

## **MARINE FISHERIES ADVISORY COMMISSION**

**June 28, 2016**

**DFW Field Headquarters  
Westborough, MA**

### **In attendance:**

*Marine Fisheries Advisory Commission:* Raymond Kane, Chairman; Bill Adler, Vice Chairman; Michael Pierdinock, Clerk; William Doyle; Kalil Boghdan; Charles Quinn; Gus Sanfilippo; Andrew Walsh; Lou Williams.

*Division of Marine Fisheries:* David Pierce, Director; Daniel McKiernan, Deputy Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Story Reed; Nichola Meserve; Melanie Griffin; Mark Rousseau; Jared Silva; Steve Wilcox; Kristina Dubuque.

*Department of Fish and Game:* George Peterson; Commissioner, Mary Lee King, Deputy Commissioner; Richard Lehan, General Counsel; and Doug Christel, Special Assistant.

*Office of Law Enforcement:* Major Patrick Moran; Lt. Matt Bass

*Members of the Public:* Sean Horgan

## **INTRODUCTIONS AND ANNOUNCEMENTS**

There were no introductions or announcements.

## **MARINE FISHERIES ADVISORY COMMISSION ELECTIONS**

Director David Pierce stated that the first order of business would be for the Marine Fisheries Advisory Commission (MFAC) to vote to appoint a Chairman, Vice-Chairman and Clerk. David stated that electing a Chairman and Clerk is required by statute; there was not a statutory requirement for the MFAC to appoint a Vice-Chairman. Electing a Vice-Chairman was ultimately at the discretion of the MFAC, but he noted the MFAC historically elected a member to this position so that meetings could be run in the absence of the Chairman. There were no objections to appointing a Vice-Chairman.

The Director then asked if there were any appointments for the Chairman position. Michael Pierdinock nominated Raymond Kane. **No additional nominations were made. Ray was appointed Chairman through acclamation.**

David asked the MFAC to appoint a Vice-Chairman. There were no objections. David then asked for a nomination. **Kalil Boghdan nominated Bill Adler. No additional nominations were made. Bill was appointed Vice-Chairman through acclamation.**

Lastly, the Director sought nominations for the Clerk position. **Andrew Walsh nominated Michael Pierdinock. No additional nominations were made. Mike was appointed Clerk through acclamation.**

Chairman Kane assumed the running the meeting.

#### **APPROVAL OF JUNE 28, 2016 BUSINESS MEETING AGENDA**

Chairman Kane asked if there were any amendments to the June 28, 2016 MFAC business meeting agenda. There were no comments. Ray then asked for a motion to approve the business meeting agenda.

**Bill Adler made a motion to approve the minutes. The motion was seconded by Lou Williams. The agenda was then adopted.**

#### **REVIEW AND APPROVAL OF THE APRIL 9<sup>th</sup> AND JUNE 15<sup>th</sup> DRAFT BUSINESS MEETING MINUTES**

Ray Kane asked if there were comments on the April 7, 2016 or June 15, 2016 MFAC draft business meeting minutes.

With regards to the April 7<sup>th</sup> minutes, Bill Adler asked if the restrictions proposed by DMF and approved by the MFAC regarding fishing activity around the Harwich Reef site included a prohibition on the setting of recreational lobster and crab trap gear. Director Pierce confirmed that the regulations did include this prohibition. However, he noted there was a problem filing these final regulations and DMF would address this later in the meeting. Bill then asked DMF to review the minutes and make sure that the discussion regarding sea herring management and the fixed gear set aside was documented.

There were no further comments, questions or corrections to either set of draft business meeting minutes.

Mike Pierdinock asked about the process for approving minutes, as most MFAC members were appointed after April 7<sup>th</sup> business meeting. Director Pierce stated that the MFAC could vote up the minutes with the understanding that Bill and Ray, who were in attendance, reviewed them and supported their content.

**Bill Adler made a motion to approve both the April 7, 2016 and June 15, 2016 MFAC business meeting minutes. Charles Quinn seconded the motion. The motion was approved unanimously.**

#### **COMMISSIONER'S COMMENTS**

Commissioner George Peterson commended DMF for recently writing letters to the New England Fishery Management Council (NEMFC) to push the National Marine Fisheries Service (NMFS) for joint management of black sea bass, scup and fluke with the Mid-Atlantic Fishery Management Council (MAFMC). George was encouraged to see DMF take this strong position. He noted that interstate and federal management had to be adjusted to better reflect the geographic re-distribution of these species.

Chairman Kane stated that DMF must lead in moving away from the current black sea bass management system, particularly for the recreational fishery. He noted that regional ad-hoc management was not working for the state's recreational fishermen and for-hire businesses.

Mike Pierdinock asked about the time table for the Councils to address joint management. Director Pierce stated he would provide more details on this in his comments.

The Commissioner had no further comments.

### **DIRECTOR'S COMMENTS**

Continuing with the discussion of black sea bass management, David stated that environment and stock condition were driving a geographic shift of the distribution of many species, particularly black sea bass. This shift was documented through work conducted by the Atlantic States Marine Fisheries Commission's (ASMFC) Science and Management Board, which DMF's Dr. Michael Armstrong oversaw, as well as work conducted by the Northeast Fisheries Science Center. Additionally, at the June NEFMC meeting there was much discussion about climate vulnerability and stock assessments, and it is resulting in shifts in species distribution – for instance black sea bass, scup and fluke have become more abundant in northeast waters.

Despite these studies, change to management was slow. To facilitate further discussion and consideration, the Director recently wrote letters to the NEFMC and ASMFC. In his letter to the NEFMC, he petitioned they advocate NMFS allow for joint management of black sea bass, scup and fluke (similar to how dogfish are managed). This would give Massachusetts, and other New England states, a seat on the federal management body for these species. Then in his letter to the ASMFC, he petitioned they review catch limit allocations for these species. He thanked Nichola Meserve for her work helping him draft these letters.

David stated that at the June NEFMC, he also made the case for joint management of these species with the MAFMC and requested NOAA's support. NOAA representatives stated that this may prompt the MAFMC to request joint management of other species, such as sea scallops. David countered that sea scallops were not migratory species and no data existed to support an argument that the sea scallop biomass is moving southward.

NEFMC member Michael Sissenwine was instrumental in moving forward David's proposal for joint management. Eventually, the NEMFC approved the proposal 13-0-2. With this vote, the process to develop a joint management system would begin. However, he expected it would be difficult and the MAMFC would be resistant. Accordingly, one of the more difficult tasks would be for NOAA to develop a joint management procedure that would be amenable to both the NEFMC and MAFMC.

The Director stated that if the MFAC was supportive of this, he would have his staff draft an official correspondence to NOAA stating their support. There were no objections. David indicated that he would have staff work on a draft and hopefully have it ready for MFAC review at an upcoming meeting.

The Director then moved on to discuss recent events that may affect the recreational black sea bass fishery. The northern region (MA-NJ) was required to reduce harvest by 23% for 2016 because the 2015 recreational harvest estimate exceeded the 2016 recreational harvest target by that amount. However, this reduction was derived from preliminary 2015 harvest estimate data. NOAA just received updated 2015 recreational harvest estimates, which included VTR data. While Massachusetts harvest levels did not go up due to the incorporation of this data, New York saw a substantial increase in their harvest. As the recreational black sea bass fishery is subject to ad-hoc regional management, this increase in the 2015 harvest estimate could result in having to take further management action to constrain catch in 2016.

A conference call was scheduled for July 6, 2016 to discuss this new data and what management measures may need to be implemented to account for the additional harvest. David he was uncomfortable taking any further actions to constrain, as the stock is seemingly abundant, the fishery is ongoing and harvest was already reduced by 23%. However, early indications were that NMFS was considering closing the federal recreational black sea bass fishery. David encouraged the MFAC participate.

Chairman Kane stated that dogfish is also a species that is jointly managed by the NEFMC and MAFMC. He was curious whose Scientific and Statistical Committees (SSC) worked on dogfish management. David stated it was the MAFMC.

Ray was curious if there would be a similar arrangement if black sea bass, scup and fluke became jointly managed by the NEFMC and MAFMC. David stated that it was too early to make such a determination and this was one aspect NMFS must parse out in developing a joint management procedure. However, David noted that Massachusetts and Rhode Island scientists were playing a critical role in developing the new black sea bass stock assessment.

Ray asked David who would be representing DMF at meetings to discuss joint management. David stated that he would be working with Nichola and Dan on this matter, but he would represent DMF in formal discussions.

Ray then noted that if NMFS were to shut down federal waters to the recreational black sea bass fishery, DMF should support a position that minimizes impacts on Massachusetts fishermen. He stated that Massachusetts stayed within its harvest target for 2015 and had to take an initial cut in 2016 because of high levels of harvest in the regions more southerly states and now were facing potential additional cuts because of more harvest being attributable to New York's. In conclusion, he reiterated that the current ad-hoc regional management system was not working in favor of Massachusetts fishermen.

Bill Adler asked for David's opinion on the MAFMC reaction to the joint management proposal. Based on preliminary conversations with members of the MAFMC, David expected the MAFMC would oppose joint management.

Bill then asked for more information regarding 2015 recreational black sea bass harvest estimates in relation to 2016 recreational black sea bass limits.

Nichola Meserve stated that preliminary harvest estimates, from MRIP data, are provided in the winter. States use these preliminary estimates to develop their fishing limits for the upcoming year. Final estimates, which incorporate VTR data, are provided later in the year. Historically, the incorporation of this data has not driven harvest estimates up by any substantial margin. However, this was not the case for 2015; New York's harvest estimate (which was already over its target) increased by 30% with the incorporation of the additional data (Massachusetts harvest was actually estimated to have decreased by 2.5% from the preliminary to the final estimate) As the ASMFC fishery management plan (FMP), establishes regional management for the recreational black sea bass fishery, all states in the region (MA-NJ) are be accountable any harvest overage.

Mike Pierdinock asked for clarification on what it meant for NMFS to close the federal black sea bass fishery. David stated such an action would prohibit the harvest of the black sea bass in federal waters or by any federal charter boat permit holder. He expected this would have a more limited impact in Massachusetts because our black sea bass fishery occurs principally in state waters by non-federal permit holders. Mike stated that he was a federal charter boat permit holder.

Mike then asked what could be done to prevent Massachusetts from having to take cuts to its recreational fishery because of overages in other states. David stated that we are stuck with the regional approach in 2016 and cannot move away from this system this year. A new Addendum could be initiated this winter that would allow for another management approach in 2017 (e.g., state by state).

David understood the frustration with having to cut harvest in our state because of fishing activity in another state, but noted that it does provide a buffer when your state is the one responsible for over-harvest. In some years, Massachusetts' harvest overage was the driving factor in regional cuts and if it were not for the regional management system Massachusetts would have had to take substantial cuts to harvest limits. The

Director opined that the bigger issue may be that the current system requires states to adjust their limits annually based on the prior year's harvest and harvest is driven more by availability than management.

Mike asked if David expected the new stock assessment would have a mitigating impact on the need to annually adjust black sea bass limits. David was uncertain. At this point, there was little information regarding to what extent the new stock assessment would allow for the liberalization of catch limits, and there was inadequate data available to estimate 2016 harvest so early in the season. He was optimistic, however, that the new stock assessment was improved and it would demonstrate there is greater black sea bass abundance than the previous assessment showed.

Bill stated that there was a letter from the Connecticut US Congressional delegation regarding black sea bass management. He was curious if David thought the letter would prompt change or if it was just politics. David noted that this letter allowed fishermen to express their frustrations with the management system, but was uncertain if it would facilitate change. However, he noted that the New York delegation has been successful in influencing fluke management in the past.

Ray asked what the ASMFC was expected to discuss at their August meeting regarding black sea bass. Nichola stated the agenda was dependent on the outcome of the upcoming July 6<sup>th</sup> ASMFC conference call on final recreational harvest limits and potential management impacts.

The Director then moved on discuss sea herring management. He stated that landings of the Management Area 1A (inshore Gulf of Maine) commercial quota have outpaced projections. There was now a concern that the fishery may have to close earlier than expected. This would impact the availability of fresh bait.

There had been ongoing informal discussions among Maine, New Hampshire, Massachusetts and the industry as to how to slow down catch. The historic mechanism for this is to adjust the number of landing days. However, Maine recently unilaterally implemented that both shortened the landing days schedule and controlled the number of fishing days. David expected there would be a conference all in mid-July to discuss Maine's action and determine what (if any) adjustments should be made.

Bill stated that Maine had taken action to control fishing by their permit holders when fishing in federal waters. Bill asked in Massachusetts could do the same thing. David stated that DMF could. However, he did not intend for Massachusetts to take any approach that differed from the approach agreed upon by the ASMFC.

Ray asked how Maine could act unilaterally to manage sea herring without approval of the ASMFC. David stated he would have liked to see Maine propose this action through the ASMFC, as this decision was affecting fishermen and management in other states. However, Maine would likely argue that they can take a unilateral action affecting their fishermen if it is more restrictive than the specifications set forth by the ASMFC. Bill Adler agreed that Maine could manage more restrictively without ASMFC approval.

Ray stated that this fishery closed in early September in 2015 and early closure caused bait shortages. He was concerned that we were facing an even earlier closure this year and therefore even more problems with bait availability.

David stated that effort was higher than expected and purse seiners were pumping out onto carriers (generally mid-water trawlers) and the carriers would then land the fish. This increased the capacity of the fishery, resulting in high than projected landings.

Ray thought that Maine was working to resolve the issue regarding the use of carriers.

Director Pierce moved onto discuss squid fishery issues. He stated that there is an active small mesh trawl fishery for squid in federal waters south of Martha's Vineyard and Nantucket. The fishery has been very productive and they recently reached their Trimester 2 quota threshold (90%), which prompted NMFS to establish a 2,500 pound incidental catch limit.

The Director reminded the MFAC that the squid fishery was the center of a controversy in Massachusetts. Nantucket residents were actively advocating for more aggressive management of this fishery in state and federal waters due to concerns about forage availability and impacts on squid spawning. One avenue being pursued is for the MAFMC to adopt buffer zone closures to reduce small mesh trawl fishing in certain areas to increase forage and reduce effort where squid egg mops are deposited. David expected there to be support for this proposal from the recreational fishery, but for it to be opposed by trawlers.

Andrew Walsh stated that he has been following this and preliminary discussions at the MAFMC do not indicate there is a strong scientific basis for adopting the buffer zone closure proposal. He stated that in 2015 DMF closed the summertime squid fishery in an area of state waters south of the Martha's Vineyard and Nantucket due to concerns about forage impacts, but without any supporting data on forage depletion. He was concerned that fishing opportunities were being taken away from draggers due to the perceptions of certain individuals rather than valid science.

David stated that DMF was awaiting the full analysis from the MAFMC. Following a review of this analysis, DMF will comment on the MAFMC Squid Capacity Amendment, including the buffer zone proposal. He noted that Doug Christel was assisting to keep DMF informed on this issue.

Mike Pierdinock stated that this was a complex issue. Recreational anglers and the charter boat community that fish in this area are very concerned about the decline in availability of key target species (e.g., fluke and striped bass). He noted that there are many reasons why these fish may not be available (e.g., seals, forage, water temperature). However, the squid fishery was very active in this area in recent years and blame was being placed on the trawlers localized depletion. He hoped that the

MAFMC's analysis could provide data that would help parse out potential causes for declines in availability.

On squid, David stated that he used his regulatory authority to extend the state's small mesh squid fishery for one week in June. This decision was based on federal observer data, which showed high levels of squid catch and limited discarding of other species. He noted that there are some photos circulating that show large bycatch in the squid fishery. However, DMF cannot rely on photos like this to make decisions and instead must rely on the best available data, which comes from sea sampling.

David added that the decision to extend the state's squid fishery was met with frustration from some Nantucket residents, namely those who are driving the buffer zone concept. David encouraged the Town of Nantucket, through their Selectmen, to develop a petition to DMF that describes exactly what actions they want the state to take to better manage the squid fishery. David would then present this petition to the MFAC for debate and review.

Andrew supported DMF's extension of this fishery. He stated that Facebook posts are not real scientific data and should not play a role in DMF decision making. The state must look at real data and analysis, as they did by using observer data.

The next topic for the Director's comments was the Gulf of Maine cod industry based survey. He noted that this survey had been ongoing since April. Concurrent with this was the open end cod survey conducted by Dr. Kevin Stokesbury of SMAST. These surveys may provide supplemental data for the assessment. David noted that as soon as data was available, he would provide the MFAC with a presentation.

David briefly touched on Ocean Planning. He stated that he sits on the Northeast Regional Planning Body for the federal Ocean Plan. Additionally, he sits on the Massachusetts planning body and the Massachusetts Ocean Plan was being revised.

DMF was continuing their work with the Atlantic White Shark Conservancy. They have identified over 100 white sharks off Massachusetts waters and have tagged more than 40. These studies should help understand white shark movements and behaviors along our coast, which in turn can assist local decision making.

Lastly, David recently spoke at the opening of the New Bedford Fishing Heritage Center. The museum has a number of different exhibits designed to educate the public on the commercial industry. He presented a number of slides that showed the Center, its staff and its exhibits. He strongly encouraged the MFAC to visit.

## **LAW ENFORCEMENT COMMENTS**

Major Patrick Moran handled comments for the Massachusetts Environmental Police. He stated that similar to previous years there had been a number of non-compliance

incidents prior to and during the recreational black sea bass season. There were a number of cases that involved substantial overages and possession of sub-legal sized fish. Some of these cases resulted in arrests. The first case was recently settled in Wareham District Court. The defendant had to pay a \$2,400 criminal fine; others cases were still pending.

Officers were also seeing an influx of undersized whelks at New Bedford processors. Earlier in June, they seized over 1,000 pounds of whelks from a processor. He noted that discrepancies between Rhode Island size standards and Massachusetts size standards may be responsible for the presence of some of these undersized whelks, but fisherman compliance with the state's minimum size standard remains problematic as well.

Major Moran then noted that Lt. Matthew Bass would serve as the agency's liaison to the MFAC at future business meetings.

Mike Pierdinock asked if those individuals who were found in violation of the black sea bass regulations also lost their fishing license. Lt. Bass stated that it was common for them to not hold a recreational fishing license or to be fishing under a commercial permit for scup. However, if they did, the license could be taken away through an adjudicatory hearing. Jared Silva stated that he would speak to Mike about the hearing process.

Kalil Boghdan asked for the number of environmental police officers and to describe how their vessels were geographically allocated. Sgt. Bass stated that there are 90 officers state-wide and approximately 40 officers on the coast. Additionally, they had 40 vessels and the location of these vessels vary depending on seasonal priorities. For instance, in the spring the focus may be in the southern waters to enforce sea bass rules, in the summer they may be along the Cape to enforce striped bass rules, then in the winter they may be in Cape Cod Bay to identify gear that has been abandoned in the fixed gear closure area.

### **ACTION ITEMS**

Director Pierce stated that DMF sent the MFAC a number of memos. He thanked Jared Silva, Nichola Meserve and Melanie Griffin for their work on these documents.

#### 2016 Recreational Black Sea Bass Limits

The first action item was to vote on recreational black sea bass limits previously adopted by emergency regulation. David asked Nichola to present the recommendation.

Nichola explained that following scoping meetings and review with the MFAC, DMF adopted emergency regulations to implement the 2016 recreational black sea bass limits (May 21 – August 31; 5-fish per angler; 15" minimum size). No comments were received at the public hearing or during the public comment period. The Director's

recommendation was to adopt these emergency regulations as final regulations. To do so, the MFAC would need to make a motion to adopt this recommendation.

**Bill Adler motioned to adopt the Director's recommendation. Kalil Boghdan seconded the motion.**

The Chairman opened this item up for discussion.

Lou Williams expressed a general concern about increasing minimum sizes. He stated that he had long objected to this practice because it forces discards and higher discard mortality, and results the harvest of larger, more fecund adult fish.

Mike Armstrong stated for black sea bass discard mortality is about 5% overall and it is lower in Massachusetts waters because they are being caught in more shallow water. Additionally, Massachusetts harvest was historically composed of larger fish. Therefore, from a biological perspective, Dr. Armstrong was not particularly concerned about the impacts of recreational fishermen taking a 15" fish, as opposed to a 14" fish.

Commissioner Peterson stated that in addition to joint management he wanted DMF to pursue adjusting how and when the state sets its recreational fishing. He noted that it is ineffective to work in an interstate management system that does not allow you to develop limits until late winter (when preliminary harvest estimates are available) and then have to implement rules within only a few months. This is particularly unfair to charter businesses that book trips well in advance of rules being published and rely on consistent management to maintain a client base.

Ray agreed. Ray advocated that DMF pursue a state management approach. Under this management approach, Massachusetts would not have to wait until mid-February to begin developing limits for the upcoming season; the state's fishery concludes in Wave 4 (July – August) and the preliminary estimates needed to develop limits would be available by mid-to-late fall. However, under the current management approach, Massachusetts cannot develop its rules until late-winter, as it must wait for Wave 6 (November – December) harvest estimates from New York and New Jersey.

David recognized the frustration with the current management system and noted how he did not favor developing limits so late in the year. However, he reiterated concerns about moving away from a regional management approach and reminded the MFAC that in past years Massachusetts would have had to severely constrain the recreational black sea bass fishery had it not been for the buffer provided by the regional approach.

**No further comments were made. Chairman Kane called for a vote. The motion was approved unanimously.**

## 2016 Recreational Gulf of Maine Cod and Haddock Limits

David recommended the MFAC adopt as a final rule the recently enacted emergency regulations that established recreational fishing limits for Gulf of Maine cod and haddock. These limits were described in Table 1 of the June 23, 2016 memo.

**Bill Adler motioned to adopt the Director's recommendation. Lou Williams seconded the motion.**

Chairman Kane opened this item up for discussion.

Bill Adler asked for the Director to describe the condition of the Gulf of Maine cod stock.

David stated that this was a much debated question over the past number of years. The most recent stock assessment demonstrated that the stock was at 3-4% of its target. However, this assessment was disputed by anecdotal evidence provided by fishermen. This highlighted the need for better data. He was hopeful that the IBS and the open end cod survey could provide this data. Early indications from the IBS show that cod were not highly abundant in areas where and at times when the industry believed researchers would find them; so there is reason for concern. However, fishermen continue to see cod in high abundances in certain areas, such as western Stellwagen Bank. The open end cod survey should be able to provide additional detail into this.

Andrew Walsh asked if the IBS survey was being conducted only in state waters. David stated that it was funded by Massachusetts but it was occurring primarily in federal waters.

Andrew stated that he was concerned that gaps in the IBS would result in the data not assimilating well into the stock assessment. So he asked if there was secure continuous funding for the IBS.

David stated the survey was currently being funded with groundfish disaster relief money, but DFG was working hard to secure a continuous source of funding. Commissioner Peterson stated that revenues were not tracking well and the state was preparing for potential budget cuts. However, Governor Baker and Secretary Beaton have committed to improving fisheries science, so the Commissioner was optimistic that funding for the IBS would be prioritized.

Mike Pierdinock stated that the boats targeting haddock in the Stellwagen Bank area are regularly discarding high numbers of cod.

Commissioner Peterson shared David's optimism that the open end cod survey should help better characterize these abundances. He stated that thus far there was about a 90% accuracy of identifying fish in the open end survey. He opined that this bodes well for potentially extending this technique to larger areas, which in turn would

improving the stock assessment. Director Pierce stated the open cod end survey is a provocative study.

**No further comments were made. Chairman Kane called for a vote. The motion was approved unanimously.**

#### Restrictions on Harwich Reef Site

DMF biologist Mark Rousseau provided a presentation on the Harwich reef project and took questions from the MFAC.

Mike Pierdinock asked if DMF's initial analysis of the reef were consistent with expectations. Mark stated that reefs colonize at different rates. Expectations were the black sea bass would quickly colonize this structure and this has been verified. Ray Kane noted that fishermen were catching fish, including black sea bass, on the reef.

Director Pierce asked Mark to describe the involvement of the Town of Harwich. Mark stated that the town is very much involved with the project. On March 30<sup>th</sup> they held a fundraiser to start a high school artificial reef program to involve teenagers in marine biology and to raise public awareness. Harwich is hoping to hold this event annually and there is a lot of support in the town for the reef and the program. DMF was assisting the Harwich in an advisory role to set up and run this program.

Deputy Director McKiernan asked if any acoustic receiver data was available. Mark stated that DMF pulled data from the receiver on June 15, 2016. The receiver showed that eight striped bass and one sturgeon passed the reef site.

Kalil asked about the funding for the reef. Mark stated that the Seaport Advisory Council provided an initial \$40,000 to study site suitability. Then reef deployment was funded through proceeds from the recreational fishing license. Costs for deployment have been about \$150,000.

Deputy Director McKiernan then discussed DMF's recommendation for restrictions on the reef site. He noted that these rules were previously approved by the MFAC in April 2016. However, due to an oversight by the Secretary of State, DMF could not file a final regulation and was instead required to go back out to public hearing and provide this recommendation to the MFAC again.

The final recommendation being provided at this meeting is the recommendation that was approved by the MFAC at their April meeting and was currently in place as an emergency regulation. The recommendation is to prohibit commercial fishing, recreational trap fishing and the setting of vertical lines (e.g., moorings) within a 40 acre square site. This 40 acre area is comprised of the permitted reef site (200 m x 200 m) and a buffer zone (100 m) on each side of the permitted reef site. The purpose of these restrictions is to prevent conflicts with different user groups.

**Bill Adler motioned to adopt the Director's recommendation. Lou Williams seconded the motion.**

Chairman Kane opened this item up for discussion.

Bill Adler asked if DMF had ever set aside an area for exclusive use by a user group. Dan stated that the weir fishery is analogous, as DMF has prohibited fishing around and within weirs.

Ray Kane asked if these same restrictions would apply to the Yarmouth tire reef. Dan stated that they would not. There was a precedent to allow commercial fishing on the Yarmouth reef, so adopting similar rules for Yarmouth would result in restricting historic access; this was not DMF's goal.

The Harwich reef was designed for recreational use only with funding from the recreational permit. Additionally, there was very little historic fishing activity in this area, as gillnets and mobile gear are seasonally prohibited and habitat was not suitable to target other species except potentially some conch potting. For these reasons, DMF felt it was appropriate to make the Harwich reef recreational angling only.

Andrew Walsh asked if commercial rod and reel fishing would be prohibited from fishing on the reef. Dan stated that an angler (commercial or recreational) may fish on the reef under recreational fishing limits. If fisherman was in possession of fish that did not conform to recreational limits, they would be in violation of the regulation.

Bill Adler stated that there was a comment to potentially allow fishing on the reef during late fall and early winter, when recreational fishing would be minimal. Dan recalled that the comment was in regards to potentially providing access to conch potters. However, with the presence of the reef, the area is no longer suitable whelk habitat. Outside of conch potting, Dan was unsure what type of commercial fishing activity would occur on the reef at that time, as finfish species would have migrated south and most quota managed fisheries would be closed. That said, DMF was not opposed to the idea. However, it was not being proposed at this time because DMF wanted to monitor fishing activity and species presence around the reef before considering exemptions.

Bill asked if DMF expected this closure to have a similar effect as the discrete spawning cod closures in off Cape Ann, where gillnetters were setting their gear around the closure to catch the fish as they moved in and out of the area. Dan reminded the MFAC that gillnets are seasonally prohibited in this area. However, some pot fishermen may fish the edges of the area. This would be something that DMF would have to monitor.

**No further comments were made. Chairman Kane called for a vote. The motion was approved unanimously.**

### Sea Herring Spawning Closure

Jared Silva reviewed the sea herring management proposal. He stated that there is a long standing seasonal sea herring spawning closure in the inshore waters of the Gulf of Maine (MA/NH Closure). This closure was adopted through the ASMFC. It is a four week closure that can be extended for an additional two weeks. The timing of the closure was determined by a Gonad Somatic index, which measured the size of the gonad as a proportion of the overall weight of the female herring to project when spawning would likely occur.

Based on a review of historic spawning sampling, researchers determined that this methodology for enacting a spawning closure did not always result in the closure coinciding with peak spawning. Better protecting peak spawning became the focus of a new ASMFC initiated and approved a new Amendment to the FMP.

The Amendment included a number of items.

- A new spawning closure project methodology was developed. The new methodology tracks gonad size over time to project peak spawning throughout the area.
- To alleviate some confusion among the states regarding the procedure for extending the closure, the Amendment clarifies that samples must include a minimum of 100 female herring but the herring may come from fishery dependent or independent sources.
- The fixed gear set aside would not be reallocated into the general quota.
- All vessels would be required to have an empty fish hold after landing. This provision was later not adopted by the NEFMC in Framework 5 and therefore dropped from the Amendment.

As Massachusetts does not have a fixed gear fishery and the empty fish hold provision was dropped, DMF's draft regulation focused entirely on the spawning closure adjustments. Accordingly, the Director recommended to amend the methodology by which the closure is implemented and the sampling procedure by which it can be extended to comply with the FMP. No comments were received at public hearing or during the public comment period.

Director Pierce added that the sea herring closure was a long standing ASMFC management approach for the Management Area 1A. DMF staff has played a crucial role in sampling and reviewing data. Based on their review of this data, the state of Massachusetts led the push for this amendment, particularly as it relates to the methodology for implementing the closure.

David noted that moving forward it may be warranted to consider potential spawning protections on George's Bank as well.

**Bill Adler motioned to adopt the Director's recommendation. Andrew Walsh seconded the motion.**

Chairman Kane opened this item up for discussion.

Bill and Ray discussed the sampling and re-closure protocol issue. Dr. Armstrong explained that in 2015, the ASMFC initiated a re-closure based on a discrete sample taken from a bottom trawler in Maine. Directed fishery catch was also landed in Massachusetts and our samplers found the fish were spent. However, the closure had already been initiated based on Maine's data. Massachusetts disagreed with using catch from a non-directed fishery. When the closure was initially developed, the intent was to open the fishery to the directed fleet so that a sample of herring from throughout the area could be obtained to determine if re-closing was necessary.

**No further comments were made. Chairman Kane called for a vote. The motion was approved unanimously.**

### **OPEN MEETING LAW PRESENTATION**

Commissioner Peterson introduced his General Counsel, Richard Lehan. Rich was asked to provide a presentation on the state's Open Meeting Law. His presentation reviewed aspects of the new law; the role of the Attorney General's Open Meeting body; how complaints were made and handled; requirements for an open meeting; what constitutes a deliberation and when a meeting is subject to the Open Meeting Law; the requirements for executive session; remote participation; and exemptions from the law. At the conclusion of the presentation, Rich took questions from the MFAC.

Bill Adler asked about the use of fax polls. Rich stated that they may be exempt, but their use must fit within the definition of an emergency under the Open Meeting Law. He noted that he was working with DMF to discuss the continued use of fax polls moving forward.

Kalil Boghdan asked whether there was a difference in minutes taken during an open session and an executive session. Rich stated that open session minutes are public with few exceptions regarding performance evaluation of an individual or if information is otherwise confidential under the public records law. Executive session discussion is confidential. However, at a later time when the reason for the executive session is no longer applicable, then that discussion must be transcribed and become part of the public record, unless exempt under the public records law or privilege communication with legal counsel.

Mike Armstrong stated that MFAC business meeting minutes are very detailed. He was curious if this was what was required by the law. Rich stated that a summary must be provided that allows the public to have a reasonable understanding of what was discussed. However, being more detailed than required should be considered favorable, because it provides greater transparency with regards to the discussion. Jared Silva stated that the MFAC business meeting minutes were detailed in order to develop a clear historic record to better understand past actions.

## **ITEMS FOR FUTURE PUBLIC HEARING**

### July Public Hearing

Deputy Director McKiernan stated that DMF provided the MFAC with the public hearing notice for the upcoming public hearing. The notice provided a brief description of each item. Additionally, there was a hand out of slides that reviews the details of each proposal. He asked the MFAC if they wanted to review each proposal. They did not.

### ASMFC Jonah Crab

Deputy Director McKiernan stated that Addendum I to the ASMFC's Jonah Crab FMP was recently approved. The Addendum liberalized the incidental trip limit from 200 crabs per day or 500 crabs per trip to 1,000 crabs per trip. It also extended the limit so that it would apply to all non-lobster trap gear, rather than just net gear. Dan argued that there was not any evidence to demonstrate that this liberalization was necessary, but it was effectively lobbied for by certain Mid-Atlantic states. Dan added that he did not think it would result in a proliferation of effort or trap gear in Massachusetts because state law requires a person hold a commercial lobster permit to take crabs, and trap limits are constrained by trap tags and the setting of non-lobster trap gear constrained by haul-out periods for fish pots and conch pots.

Bill Adler asked if the 1,000 crab limit applied to conch pot fishermen. Dan stated that it allows any trap fishermen with a commercial lobster permit to take up to 1,000 crabs.

## **DISCUSSION ITEMS**

### Commercial Striped Bass Presentation

Deputy Director McKiernan stated that DMF put together this presentation because it is a good demonstration on how DMF collects data, uses data and works with the MFAC to manage fisheries.

Story Reed provided a presentation on commercial striped bass fishery performance. A prior presentation was provided to the MFAC in 2010/2011 in response to a request by a member (John Pappalardo). This presentation prompted the MFAC and DMF to go to rule making to address how this fishery was being managed to address a multitude of concerns and new rules were implemented for the 2014 season.

The presentation provided a 5-year look back at the commercial fishery and it demonstrated how performance has changed as a result of 2014 management changes and the 2015 quota reduction. Additionally, it included a review of the statistics available to DMF. At the end of the presentation, Story took questions from the MFAC.

Chairman Kane thanked Story for his presentation.

Bill Adler stated that harvester trip level reporting forms are confusing and difficult for many fishermen. Story agreed, noting that he's been working with commercial fishermen on how to correctly fill out these forms since trip level harvester reporting was implemented.

Story noted the forms are unfortunately "one size fits all". However, with the increasing use of electronic reporting he was optimistic that more personalized forms could be developed. In fact, DMF was working with ACCSP to move in this direction. Doug Christel added that NMFS is working on an electronic reporting form that will allow for auto-population of certain fields to provide more selectivity about fishing activity.

Kalil Boghdan asked Story what the total value of the commercial fishery was. Story stated in 2015, with a quota reduction, the ex-vessel value of the fishery is \$3.5M. Kalil opined that considering striped bass is retailing for more than \$20/pound, the value of this fishery is at the dealer level. Story noted that the ex-vessel value in this fishery is still very high compared to many other commercial fisheries and provides an important source of summertime income for many fishermen and it kept many small-scale fishing businesses operable.

Ray Kane credited DMF and MFAC on this new management structure and noted it was a success.

#### Timing and Location of Future Business Meetings

Director Pierce proposed maintaining the historic MFAC business meeting schedule (first or second Thursday of the month at 10:30 AM). He also encouraged continuing to hold these meetings throughout coastal municipalities, particularly if there were regionally important issues being addressed. The Director turned to the Chairman for further discussion and comments.

Chairman Kane stated that he has served on MFAC for 9-years and recalled difficulties in consistently having a quorum in attendance. With seven new members, he thought it would be best to have a standard location. This may provide some stability and thereby enhance attendance. The Chairman suggested meetings be held at DFW's Headquarters in Westborough.

This recommendation was supported by the MFAC. However, Mike Pierdinock expressed some concern about public attendance and transparency by not having meetings in coastal communities. The Chairman stated that the public is afforded an opportunity to discuss proposals at public hearing, and the MFAC business meeting was not a suitable forum for discussion with the public.

David did not object to holding these meetings in Westborough. He noted that if the MFAC felt it was important to return to holding meetings throughout the state, it could be discussed at another time.

Ray Kane asked if DMF could move the proposed September meeting date to accommodate Mike Pierdinock's schedule. There were no objections and the MFAC agreed to meet on September 15, 2016 rather than September 8, 2016. Ray then asked Jared to notify the MFAC of the pending meeting dates for the remainder of 2016.

#### **OTHER BUSINESS AND COMMISSIONERS COMMENTS**

Kalil extended his congratulations to Ray, Bill and Mike on their election as Commission officers.

Andrew Walsh asked if DMF had considered allowing public participation in MFAC business meetings by webinar or conference call. Jared stated that there had been negligible historic interest in such a platform, but if it was an item of interest, DMF could review whether it was feasible or not and noted that it may be dependent on the technological capabilities of the facility where the meeting was being held.

No further comments were made. **Bill Adler made a motion to conclude the business meeting. The motion was seconded by Andrew Walsh. The motion was unanimously approved and meeting was concluded.**

## **Meeting Documents**

- June 28, 2016 MFC Business Meeting Agenda
- April 7, 2016 MFC Draft Business Meeting Minutes
- June 15, 2016 MFC Draft Business Meeting Minutes
- Recommendation for 2016 Recreational Black Sea Bass Limits
- Recommendation for 2016 Recreational Gulf of Maine Cod and Haddock Limits
- Recommendation for the Harwich Recreational Fishing Reef Restricted Area and Harwich Reef Presentation
- Recommendation for Adjustments to the Sea Herring Spawning Closures
- Open Meeting Law Presentation
- July 2016 Public Hearing Notice and Related Slides
- Cancer Crab Proposal for Public Hearing
- Commercial Striped Bass Presentation
- Memorandum on Proposed Future Meeting Schedule

## **Next Meetings**

**October 6, 2016  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA**

**November 10, 2016  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA**

**December 8, 2016  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA**