders based on the level of their activity.

Mike P. thanked DMF for all the work on the CARES relief efforts. He then asked if DMF anticipated additional federal relief funds were going to be made available. Dan had conversations with Senator Markey's staff on the subject, but he was uncertain if Congress would approve additional funding.

DMF Seafood Marketing Promotion

Story Reed provided a brief presentation to update the MFAC on DMF's Seafood Marketing Program's efforts. DMF was engaged in audio and digital seafood promotions via iHeart Radio, with the ads totaling more than 6 million impressions. DMF also developed an online chef's seafood series, which featured recipes from local chefs. How-to videos for at home cooking are forthcoming. Story then went on to discuss the \$36-million Food Security Infrastructure Grant, which seeks to ensure that farmers, fishermen, and other local food producers are better connected to allow for a more resilient food security system. Three grants have been approved to-date and Story expected three more would be approved in the near future. Story then mentioned the

MDAR online platform - MassGrown Exchange - that matches wholesalers with retailers. DMF will be working with MDAR to promote this platform to seafood dealers.

New Workplace Safety Standards for For-Hire Fleet

Dan highlighted the recently updated workplace safety standards for the for-hire fleet. These new standards constrained certain larger capacity vessels (100+ people). Whereas these vessels could previously work at 50% capacity, they are now constrained to a maximum of 50 persons. Dan noted that he was also made aware of concerns regarding mask wearing on larger passenger vessels.

Extension of For-Hire Black Sea Bass and Gulf of Maine Cod Fisheries

DMF successfully petitioned the ASMFC to accommodate an extension of Massachusetts recreational for-hire black sea bass fishing season. This was proposed in response to the for-hire fleet losing access to the spring fishery based on the Governor's stay-at-home order and subsequent social distancing guidelines limiting the size of gatherings. This extension will allow the for-hire black sea bass fishery to remain open through October 9, which is also the end of the state's recreational fluke season. Dan credited Nichola Meserve's with the success of this proposal.

Dan then stated that NOAA Fisheries extended its Gulf of Maine cod season for for-hire vessels. Rather than the season occurring from September 15 – September 30, it would now occur from September 8 – October 7. The season for all other recreational anglers would remain September 15 – September 30.

Limited Entry Permit Transfer Policy on Active Fishing in 2020

At a recent MFAC meeting, Sooky Sawyer requested DMF review its current limited entry permit transfer policy regarding active fishing. He noted that older fishermen may decide to forgo fishing this year due to the risk posed to them by the pandemic. This personal health decision may then impact their ability to meet the actively fished threshold and could disallow them from transferring their limited entry permit in the future. DMF reviewed and updated this policy. The revised policy allows for 2020 to be omitted when reviewing the "four-out-of-the-past-five-year" lookback period used to determine if a permit transfer meets the actively fished criteria for a transfer.

Sooky thanked the DMF.

Resumption Federal At-Sea Observer Program

NOAA Fisheries recently resumed its At-Sea Observer Program along the Atlantic coast. This decision was controversial. One area of concern was the ability for observers to comply with state-specific quarantine guidelines as they move from state-to-state to observe trips. Under the Governor Baker's order, commercial fishing activities that take place over state lines are exempt from the state's quarantine standards under the business/employment exemption. DMF has requested that observers be similarly exempt, particularly as they are servicing an essential business.

Melanie Griffin added other controversial areas include vessel insurance coverage and the risk of transmission to crew from observers and vice versa. NMFS tried to provide national standards, but ultimately standards were left to the third-party observer programs.

As an aside, Dan noted DMF cancelled its in-shore trawl survey this year. He was hopeful that the fall survey could occur and DMF was working with NOAA Fisheries to develop safety protocols to limit interactions between the state's survey program staff and the federal NOAA Corps vessel operators. However, the burden this placed on the program was untenable and it was decided to wait until the spring. Dan noted his concern regarding the likely one-year gap in survey data for MA and in other affected surveys along the coast.

Federal and Interstate Fisheries Management Updates

NEFMC

Melanie Griffin discussed ongoing issues at the NEFMC, which was scheduled to meet next from September 29 – October 1. It is a weighty agenda comprised of several final actions including: Groundfish Amendment 23 (monitoring), Scallop Amendment 21 (Northern Gulf of Maine management and Limited Access General Category possession limit), and Atlantic herring Framework 8 (2021-2023 specification and incidental catch limits in mackerel fishery).

The Amendment 23 public comment period wraps-up on August 31st and the Scallop Amendment 21 public comment period is underway now through September 4th with two remaining webinars on August 27 and September 4. Additionally, the Council will discuss limited access for skates (Amendment 5) and the Conservation Law Foundation's petition for Secretarial rulemaking to prevent overfishing on and rebuild Atlantic cod.

ASMFC and MAFMC

Nichola Meserve provided some updates from the ASMFC and the MAFMC:

- The ASMFC approved the first-ever ecological reference points (ERPs) for menhaden. These reference points will be used to set the TAC in a manner that accounts for the role menhaden play as forage. Nichola expected the Menhaden Board to select a TAC for 2021-2022 at the ASMFC Annual Meeting in October based on various projections to be provided by the Technical Committee.
- 2021 commercial quotas and recreational harvest limits (RHL) were set for bluefish, scup, summer flounder (fluke), and black sea bass. The actual effect of these RHLs on 2021 recreational fishing limits is dependent on 2020 MRIP estimates; 2020 estimates may be subject to enhanced uncertainty given the pandemic interrupted MRIP sampling efforts in certain states. Compared to 2020 coastwide levels:

- The bluefish commercial quota will remain status quo, but the RHL will be reduced by 12%;
 - The scup commercial quota will be reduced by 8% and the RHL will be reduced by 7%;
 - The summer flounder commercial quota and RHL will both be increased by 8%; and
 - The black sea bass commercial quota and RHL will both be increased by 9%.
- A range of alternatives was approved for the MAMFC's draft Fluke, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment. The draft amendment could be approved for public hearing at the December joint meeting of the ASMFC and MAFMC. Actions regarding for-hire sector separation were removed from this draft amendment and will be addressed through the Recreational Reform Initiative.
 - The MAFMC's draft Black Sea Bass Commercial Reallocation Amendment was approved for public comment. Public hearings are expected to occur virtually this fall. Final action may be delayed in response to finalizing the MAFMC's Commercial/Recreational Allocation Amendment, given the interplay between the two proposed actions.
 - A draft range of alternatives are expected to be reviewed and approved at the December joint meeting of the ASMFC and MAFMC for the draft Bluefish Rebuilding and Allocation Amendment.
 - The MAFMC initiated the Recreational Reform Initiative. This initiative will address a number of ideas to improve the management of certain recreational species, including fluke, scup, sea bass and bluefish. Nichola expected the initiative would provide certain recommendations that would then be formalized into a future addendum or amendment. For-hire sector separation will be explored through this initiative.

Updates from Commission Members

Kalil Boghdan thanked those in DMF who donated in his brother's honor.

Tim Brady thanked everyone involved in the process of expediting CARES Act relief payments to head boats.

Mike P. thanked DMF for their work to extend the recreational for-hire black sea bass and Gulf of Maine cod season extensions.

Ray Kane asked that Melanie Griffin provide more regular NEFMC updates to the MFAC.

PUBLIC COMMENTS

There were no public comments.

ADJOURNMENT

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

MEETING DOCUMENTS

- August 20, 2020 MFAC Business Meeting Agenda
- May 21, 2020 MFAC Business Meeting Draft Minutes
- June 18, 2020 MFAC Business Meeting Draft Minutes
- Menhaden Episodic Event Set Aside
- Recommendation to Close Cape Cod Canal to Commercial Striped Bass Fishing
- Updated Workplace Safety and Reopening Standards for For-Hire Operations
- For-Hire Black Sea Bass Fishery Extension
- GARFO Advisory on 2020 Recreational GOM Cod and Haddock Limits
- Federal Register Notice on 2020 Recreational GOM Cod and Haddock Limits
- DMF LE Permit Transfer Policy on Active Fishing for 2020
- GARFO Bulletin on NEFOP Program
- ASMFC Summer 2020 Meeting Summary
- ASMFC and MAFMC Joint August Meeting Summary

UPCOMING MEETINGS

9AM September 24, 2020 Via Zoom	9AM October 29, 2020 Via Zoom	9AM November 19, 2020 TBD	9AM December 10, 2020 TBD
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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: September 18, 2020

SUBJECT: **Recommendation to Set 2020 Winter II Scup Limit**

Recommendation

I recommend that the MFAC adopt a 24,000-pound commercial possession and landing limit for scup during the 2020 Winter II period (October 1–December 31). This action, taken via the Declaration Process, will complement the federal coastwide possession limit recently set for this period.

Rationale

If approved, this action will allow commercial vessels to harvest, possess and land up to 24,000 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 24,000-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 2020 coastwide quota is 22,229,210 pounds, resulting in roughly 10.0, 8.7 and 3.5 million pounds allocated to the three periods. NOAA Fisheries may transfer unused quota from the Winter I period to the Winter II period, with the Winter II trip limit being set based on the adjusted available quota. Specifically, the Winter II period has an initial trip limit of 12,000 pounds, which is increased by 1,500 pounds for every 500,000 pounds of unused Winter I quota that is rolled over to Winter II.

On September 11, 2020, NOAA Fisheries announced their 2020 Winter II commercial scup limits (see [Federal Bulletin](#)). NOAA Fisheries had transferred 4,850,963 pounds of unused quota from the Winter I period to the Winter II period, resulting in a Winter II commercial quota of 8,394,299 pounds. Per the above formula, NOAA Fisheries set the federal Winter II commercial scup limit at 24,000 pounds. In

response, DMF issued an advisory notifying the public of this federal action and that DMF was soliciting public comment on adopting a complementary state possession and landing limit (see [Advisory](#)).

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 public comment process. This is the same process that we recently used last month for making in-season adjustments to commercial fishing limits and is explained in the September 11 Advisory.

Historically, the annual setting of these state limits has generated only nominal public interest. Earlier this year, DMF changed its service for delivering these notifications and this has increased the agency's capacity for soliciting public comment and subsequently enhanced the quantity of feedback we receive. Despite this, only a small number of comments have been received to date.

The comments received are from recreational fishermen and they object to DMF setting these complementary commercial limits for scup. They object to this action due to concerns about local recreational fishing performance and management. While I understand the concerns raised, I do not agree with the conclusions made.

The most recent scup stock assessment (data through 2018) shows that the stock is rebuilt, overfishing is not occurring, and SSB is about two times the target. The current quota reflects these scientific underpinnings. Moreover, even if conservation were needed, the state should not constrain the ability for offshore vessels to land lawful quantities of fish taken in federal waters. This would not effectively promote conservation, but instead negatively impact our seafood industry by forcing vessels to land the product in other states along the coast where they may be permitted.

It is also worth noting that the ASMFC and MAFMC are currently developing the Summer Flounder, Scup and Black Sea Bass Commercial/Recreational Allocation Amendment, which explores potential modifications to the sector allocations for these species. The ABC for scup is currently allocated to each sector using a 78/22 percent split favoring the commercial fishery, based on historical scup catch during the late-1980s and early-1990s. This allocation system may no longer be appropriate given changes to the fisheries and stock status. In recent years, the commercial quota has been underutilized, largely due to lack of market for the growing quota and low ex-vessel value. Meanwhile, the recreational fishery is bumping up against its harvest limit with our new understanding of recreational harvest (i.e., MRIP changes). If approved, this Amendment may help address some of the perceived inequities between the two sectors that are expressed in the comments received.

Attachment

September 11, 2020 DMF Advisory
Public Comment



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DANIEL J. MCKIERNAN
Director

September 11, 2020

Marine Fisheries Advisory

FEDERAL 2020 WINTER II SCUP QUOTA AND POSSESSION LIMIT SET; DMF PROPOSES TO ADOPT COMPLEMENTARY LIMIT

NOAA Fisheries has transferred 4,850,963 pounds of coastwide commercial scup quota that went unused in the Winter I period (January 1–April 30) to the Winter II period (October 1–December 31). This results in a revised Winter II coastwide commercial scup quota of 8,394,299 pounds. As a result of this rollover, NOAA Fisheries is setting the federal Winter II commercial scup trip limit at 24,000 pounds. For more details, please review the [federal bulletin](#).

The Division of Marine Fisheries is proposing to establish a complementary 24,000-pound state limit for the Winter II period. The Winter II fishery occurs primarily in federal waters and 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.

Public comment is now being sought on this proposed action. Public comment will be accepted through 5PM on Friday, September 25, 2020. Written comment may be submitted to Director Daniel McKiernan by e-mail (marine.fish@mass.gov) or post (251 Causeway Street, Suite 400, Boston, MA 02114). Note that while public comment will be accepted through September 25, 2020, the Marine Fisheries Advisory Commission will vote on this proposal at their September 24, 2020 business meeting. This concurrent process is consistent with the state's regulations for setting these Winter II limits.

For more information regarding the management of scup in Massachusetts, please visit our website: www.mass.gov/marinefisheries

From: [The Wizard](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Commercial Scup increases
Date: Monday, September 14, 2020 4:15:50 PM

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

I love the way you guys screw the recreation fisherman and give the commercial guys everything they could ask for. We can't let children catch small scup, we can't use them for bait unless they are over what 10" or so. But you can give away 24000 pounds when the fishery is in trouble just because they didn't meet some bloated quota last spring? They probably couldn't catch them because you already let them decimate the populations for years.

Sincerely can't wait till the rec guys wake up and organize to put you all out of work. Your day is coming.

Dan Feeney

Fishermen for sustained yield first, recreation second, and commercial only for what's left if any.

Sent from [Mail](#) for Windows 10

From: [n.n](#)
To: [Fish, Marine \(FWE\)](#)
Subject: public comment regarding scup
Date: Sunday, September 13, 2020 11:40:00 PM

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

My grandfathers, father, myself, uncles...etc...we always had a reliable supply of scup. The past two years there have been absolutely NO scup in the Slocum River and off Mishaum Point and Lloyd State Park in Dartmouth, MA.

It has NEVER before been this bad...absolutely nothing when using clams, sea worms, squid, etc...they are GONE!

We got to pay a salt water fishing lic. fee beginning several years ago - ever since the fishing has progressively become FAR WORSE!

The only wildlife in Mishaum Harbor the last week....were the seals. This talk of 8 MILLION pounds of scup is a laughable bit of salt in the wound...what scup?? Where?!

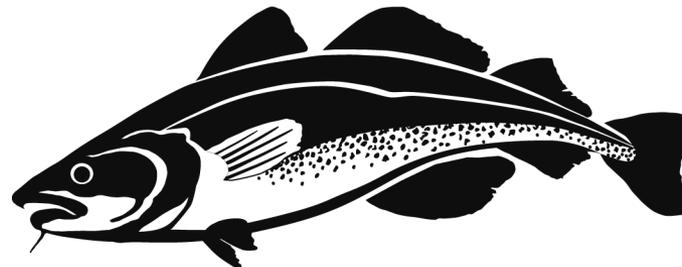
Best wishes...and hoping the state has some magic to revive this once thriving recreational fishery ***that is now completely dead.***

Nathan Tardif
508-636-5530

Interactions between diamondback terrapins and blue crab traps in Massachusetts

September 24, 2020

Marine Fisheries
Commonwealth of Massachusetts



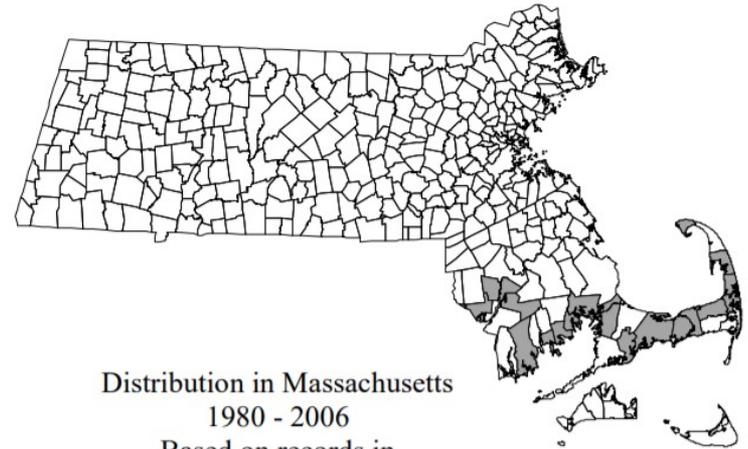
Diamondback Terrapins

- Turtle native to the brackish coastal marshes of the US Atlantic and Gulf coasts
- Sexually dimorphic – females around 7 inches; males around 5 inches
- Diet consists of fish and mollusks
- Range in Massachusetts confined to South Coast and Cape Cod



Status of Species

- Populations in decline throughout their range
- Poor understanding of population size or growth trends
- Listed as threatened under the Massachusetts Endangered Species Act
- No federal conservation status but special status/protections in other states as well



Distribution in Massachusetts
1980 - 2006
Based on records in
Natural Heritage Database



Threats to Terrapins

- Historically, population decline caused by gourmet harvest and coastal habitat destruction
- Current threats include:
 - Bycatch in intertidal crab pots
 - Habitat alteration
 - Nest disturbance
- Overlap in habitat between blue crabs and diamondback terrapins
- Carnivorous, air-breathing turtles attracted to the bait in crab pots and then drown





September 24, 2020

Division of Marine Fisheries

Slide 5

Marine Fisheries
Commonwealth of Massachusetts



Blue Crab Pot Fishery

- Targeted mostly south of Cape Cod
- Principally a recreational fishery
- Harvest limited to 25 crabs per day per person
- Coastal Lobster Permit required to sell crabs commercially
- Recreational crab and lobster permit only needed if using 6 sided traps for recreational purposes
- Anecdotal evidence suggests most crabs caught with trot line or dip net
- No fisheries data collected



Bycatch Reduction Methods

- Installing turtle excluder devices on traps
 - BRD studies show little change in crab catch while greatly reducing terrapin deaths
- Prohibiting the use of bait
- Checking traps at least daily
- Time of year restriction on setting of pots
- Shallow water restriction on setting of pots



Use of Bycatch Reduction Devices

	BRDs Required
MA	No
RI	No
CT	Pots prohibited
NY	Yes
NJ	Yes
DE	Yes
MD	Yes
VA	No*
NC	Yes, in some areas
SC	No
GA	No
FL	No

Installing a Bycatch Reduction Device (BRD) on a crab pot.

STEP 1: Obtain a 1 ¾ x 4 ¾ inch BRD (metal or plastic) for each funnel opening in the crab pot, along with heavy plastic cable ties. Hog rings or cable ties can be used to attach metal BRDs.



STEP 2: Position the BRD at the narrow back end of each entrance funnel.



STEP 3: Use heavy zip ties (cables) to loop around funnel wire and the corner of the BRD. Pull tightly and trim excess cable. Use a *minimum of four* cable ties or hog rings to firmly attach each excluder.



MD DNR



Recommendations

- Takes of diamondback terrapins by recreational pot gear are a violation of the Massachusetts Endangered Species Act
- Measures to mitigate these takes should be taken ASAP
- Options:
 - 1) Require the use of a turtle excluder device on all recreational pot gear set in harbors and estuaries
 - 2) Prohibit the use of recreational pots in harbors and estuaries





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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: September 18, 2020

SUBJECT: **Spring 2021 Recreational Gulf of Maine Cod and Haddock Limits**

Proposal

This winter, I intend to go to public hearing to amend the state’s recreational Gulf of Maine (GOM) cod and haddock limits to complement the recently adjusted federal limits for the January 1 – April 30 portion of the Federal 2020 fishing year (May 1, 2020 – April 30, 2021). These changes are described in the table below with the proposed new rules described in bold faced font and the proposed rescinded rules in strikethrough.

Species	Open Season	Bag Limit	Size Limit
GOM Cod	April 1 – April 14	1-fish	21”
GOM Haddock	April 1 – April 30 April 15 – April 30	15-fish	17”

Effectively, this adds a new 14-day recreational fishing season for GOM cod during the beginning of April. It also extends the recreational fishing season for GOM haddock to be inclusive of all of April, rather than just the second half. In turn, this allows for the retention of GOM haddock that may caught during the new GOM cod season.

Background

On August 13, 2020 NOAA Fisheries enacted a [final interim rule](#) to extend the recreational Gulf of Maine (GOM) cod and haddock seasons for the federal 2020 fishing year (May 1, 2020 – April 30, 2021). In summary this action: 1) extended the fall for-hire recreational fishing season for GOM cod; 2) added a springtime GOM cod recreational fishing season for all recreational anglers; and 3) extended the springtime GOM haddock recreational fishing season for all recreational anglers.

DMF acted immediately to adopt a complementary fall extension of the for-hire recreational fishing season through conditions to 2020 for-hire fishing permits (see [Permit Condition](#)). This allowed the agency to timely implement this change for the upcoming fishing season. To implement complementary limits for April of 2021, DMF is instead opting to amend the limits at 322 CMR 6.03. This is preferred because DMF has ample time to amend these regulations through the normal rule making process and because it affects all 100,000 plus recreational anglers (and not just a known sub-set of permit holders).

Timeline for Implementation

I intend to incorporate this proposal into a larger winter public hearing docket. I anticipate a public hearing and comment period will be held during early 2021 (mid-January to mid-February) and a final recommendation will be provided to the MFAC at their February or March 2021 business meeting. This will allow for the implementation of final regulations prior to April 1, 2021.

Attachment

August 18, 2020 DMF Advisory



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Director

August 18, 2020

Marine Fisheries Advisory

NOAA Fisheries Enacts Final Interim Rule Extending Recreational Gulf of Maine Cod and Haddock Seasons

On August 13, 2020 NOAA Fisheries enacted a [final interim rule](#) to extend the recreational Gulf of Maine (GOM) cod and haddock seasons for the federal 2020 fishing year (May 1, 2020 – April 30, 2021). While specific details are provided below, in summary this action: 1) extends the fall for-hire recreational fishing season for GOM cod; 2) adds a springtime GOM cod recreational fishing season for all recreational anglers; and 3) extends the springtime GOM haddock recreational fishing season for all recreational anglers.

In response to this action, the Division of Marine Fisheries (DMF) is proceeding to implement complementary measures for state-waters. Given the late timing, the extended fall for-hire recreational fishing season for GOM cod will be implemented by conditioning all 2020 For-Hire Permits (see [Statement of Permit Conditions](#)). DMF then expects to implement the springtime adjustments to the recreational GOM cod and haddock seasons by regulation over this coming winter.

Gulf of Maine Cod

Prior to this federal rule change, the recreational GOM cod season was scheduled to occur from September 15 – September 30 with a one-fish per angler bag limit and 21” minimum size for all recreational anglers. With this rule change, the for-hire fishery has been extended an additional 14 days to September 8 – October 7; private recreational anglers will still be subject to a September 15 – September 30 season. Additionally, an April 1 – April 14 season has been added for both for-hire and private recreational anglers. During these open seasons, the one-fish per angler bag limit and 21” minimum size shall remain in effect.

The extended fall for-hire season is intended to allow the for-hire fleet to use the fall season to make up for the loss of access to the fishery in the spring. Travel and other COVID-related restrictions imposed by states in March and April effectively closed the for-hire fishery. While state restrictions of for-hire fishing have been lifted or modified, limits on the number of people who may gather remain in place and constrain the number of passengers for-hire vessels may accommodate.

FY2020 GOM Cod Recreational Fishing Limits			
Angler Mode	Open Season	Bag Limit	Minimum Size
Private Angler	September 15 – September 30	1 fish	21”
	April 1 – April 14	1 fish	21”
For-Hire Angler	September 8 – October 7	1 fish	21”
	April 1 – April 14	1 fish	21”

Gulf of Maine Haddock

Prior to this federal rule change, the recreational GOM haddock season was scheduled to occur from April 15 – February 28 with a 15-fish per angler bag limit and 17” minimum size for all recreational anglers. With this rule change, the fishery will be extended to include the entirety of April with the closed season only occurring from March 1 – March 31. No changes to the bag limit or size limit were made.

FY2020 GOM Haddock Recreational Fishing Limits			
Angler Mode	Open Season	Bag Limit	Minimum Size
Private Angler	April 1 – February 28	15-fish	17”
For-Hire Angler	April 1 – February 28	15-fish	17”

For more information regarding the management of recreational fisheries in the Commonwealth, please visit our website:
www.mass.gov/marinefisheries.



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MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: September 18, 2020

SUBJECT: **Proposed Housekeeping Measures for Winter 2020 Public Hearing**

Annually, DMF compiles a list of regulations that require minor modifications. This is typically done to clarify language, improve the readability or applicability of the regulation, or enhance conformity with federal regulations or interstate or federal fishery management plans (FMP). This winter is no different and I intend to go to public hearing to make several housekeeping measures to amend DMF regulations at 322 CMR. The current list of proposed housekeeping adjustments is provided below.

Black Sea Bass Pot Ghost Panel Size

Adopt a minimum ghost panel opening size of 3" x 6" for black sea bass pots. During the ASMFC's annual review of DMF's black sea bass compliance plan, I was made aware of the fact that our black sea bass pot regulations (322 CMR 6.12), while requiring a panel or door with hinges and fasteners made of an approved degradable material, do not establish the minimum size of the opening to be covered by this ghost panel, which is required under the FMP. To ensure state regulations comply with the FMP and thereby adhere to federal law, I am proposing we establish this minimum ghost panel opening size. I do not anticipate that this will impact commercial black sea bass pot fishermen, as it is common for fishermen to rig an entire side of the trap or the door of the trap as the ghost panel, and these methods are likely sufficient to meet this requirement.

Retail Boat Permits and Histamine Producing Species

In response to the pandemic, DMF has seen an uptick in interest by commercial fishermen of marketing their catch directly to the public under a retail boat permit. This has prompted a number of inquiries regarding what may or may not be sold under the retail boat permit. DMF regulations are clear that the primary purchase of shellfish may only occur between a commercial fisherman and a wholesale dealer authorized as a primary buyer of shellfish. However, the regulations are not similarly clear about restrictions on the direct to public sale of histamine producing species (e.g., bluefish) and instead DMF relies on DPH regulations to restrict this activity. To reduce confusion and improve state fisheries regulations, DMF is proposing to adopt this restriction more clearly in the retail boat regulations at 322 CMR 7.01.



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DANIEL J. MCKIERNAN
Director

To: Dan McKiernan, Director
From: Jeff Kennedy, Shellfish Program Lead
Date: Tuesday August 18, 2020
Subject: New NSSP Mooring Area Assessment Requirements

Memorandum

For several years the USFDA has been expanding their *interpretation* of [National Shellfish Sanitation Program \(NSSP\)](#) Model Ordinance (MO) regulations as well as *adding new regulatory requirements* for the pollution source assessment of mooring areas. This is accomplished through annual Program Element Evaluation Reports (PEER). The NSSP is a product of the [Interstate Shellfish Sanitation Conference \(ISSC\)](#), a state-federal-industry partnership which meets every two year to promulgate new regulations, and adopt new testing methods and checklists for the harvest, handling and processing of all bivalve molluscan shellfish in the US. FDA is responsible for annual evaluations of state shellfish programs to verify compliance with the NSSP. For the last three years Massachusetts has been debited for our treatment of mooring areas in our annual, triennial, and 12-year sanitary survey reports.

At the ISSC biennial conference in October 2019 new requirements for mooring area assessment were adopted and just recently endorsed by the ISSC Executive Board. These new regs require defining all mooring areas in state waters and classifying them as Conditionally Approved, Restricted, Conditionally Restricted or Prohibited; they may not be classified as Approved. In addition, a dilution analysis will be required to determine if a particular mooring area needs to be CLOSED to SHELLFISHING while boats are present. An actual or assumed occupancy rate must be applied, along with an assumed discharge rate.

In conversations with evaluators, DMF has stressed that the Commonwealth is a state-wide EPA No Discharge Zone (NDZ) with an active and comprehensive [Clean Vessel Act \(CVA\)](#) boat pump-out program. To date, we have been told a dilution analysis is required for mooring areas and that assumed discharge and occupancy rates cannot be set to zero regardless of state and local regulations prohibiting the discharge of human waste from vessels.

No doubt these new regulations and FDA's interpretation and guidance will impact many active shellfish growing areas in some manner. Mooring areas closed may reopen towards the end of the boating season as moored boats are pulled out of the water for the winter (generally once the number of boats in a mooring area is 20 or fewer).

Since 1989, the NSSP has contained requirements for pollution assessment and dilution calculation for all marinas. While boats are present, DMF typically closes the marina proper. Yet the demand for minimum mandatory occupancy and discharge rates in mooring areas will apply to dilution calculations for marinas as well and may extend closures beyond the confines of the marina.

The impact to shellfish growers and harvesters may not be limited to only those areas reclassified as Conditional and CLOSED. Shellfish aquaculture growers (or wild harvesters) in those harbors currently classified as APPROVED would not be able to ship their product to Europe once molluscan shellfish trade resumes in the next few months. Only product from clean Approved classified areas will be eligible for export to the EU.

Those areas already classified as Conditional for rainfall or potentially impacted by a point source (eg waste water treatment plant) are less likely to be impacted by these new regs but closures remain a possibility based on dilution calculations. The impact on DMF is also a concern as conditional areas require monthly water quality monitoring whereas Approved areas must be sampled a minimum of five times per year.

As these new regulations are yet to be published in the new NSSP guide (scheduled for late September 2020) it is difficult to quantify the problem. Having not yet been evaluated by FDA on compliance with these newer regs, it is impossible to know precisely what state or local mitigation measures can be applied to soften the impact on harvesters and growers. These changes to shellfish growing area classification and status will not only impact commercial wild harvesters and aquaculture operations but will likely curtail seasonal recreational harvesting as well.

As you know we are continuing to have weekly conversations with the Executive Director of ISSC on this issue and will likely start up our PEER negotiations with FDA again next month. Hopefully these meetings will provide added clarity for DMF and local authorities to begin planning for next summer. In the meantime, we will be conducting on-site surveys to delineate mooring areas for mapping, develop a database of existing mooring areas appraisal forms, with the goal of developing a method to generate potential impacts to shellfish areas with an ability to model differing occupancy and discharge rates. I would expect this will provide options for DMF and the local communities based on mooring area type and density.

I have not included the proposed regulatory language change to the MO but can provide as needed.

cc: T. Shields, G. Sawyer, C. Petitpas DMF

- Mooring Areas
- Wastewater Treatment Plants
- Massachusetts Shellfish Initiative
- Trade with Europe

Mooring Areas

- Proposal 17-100 passed ISSC - October 2019
- FDA submitted concerns to Executive Board - February 2020
- Interim approval given by Executive Board - July 2020
- Language will be published in next NSSP revision - pending
 - Areas delineated with more than 20 boats
 - Pollution Assessment now required
 - Potential and direct source of pollution
 - Mooring areas must be classified as Conditionally Approved or below
 - Dilution calculation to be applied to determine status – OPEN or CLOSED for area proper
 - If calculation indicates adjacent waters negatively impacted – must be CLOSED
 - Areas may be reopened once boats are pulled for winter

DMF Response

- Weekly calls with ISSC
 - Developing draft policy - adapting Nssp language
- DMF Workgroup established
 - CVA coordination
 - Harbormaster questionnaire based on existing marina/mooring area forms
 - Mooring Area db will be developed from update municipal response
 - Habitat Program developing refined GIS mooring area data layer
 - Shellfish Program delineating mooring areas thru site-visits
 - Field staff assistance provided by habitat, resource, etc.

Wastewater Treatment Plants

Viral concerns

- All states required to set mandatory Closed Safety Zones at the 1000-1 dilution line
 - In shallow estuaries this may result in expansive closures of existing harvest areas
- Without modeled data or dye studies states are required to set conditional area within 100K-1 dilution line
 - Reclassification required around WWTP with CSZ abutting Approved classified areas
 - Result in additional documentation and monitoring by DMF

DMF Response

- Workgroup has proposed coordination with SMAST possibly thru MFI
- DMF/DFG staff investigating a GIS tool for more accurate volumetric calculations to set 1000-1 and 100K-1 dilution lines
- DMF to employ Male Specific Coliphage (MSC) viral testing capability
- DMF to develop in-house dye study capability

Massachusetts Shellfish Initiative

- Steering Committee
- Task Force
- SubCommittees
 - Assessment Committee
 - Scoping Committee
 - next – strategic plan?

<http://www.MassShellfishInitiative.org>

Trade with Europe

- FDA and the EU have not allowed the import of raw molluscan shellfish since 2010
- Shellfish equivalency between US and European Commission published in federal register
 - FDA's equivalence determination finds adoption and implementation by Spain and the Netherlands of the EU system of food safety control measures for raw bivalve molluscan shellfish, along with application of additional measures specifically adopted for export to the United States, provides the same level of sanitary protection as comparable food safety measures in the United States and is therefore equivalent.
- Initially, firms in Washington and Massachusetts will have access to the EU market
- U.S. firms in other states soon will have an opportunity soon, using a streamlined process established by FDA and the EC.
- Only shellfish from areas classified as APPROVED qualify
- Online webinars to be offered by FDA for states and firms
- Trade is still months away

- Email questions to: ShellfishEquivalence@fda.hhs.gov
- For more information <https://www.fda.gov/food/cfsan-constituent-updates/fda-finalizes-first-food-safety-equivalence-determination-resumption-shellfish-trade-spain-and>

CARES Act Funding Disaster Relief

\$300 Million to Support U.S. Fishermen and Seafood Industry

- NOAA Fisheries used multi-year averages of “fishery participants” to estimate total average annual revenues for each state and sector.
- Eligibility for disaster relief from this program requires an economic loss of at least 35% as compared to prior 5-year average.

Massachusetts will receive approximately \$27.8 Million (4 Sectors)

- Seafood Processing 51.2%
- Commercial Fishing and Aquaculture combined 47.3%
- For-Hire (Party and Charter Boats) 1.5%



Update September 24, 2020

Massachusetts' 2020 CARES Act Fisheries Relief

- All Sector Working Groups have met 2 times to finalize requirements of the CARES Act Fisheries Relief Program
- Final Spending Plan submitted to NOAA Fisheries for approval on July 15, 2020
- Spending Plan approved by NOAA Fisheries on July 29, 2020

Sector	Amount	# Eligible submissions	Expected Payment Range	Application Period	Appeals Period
Commercial Fishermen	\$11.8M	2,000+	\$2K-\$14K	August 31 – October 10	Through October 24
Seafood Processors	\$13.8M	200	\$15K-\$100K	August 24 – September 12	Through Sept 25
Aquaculturists	\$1.2M	168	\$500-\$15K	DONE: Payments scheduled for 9.29.20	
For-Hire Charter Boats	\$584K	72	\$4.6K-\$9.3K	DONE: Payments mailed on 9.15.20	
For-Hire Head Boats	\$416K	35	\$2K-\$23K	DONE: All payments have been distributed	



Update for Week Ending September 24, 2020

For-Hire Charter and Aquaculture Sectors

- Charter payments were mailed September 15th
- New request from Aquinnah tribe received on September 16th. Presenting to NOAA Fisheries for consideration of a new sector for tribal interests
- Aquaculture Sector has been completed. Checks are scheduled for distribution from ASMFC on September 29th

Seafood Processing Sector

- E-mail blast from last week resulted in significant bump-up in applications received this week.
- Applications are being reviewed as they come in and the DMF CARES website is being updated daily with applicant status.
- Final determinations scheduled to be submitted to ASMFC on September 29th

Commercial Fishing Sector

- Applications mailed to over 8,400 applicants
- Applications are being reviewed as they come in and the DMF CARES website is being updated daily with applicant status.
- Correspondence to around 50 applicants each day through e-mail and phone calls
- End date of October 10th selected for application period



Next Steps:

1

- **Aquaculture Sector – application and appeal period closed September 15th**
 - Appeals have been resolved, final share determination by September 18th
 - Final determinations submitted to ASMFC on September 23, 2020

2

- **Seafood Processing sector – application and appeal period closes September 25th**
 - Closeout application and appeal period on September 25th
 - Final determination of eligible applicants to ASMFC scheduled for September 29th

3

- **Commercial Sector applications (mailed September 8th)**
 - Manage incoming applications and update website daily
 - Resolve appeals throughout process with scheduled weekly meetings

4

- **Relief Program Administration (August 1, 2020 – September 30, 2020)**
 - Application and initial determinations (3-4 weeks, dates by sector)
 - Appeals and final determinations (2 weeks, dates by sector)
 - Compile all information and submit to ASMFC for check payments (1 week)

Payment Timeline

Completed July 20th :

- For-Hire Headboat

Completed Sept 15th :

- For-hire Charter

Late September:

- Aquaculturists
- Seafood Processors

Mid October:

- Commercial Fishermen



Payouts for Completed Sectors:

For - Hire Sector

Charter \$584,000

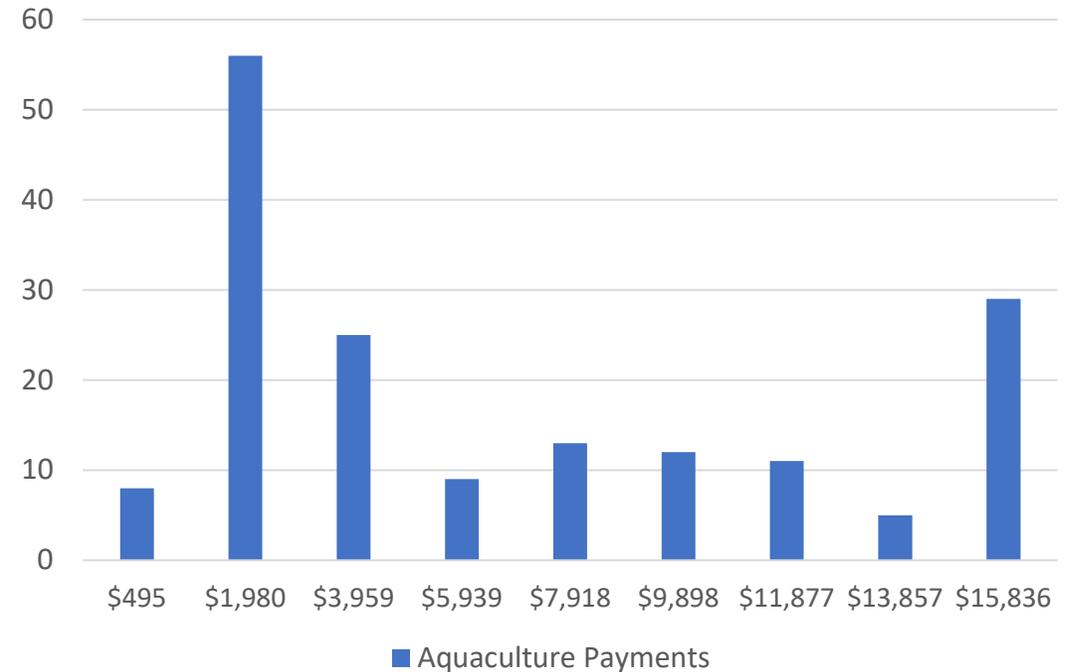
- Charter Boats had 50 trip minimum and were binned based on vessel size
 - Small (<28'): 19 payments of \$4,672
 - Large (28'+): 53 payments of \$9,344

Head Boat \$416,000

- Head Boats binned on size and activity. 34 vessels qualified with payments from \$1,432 to \$22,912 with 40% receiving \$14,320

Aquaculture Sector

\$1,152,652



For Informational Purposes

Tiering for Commercial and Aquaculture Sectors

Relative Payment Shares for MA Commercial Fishing Sector CARES Act Relief.

Tier	Annual Revenue	Payment Share
0	<\$15,000	0x
1	\$15,000 - \$31,341	1x
2	>\$31,341 - \$69,997	2x
3	>\$69,997 - \$116,326	3x
4	>\$116,326 - \$221,929	4x
5	>\$221,929 - \$583,832	5x
6	>\$583,832	6x

Aquaculture Sector Tiering System based on Maximum Single-Year Landings Value as reported by Primary Buyer(s) to SAFIS

Tier	Share	Tier Minimum	Tier Maximum
1	0.25	> \$0	\$7,500
2	1	> \$7,500	\$49,286
3	2	> \$49,286	\$91,071
4	3	> \$91,071	\$132,857
5	4	> \$132,857	\$174,643
6	5	> \$174,643	\$216,429
7	6	> \$216,429	\$258,214
8	7	> \$258,214	\$300,000
9	8	> \$300,000	\$2,400,000





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Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission

FROM: Daniel J. McKiernan, Director

DATE: August 21, 2020

SUBJECT: **2020 Letters of Authorization for Trawlers Without a Limited Entry Horseshoe Crab Endorsement to Retain Up to 300 Horseshoe Crabs**

Action

On August 21, 2020, I issued **temporary** Letters of Authorization (LOA) to a select number of trawlers who fish in the inshore summertime summer flounder trawl fishery and do not hold a limited access horseshoe crab regulated fishery permit endorsement. This LOA allows these trawlers to exceed the current 75-crab open access limit for trawlers and retain up to 300 horseshoe crabs during any open fishing day (Sun – Thur) This LOA will remain in effect through September 30. This action addresses the current shortage of crabs caused by reduced participation by certain vessels caused in part due to unexpected fishery conditions related to Covid-19.

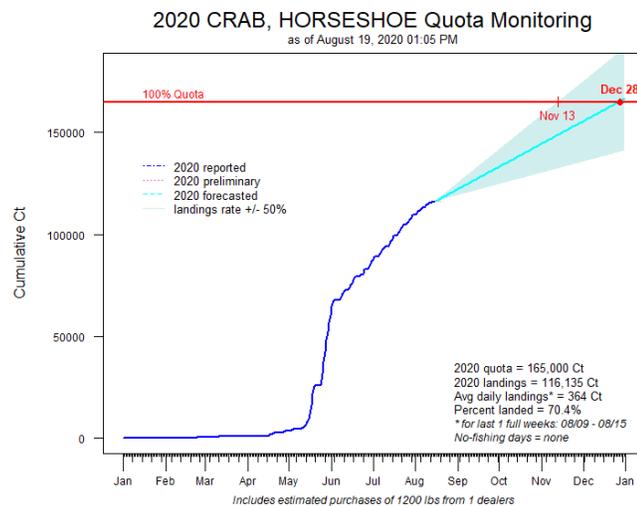
Rationale

This action was taken to increase the supply of horseshoe crabs available for the biomedical industry to borrow from bait dealers and bleed. At present, the supply of crabs coming in is low due to reduced participation in the inshore trawl fishery which catches horseshoe crabs when targeting summer flounder. There are concerns that further decreases in the supply of crabs may negatively impact the biomedical production of LAL, which is critical given the current pandemic.

As of August 15, 2020, 70% of the state’s 2020 commercial horseshoe crab quota has been taken. In recent weeks, we’ve seen horseshoe crab landings wane and last week average daily landings were only 364 crabs. If these conditions persist, DMF does not anticipate the quota will be taken this season (Fig 1). This is unsurprising given that participation in the summer flounder trawl fishery is low this year and most of the crabs taken against the bait quota in the summertime are caught by trawlers.

Over the past several weeks, DMF has had discussions with the biomedical industry, bait dealers, and trawlers regarding the

Fig. 1 August 15 Horseshoe Crab Quota Monitoring Graph



horseshoe crab fishery. Through these conversations, it became apparent that if participation and landings continue to wane, then the number of crabs available to the biomedical industry – through their borrowing of crabs from the bait stream – may be constrained. In turn, this could slow their production of LAL, which is needed given the pandemic, and they sought a steady supply of crabs through the end of September. However, bait dealers indicated that their demand for additional bait crabs was currently low as they did not anticipate strong demand from the conch pot fishery this fall given pandemic related market impacts. Several ideas were discussed about how to best accommodate this demand before settling on the approach described above.

There are several vessels who have historically participated in the inshore trawl fishery that do not hold limited entry horseshoe crab endorsements. In recent years, DMF would issue these fishermen LOAs to retain the same 300 horseshoe crab limit afforded permit holders. However, we eliminated this LOA program this year in favor of a 75-crab open entry incidental limit. This was done in response to fishery performance in 2019. The horseshoe crab quota was taken (for the first time ever) after August 31 while the summer flounder trawl fishery requiring all fishermen discard any crabs incidentally caught.

DMF reached out to the permit holders who held this LOA in recent years and were currently fishing in inshore trawl fishery to determine if they would be interesting in obtaining an LOA this year to take crabs in excess of the open entry incidental limit. Five trawlers indicated that they intended to continue to fish in this fishery into September and would take advantage of a higher horseshoe crab limit.

This action could increase weekly catch rates from about 1,500 crabs to just under 8,000 crabs assuming every LOA holder limits out and is able to fish all five open days. At this level, the remaining quota would be taken in about six weeks. However, I do not anticipate catch will occur at this level. High densities of seaweed are impacting trawl fishing productivity in the inshore fishery and fall wind and weather can keep these small trawlers at the dock. Moreover, limited demand for bait crabs is likely to produce a low ex-vessel value and may constrain directed fishing effort.

Based on these factors, I do not think this action will result in full quota utilization, but they will likely produce enough additional landings between now and the end of September to meet the biomedical industry's needs.

Transfer of Limited-Entry Fluke and Sea Bass Rod & Reel Endorsements

- Rod & Reel Sea Bass and Fluke endorsements have only been transferable, on a one-time basis, to immediate family members if they have been actively fished 4 out of the past 5 years.
- Over the past few years DMF has received an increasing amount of requests to transfer limited-entry rod & reel sea bass and fluke endorsements to non-immediate family members.
- Most of these requests come from permit holders who are aging out of the fishery. In many cases, they are looking to transfer their endorsements to people that have been fishing with them for years.
- During the process of going limited-entry in the tautog fishery, DMF committed to making Tautog endorsements transferable going forward.
- DMF intends to develop a transfer policy for Sea Bass, Fluke, and Tautog endorsements.

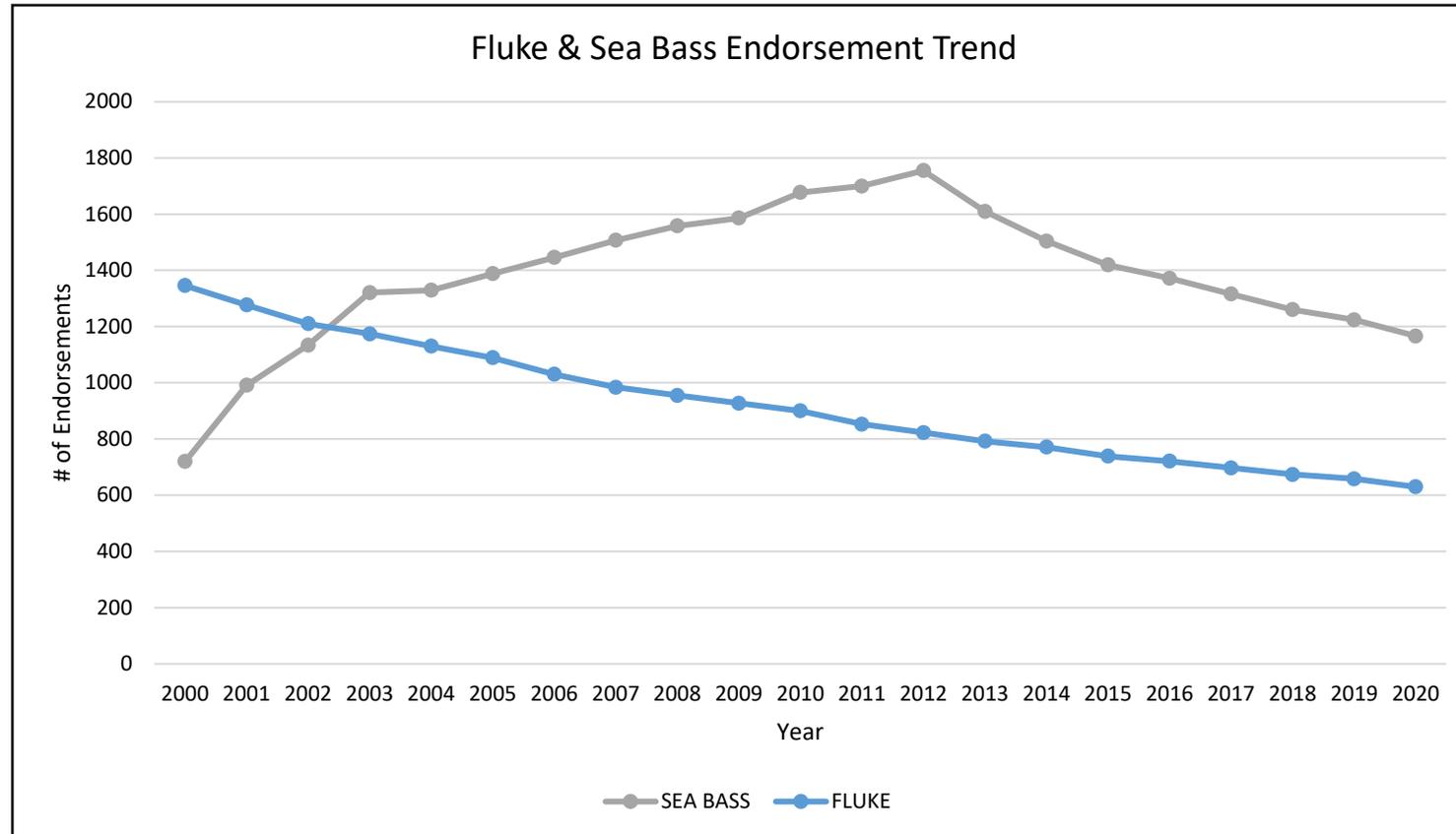


Status of Rod & Reel Endorsements

Endorsement	Endorsement Count	Limited-Entry Year	Median Age
Fluke	630	1999	63
Sea Bass	1,165	2012	59
Tautog	218	2020	54



Fluke & Sea Bass Endorsement Trend



Transfer Policy Development Considerations

- By regulation, limited-entry permits and endorsements must be actively fished in 4 of the past 5 years in order to be considered transferable. *Should there be a minimum landings threshold to be considered “actively fished” in a given year?* For example, “actively fished” for Coastal Lobster permit transfers is defined as 1,000 lbs landed and sold or 20 sales in a given year.
- If a permit holder has more than one of these three limited entry rod & reel endorsements,
 - should DMF allow bundling them together in a transfer?
 - should DMF mandate bundling or allow endorsement to be split off?





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DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: September 21, 2020

SUBJECT: **Decision on the Harvest of Horseshoe Crabs from Wellfleet Waters**

The town of Wellfleet, and other organizations within the town (e.g. Mass Audubon's Wellfleet Sanctuary, Wellfleet Shellfish Advisory Board), have historically requested that DMF implement a moratorium on the harvest of horseshoe crabs within Wellfleet Harbor. Former Director Paul Diodati denied such a petition from the town in 2012, and in the years since, there has been continued interest.

Most recently, in 2019, I met with Wellfleet town officials to informally discuss such a moratorium. A sizeable portion of Wellfleet Harbor is part of the National Seashore and is consequentially closed to horseshoe crab harvest under federal rules. Accordingly, I could see a potential enforcement and compliance rationale for enacting a broader closure. However, I wanted to hear from local interests regarding their view of the closure. After meeting with local officials, I tasked staff with reviewing what if any biological rationale exists to support a moratorium on harvest.

Over the course of the last year, DMF staff investigated this question. At this point in time, I have not seen sufficient biological evidence that supports a moratorium on harvest in this discrete area. Regional and state-wide trends show that abundance is increasing, potentially in response to management actions taken about a decade ago (e.g., lunar spawning closures). Crabs found in Wellfleet Harbor appear to be part of a regional complex of crabs specific to Eastern Cape Cod Bay, and given the generally low number of crabs harvested in Wellfleet Harbor, a prohibition on harvest in this area would provide little, if any, benefit to this population.

I have attached two memoranda that informed my decision on this subject. The first, is a recent memorandum from DMF biologist Derek Perry, our horseshoe crab specialist. This document details the current status and trends of horseshoe crabs in eastern Cape Cod Bay and Wellfleet Harbor. The second, is the October 3, 2012 memorandum from former Director Diodati to the MFAC regarding his decision to deny the town's petition for a closure.

Attachment

September 21, 2020 Memorandum from Derek Perry

October 3, 2020 Memorandum from Paul Diodati



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Director

MEMORANDUM

TO: Daniel J. McKiernan, Director

FROM: Derek Perry, Invertebrate Biologist

CC: Michael Armstrong, Assistant Director
Robert Glenn, Assessment and Survey Program Manager
Tracy Pugh, Invertebrate Fisheries Project Leader

DATE: September 21, 2020

SUBJECT: **Status of horseshoe crabs in Wellfleet Harbor and Cape Cod Bay**

The town of Wellfleet and other organizations within the town (e.g. Mass Audubon's Wellfleet Sanctuary, Wellfleet Shellfish Advisory Board) have been steadfast in their desire for a horseshoe crab harvest moratorium even after the town's request was turned down in 2012. This memo provides an update on relevant information and the status of horseshoe crabs in Wellfleet Harbor. All figures referenced herein are embedded in an appendix.

Introduction

The town of Wellfleet petitioned MADMF to close Wellfleet Harbor to the harvest of horseshoe crabs within the Harbor in May of 2012 citing concerns over local declines in crab abundance, uncertainty in abundance estimates, and the ecological role of horseshoe crabs as bioturbators and predators of bamboo worms. Former MADMF Director Paul Diodati did not grant this request citing the following reasons:

1. A lack of scientific evidence to support the claim that horseshoe crabs control bamboo worm populations and therefore enhance shellfish production;
2. A closure of Wellfleet Harbor could lead to a displacement in effort that could deplete other populations; and
3. A lack of data on current horseshoe crab abundance in Wellfleet Harbor, or an abundance threshold that would warrant opening or closing the harbor to harvest.

Other concerns raised by MADMF staff included: a lack of knowledge of the geographic range of horseshoe crabs found in Wellfleet Harbor; and concern that other towns would make similar closure requests without supporting data. Staff also stated that insufficient time had passed to determine if regulation changes made in 2010 (e.g. lunar closures, minimum legal size) had a positive impact on horseshoe crab abundance, and they believed more patrols and enforcement by Environmental Police in Wellfleet would be beneficial to enforce existing rules rather than create new regulations. MADMF offered to consider prohibiting crab harvest from discrete portions of the harbor that contain aquaculture grants to limit gear conflicts between aquaculturists and commercial horseshoe crab harvesters, and that MADMF would support and promote scientific research regarding the effect of horseshoe crabs on

bamboo worms. Director Diodati also extended the state-wide lunar closures to include the second half of April at the request of the people of Wellfleet.

Commercial Harvest Data

Spatially explicit commercial horseshoe crab harvest data are reported by fishermen to MADMF based on Shellfish Growing Areas (SGA). Wellfleet Harbor is made up of SGA CCB11, CCB12, CCB13, and CCB14 (Figure 1). Roughly only 8% of horseshoe crabs caught for bait in 2018 were harvested between Cape Cod Bay (including Wellfleet Harbor) and the Massachusetts-New Hampshire border (Figure 2). Most of the 2018 Massachusetts horseshoe crab bait landings came from Nantucket Sound (78.9%). Horseshoe crab landings from Wellfleet Harbor are confidential due to the limited number of fishermen reporting landings to these areas. Between 2010 and 2018, the number of permits reported to have fished these areas in any given year ranged between 0 and 2 with extremely low annual landings; the reported median annual harvest (2010-2018) was slightly above 400 crabs, which is the daily limit for a bait harvester. The number of crabs harvested from Wellfleet Harbor between 2010 and 2018 is similar or much less than other Cape Cod Bay embayments (Figure 3). The western shore of Wellfleet Harbor is closed to the harvest of horseshoe crabs because it falls within the border of the Cape Cod National Seashore (Figure 4). Most of the outer Cape is closed to the harvest of horseshoe crabs due to federal harvest closures at the Cape Cod National Seashore, and the Monomoy National Wildlife Refuge. Through Massachusetts regulations, only biomedical harvest is permitted in Pleasant Bay.

Fisheries Independent Data

Massachusetts fisheries independent horseshoe crab data come from two sources, the Massachusetts Horseshoe Crab Spawning Beach Survey, and the MADMF Trawl Survey conducted in May of each year. The spawning beach survey monitors the number of mature crabs that come onto the beach to spawn, whereas the trawl survey captures immature and mature crabs.

Mass Audubon's Wellfleet Sanctuary conducts spawning beach surveys at three sites within Wellfleet Harbor (Figure 5). The survey sites occur both within the boundaries of the Cape Cod National Seashore (Great Island) which has been closed to horseshoe crab harvest since 2000, and outside (Indian Neck and Sanctuary Beach) which is open to harvest. All three locations show an upward trend over the last three years in their respective time series, though numbers at the Great Island and Sanctuary Beach sites remain relatively low. Conversely, Indian Neck data have varied without trend over time, with the second highest mean number of female crabs of its time series recorded in 2019. Despite Great Island being located in an area closed to harvest, it has the lowest abundance of crabs of the three sites in Wellfleet Harbor. Wellfleet spawning beach data for 2020 have not yet been submitted

The MADMF Trawl Survey does not tow within Wellfleet Harbor due to depth limitations, but the towable waters just outside of the harbor are among the areas most likely to encounter horseshoe crabs within Cape Cod Bay and Massachusetts Bay in the fall survey (Figure 6). Abundance in the Cape Cod Bay/Massachusetts Bay region has been increasing (Figure 7). The absence of crabs in many years of the spring survey is likely a function of crab behavior related to spawning activity. Adult crabs spawn in the spring and can usually be found in water too shallow for the survey to access. Male crabs spend more time in shallow water waiting for mating opportunities, so they are even less likely than females to be encountered in the spring survey.

Tagging information

There have been two recent horseshoe crab tagging efforts in Wellfleet Harbor, an acoustic telemetry study conducted by a graduate student at the University of Massachusetts-Amherst, and the U.S Fish and Wildlife Service's button tagging program. Both studies only tagged mature crabs. University of Massachusetts graduate student Michael Long, in cooperation with Mass Audubon's Wellfleet Sanctuary, conducted a telemetry study within Wellfleet Harbor from 2015 to 2017. This research showed that most

tagged crabs remain within the Bay for most of the year, before leaving in the winter (Figure 8). Exact locations for over-wintering crabs are unknown, as the receivers were removed from the water during the winter. Long's work showed that only 37% of crabs tagged in Wellfleet Harbor were detected in the Harbor the following year. The causes for this relatively low return rate could include emigration, natural or fishing mortality, and/or tag loss.

Volunteers participating in horseshoe crab spawning beach surveys are encouraged to look for and report tagged crabs. This increases the likelihood that tagged crabs will be observed at beaches where spawning surveys are conducted. Within Cape Cod Bay there are seven spawning beach survey sites, three within Wellfleet Harbor, two within Barnstable Harbor, and two in Plymouth/Kingston/Duxbury Bay. The Mass Audubon's Wellfleet Sanctuary has been tagging horseshoe crabs with U.S. Fish and Wildlife service button tags since 2009. Nearly 500 crabs tagged within Wellfleet Harbor have been recaptured and reported with adequate recapture location information to be able to reasonably identify where the crabs were re-sighted (Figure 9). For crabs at large more than six months since release, slightly less than half of the recapture observations (48.4%) occurred within Wellfleet Harbor. More than 95% of recaptures occurred within Cape Cod Bay between Provincetown and Barnstable. About 1% were re-sighted along the backside of the Cape or in Nantucket Sound, and 1.5% were reported to be found in other states, one as far as Delaware.

Summary

Many of the reasons that MADMF did not close horseshoe crab harvest in Wellfleet Harbor after the 2012 petition are still valid today. While it has been shown that migratory shorebirds can greatly reduce the density of bamboo worms on tidal flats (Schneider and Harrington 1981), there has been no such work on the relationship between horseshoe crabs and bamboo worms. The relationships between the crabs, worms, and shellfish to each other, to the larger biological community, or to the physical properties of the tidal flats are still not clearly understood in this system.

Management actions taken in 2010 included enactment of lunar harvest closures to increase spawning opportunities. Male horseshoe crabs take nine years to reach sexual maturity, females take ten to eleven years. Male crabs that resulted from eggs laid during the first year of the lunar closure would have returned to the beach to spawn for the first time in 2019. The first female crabs from the 2010 year-class will likely return to beaches to spawn this year or next. The increase in abundance observed in the trawl survey that has occurred prior to increases in the spawning beach surveys could be due to the differences in life stages observed by each survey. The trawl survey catches both immature and mature crabs, whereas only mature crabs are encountered during the spawning survey. If the lunar closures are effective and the crabs are not harvested before they reach maturity, we will likely continue to see an increase in the number of spawning crabs in the coming years. While there are other possible reasons for the recent increases in abundance observed in the trawl and spawning beach surveys, including improving conditions resulting from climate change (for a species at the northern extent of its range), or other unknown reasons, the results of the management actions taken in 2010 are likely still playing out. The fact that the spawning beach survey and the Spring and Fall Trawl Survey are all increasing gives greater confidence that regional abundance is increasing.

Our ability to monitor specific embayments to determine abundance thresholds and make embayment-specific management decisions is extremely limited, and movement data indicate that crabs are not limited to specific embayments but are regionally distributed. It seems more relevant to ensure that habitat is protected within each embayment utilized by the crabs. Based on acoustic and traditional tagging studies, it appears that crabs observed in Wellfleet Harbor move freely throughout Eastern Cape Cod Bay. Despite intensive re-sighting efforts within the Harbor, more tagged crabs are observed outside the Harbor than inside. This shows that crab populations are not specific to small embayments such as

Wellfleet Harbor, but may be specific to larger areas such as Cape Cod Bay. Though a few crabs were reported as recaptures in other states, this could be due to reporting error.

Displacement of harvest pressure from closed areas to open areas was cited as a concern in 2012. Landings within Wellfleet Harbor have been relatively modest, and well below or similar to other embayments in Cape Cod Bay. Less than 200 crabs have been harvested annually in four of the last ten years, but harvest has been episodic. Closing Wellfleet Harbor could lead to effort being displaced to other areas, though this concern is lessened by the fact that the crab population does not appear to be specific to Wellfleet and current harvest levels in Wellfleet are generally modest.

References

Schneider, D. C. and B. A. Harrington. 1981. Timing of shorebird migration in relation to prey depletion. *The Auk* 98: 801-811.

Attachment

Appendix of Figures

Appendix of Figures

Figure 1. Map of Shellfish Growing Areas within Wellfleet Harbor.

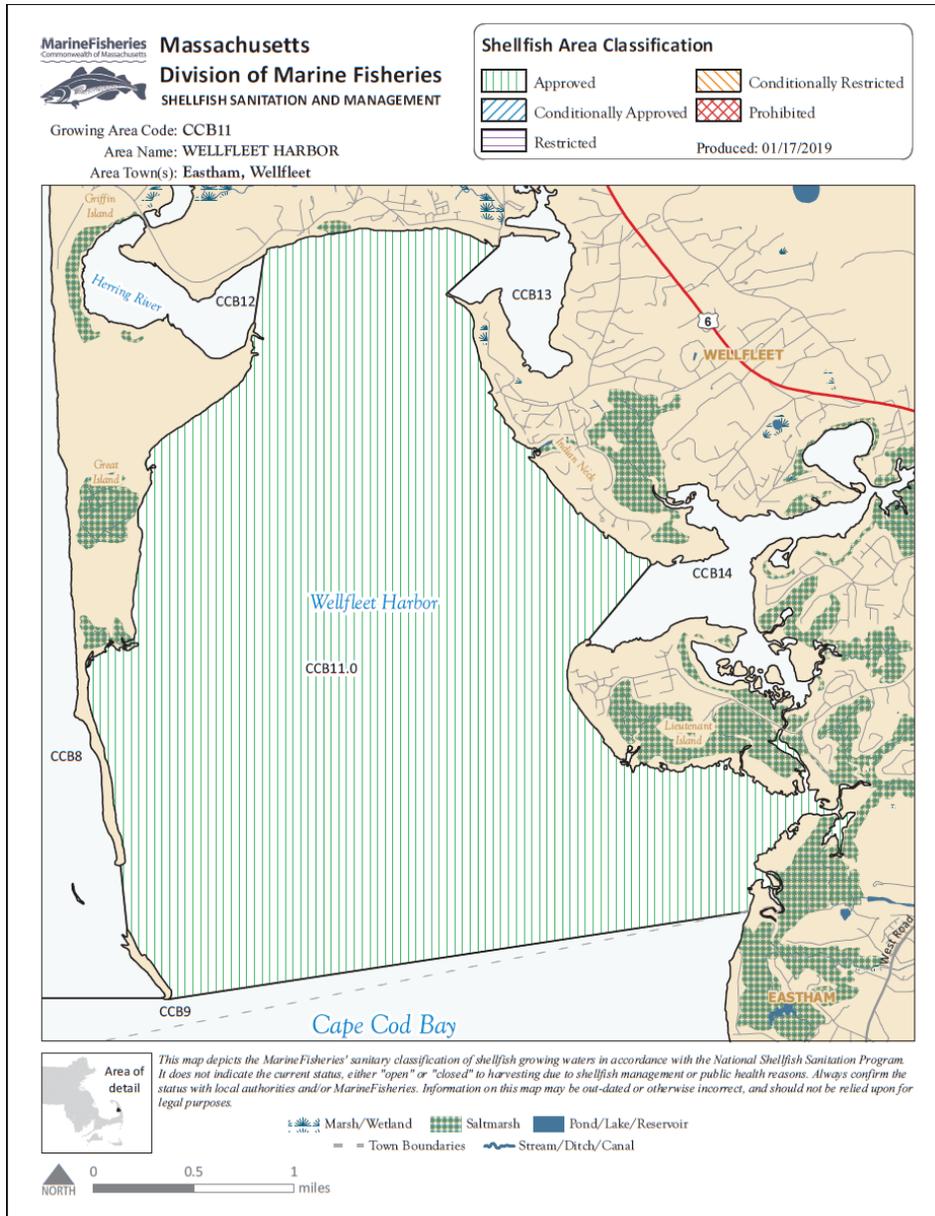


Figure 2. Percentage of Massachusetts horseshoe crabs landed commercially for bait in 2018 by region. Only areas with greater than 1% of landings are shown. All other areas are lumped into “other”. Dashed lines represent boundaries of regions.

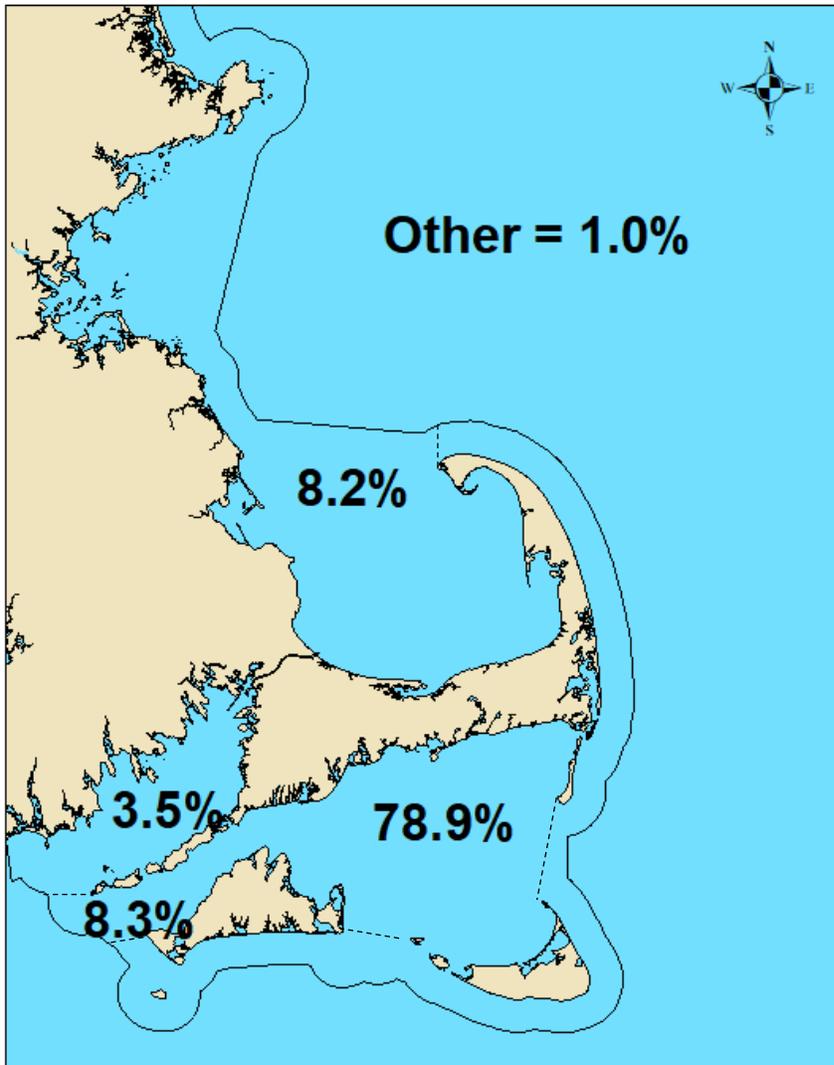


Figure 3. Map of Massachusetts SGAs color coded by region and bar chart of total horseshoe crab bait landings from these regions from 2010 to 2018. Regions not outlined in color are grouped in the “CCB other” category. PKD = Plymouth-Kingston-Duxbury Bay. CCB 20 refers to SGA CCB 20 (Brewster). The black line represents the Cape Cod Bay border. Y-axis data labels omitted due to comply with confidentiality laws.

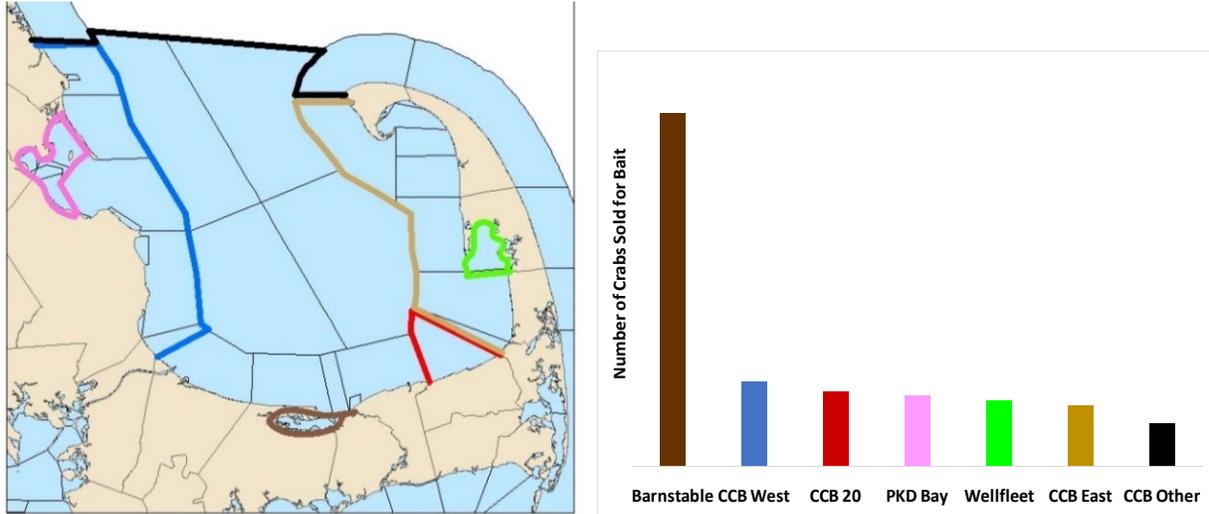


Figure 4. Map of areas closed to horseshoe crab harvest for the bait fishery. The western shore of Wellfleet Harbor is within the Cape Cod National Seashore and is closed to the harvest of horseshoe crabs.

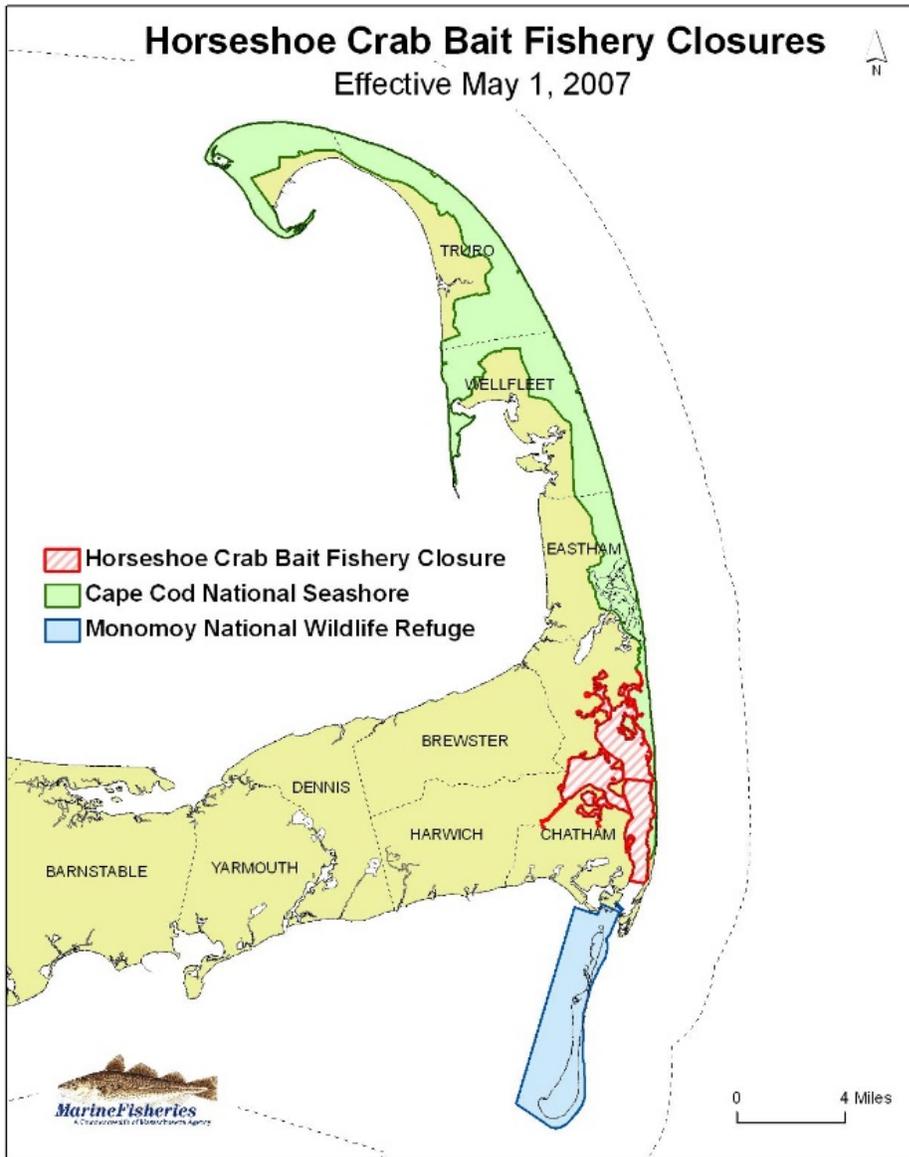


Figure 5. Location of spawning beach survey sites within Wellfleet Harbor and figures showing the mean number of female crabs at respective spawning beaches. * Error bars are 95% C.I. Great Island and Sanctuary Beach are only surveyed during the day, while day and night surveys are conducted at Indian Neck. Note that the survey was not conducted continuously at all stations. The 2014 survey used different methodology, so it is not included in these figures.

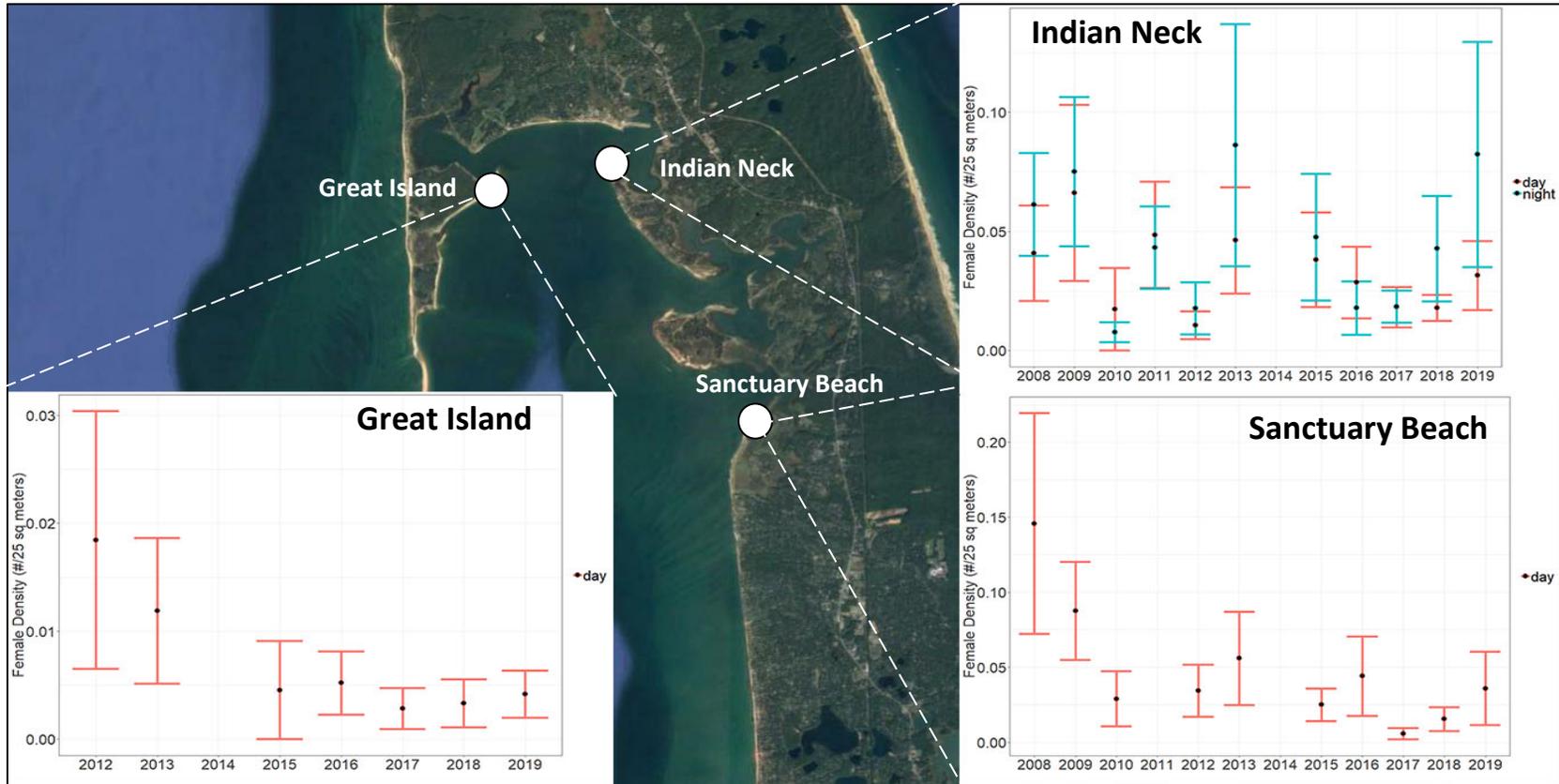


Figure 6. Location of catches of horseshoe crabs from the MADMF Fall Trawl Survey. Bubble size is representative of the number of crabs caught per tow.

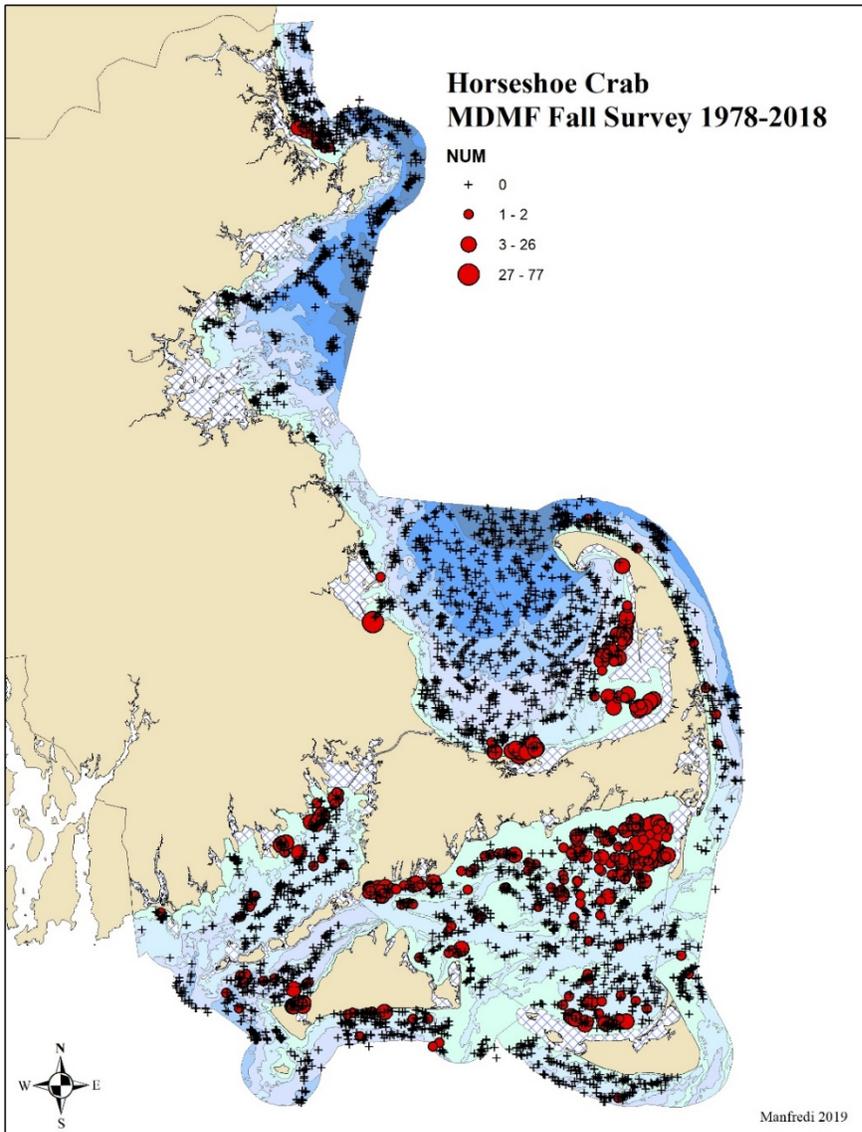


Figure 7. Bootstrapped mean number of horseshoe crabs per tow from the two shallowest depth strata (0-30', 30-60') of the MADMF trawl survey in the Gulf of Maine, 1982-2019. The red, dashed line is the time series median, blue line is a loess fit using family=symmetric and span=0.66. These settings provide a resistant fit to outliers at the end of the time-series. Blue shaded area is an approximate 95% confidence interval for the fit.

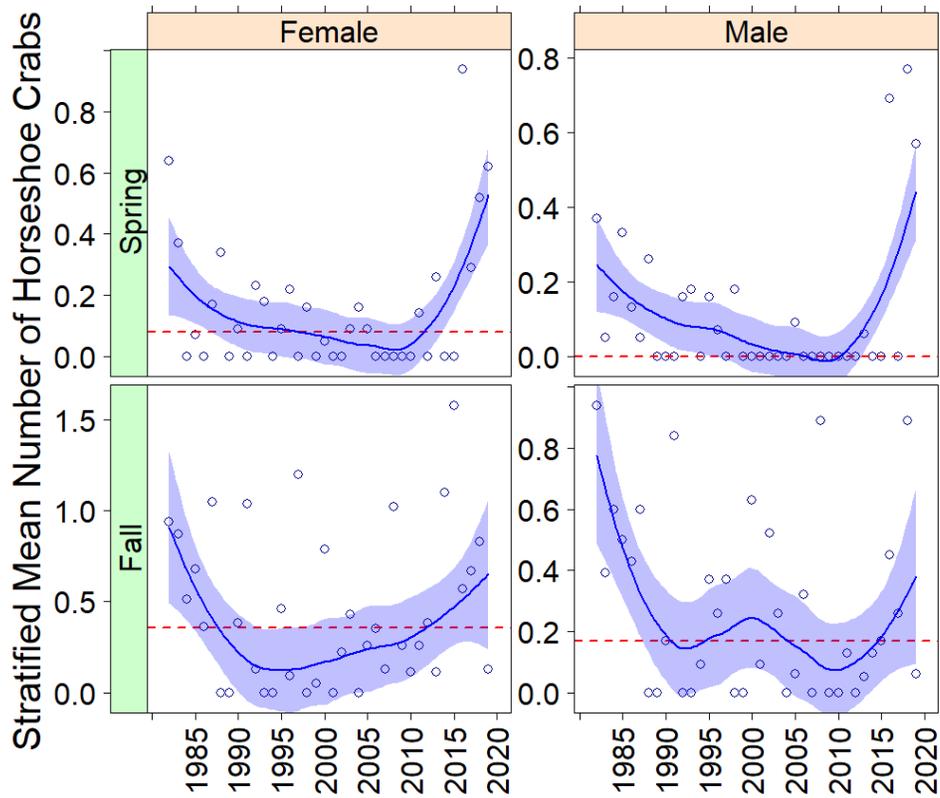


Figure 8. Seasonal residency figures from University of Massachusetts-Amherst student Michael Long graduate research using acoustic telemetry to study horseshoe crab movements in Wellfleet Harbor. Black dots are acoustic receiver locations. Grey dots are MADMF acoustic receiver locations. The red shaded area represents residency period, the amount of time tagged crabs spent in an area. Receivers were removed from the water during the winter. The winter figure is based on when crabs were last observed prior to haul-out, and first detected after re-deployment. Figure provided by M. Long.

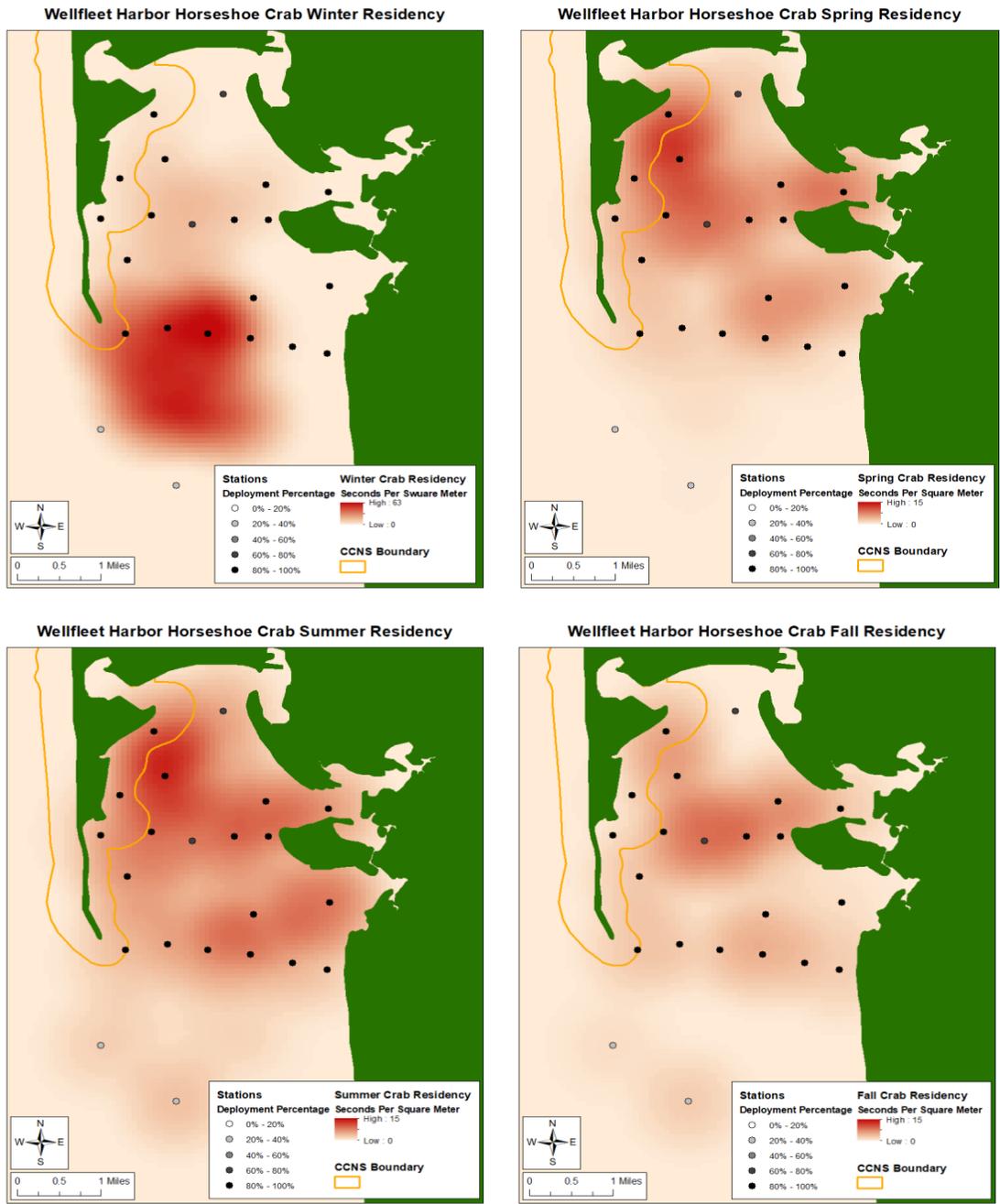


Figure 9. Percent of recaptures by town for 459 crabs tagged with USFWS button tags within Wellfleet Harbor at liberty for longer than 6 months and with sufficient recapture location information reported upon recapture. Recaptures of crabs in towns on two different water bodies are reported by town and water body (e.g. for Wellfleet: Wellfleet Harbor (48.4%) and Cape Cod Bay (3.3%)). Not included in the figure are crabs reported to have moved out of state (CT-0.2%, NY-0.7%, NJ-0.2%, MD-0.2%, DE-0.2%).

