



## ***Marine Fisheries* Shellfish Advisory Panel Meeting Summary**

March 26, 2015  
Hanover Public Library

### **Attendance**

Panel Members: Paul Bagnall, Chris Sherman, Dave Sargent, Chris Southward, Allen Rencurrel, Monte Rome, Diane Murphy, Richard Kraus, Mike Trupiano, Ron Bergstrom, Bob Wallace and Steve Kirk (proxy for Jon Kachmar). Absent: Alex Hay, Bob Stanley, and Jonathan Johnsen.

Marine Fisheries Staff: Daniel McKiernan, Michael Hickey, Jeff Kennedy, Tom Shields, Kathryn Ford, Chris Schillaci, Diane Regan, Greg Sawyer, Neil Churchill, Jerry Moles, Jack Schwartz, Ryan Joyce, Story Reed, Nichola Meserve and Jared Silva.

Other: Eric Hickey (DPH) and Lt. John Girvalakis (OLE)

### **Call to Order and Introductions**

Deputy Director Dan McKiernan chaired the meeting and called it to order. He began the meeting by noting that the Shellfish Advisory Panel (Panel) was created by Director Diodati to advise DMF on shellfish related issues and open up lines of communication between DMF and industry. Director Diodati was scheduled to retire at the end of the April, but DMF intended to maintain the Panel, as it serves a critical role in shellfish management.

Dan then introduced himself and initiated introductions for those members of the Shellfish Advisory Panel and *Marine Fisheries* staff in attendance.

He asked if there were any changes to this meeting's agenda; no changes were proposed.

### **Marine Fisheries Presentations**

#### Interstate Shellfish Sanitation Conference Update

Deputy Director McKiernan turned the meeting over to Shellfish Program Chief Mike Hickey. Mike called the Panel's attention to DMF's memo on this topic. Mike explained that with recent changes to the National Shellfish Sanitation Program's Model Ordinance, shellfish harvesters must undergo educational training every two years regarding the harvest and handling of product.

For 2015, the baseline education requirement was that harvesters had to acknowledge their understanding of existing shellfish harvest and handling rules. For administrative reasons, DMF was up

against a deadline. It was determined the best way to meet this educational requirement was through an affidavit that would be sent out to shellfish permit endorsement holders with their permit renewals. Mike recognized that some commercial shellfish harvesters interpreted this as DMF promulgating regulations without due public process; Mike assured the Panel that this was not the case and all rules referenced in the affidavit could be found in DMF and DPH regulations and statutes. Mike then provided a synopsis of the contents of the affidavit.

Dan opened this topic up to questions and comments from the Panel. Chris Sherman stated that Mike's memo was very helpful in explaining the purpose of the affidavit. However, he stated that this type of information should have been made available when the document was distributed. The affidavit caught many aquaculturists off-guard. Specifically, those sections affecting off-site culling ran counter to common industry practice; many were unaware of DPH rules affecting this practice and believed DMF was instituting new mandates. This in turn created confusion and animosity.

Ron Bergstrom wanted to discuss the enforcement of the rules outlined in the affidavit. Mike stated that all the rules set forth in the affidavit already exist in state law or regulations and are requirements of the NSSP, so they must be implemented and enforced. DMF's overarching goal is to distill all these various rules into DMF regulations so that they may be enforced by the Environmental Police and local Shellfish Constables, as these entities cannot enforce DPH regulations. Mike provided some history as to why these rules are spread throughout DPH and DMF laws and regulations.

Ron expressed concerns that because the Environmental Police are understaffed and shellfish constables are often unwilling to enforce these types of regulations that they become unenforceable. He noted that when this occurs the benefits of these regulations become marginalized but the costs increase for law abiding businesses.

Mike agreed that this has historically been an issue. However, he noted that the FDA and ISSC were focusing on time-to-temperature and shellfish handling rules and tightening up how non-compliance with these rules affects product entry into interstate commerce. Accordingly, the state needs to enhance these aspects of our shellfish management or risk our product becoming restricted in interstate commerce. Mike added that since the *Vibrio* regulations have gone into effect there has been a change in the behavior of dealers and the purchasing of non-compliant shellfish because it puts them at risk of being cited for violations.

Chris Sherman expressed a desire to see more education and outreach so that industry members better understand the necessity of some of these rules.

Paul Bagnall stated that it has always been a part of the job of the Edgartown Shellfish Constable to enforce state and local regulations. He sees the problem often lies with the courts, who often throw out tickets, which does little to incentivize compliance. He agreed with Chris Sherman that education is an important element to preventing non-compliance.

On this topic, Mike stated that rather than using an affidavit in future years, DMF was designing an online power point style question and answer educational tool. This tool would not only explain what the rules are but also their purpose. Mike expected this tool would be ready for 2017, which is the next year shellfish harvesters need to complete this training. There were some concerns expressed about computer literacy and the ability of the industry to handle such training and brainstorming as to how to make online training accessible. Dan and Mike noted other instances where online training for

fishermen is used in fisheries management. Mike was confident that this program could be rolled out well in advance the permitting season so that there would be sufficient outreach to address these concerns and not create a delay in permit issuance.

Monte Rome asked if some of the required data could be collected at the transaction between the dealer and harvester. Mike and Story Reed discussed the shellfish harvester swipe card pilot program, expressing belief that it could evolve to collect that type of data at transaction.

Mike then moved on to discuss potential ISSC requirements regarding aquaculture operational plans and site inspections. These requirements were still being further developed in committee. Mike noted that this requirement was being driven by the East Coast Shellfish Growers Association to minimize bacterial contamination from bird feces. Chris Sherman noted that there is likely going to be a push against having prescribed measures, in favor of a more self-determinative means of addressing grant specific issues.

#### Vibrio Management

Chris Schillaci provided a PowerPoint presentation on *Vibrio parahaemolyticus* (Vp) management issues for 2015. The presentation discussed: (1) the emergence of Vp and mandate to control the risk of Vp related illness; (2) the history regarding the development and implementation of the Vp Control Plan; (3) changes needed to the Vp Control Plan for 2015; and (4) Vp research priorities.

In conclusion, Chris noted that DMF ultimately wanted to move Vp management towards a predictive, rather than a reactive, management model. However, the science needed to get to this end point must be beyond reproach, particularly considering the risk of litigation. As Vp science and risk modeling is still in its infancy, he expected it will take time and be costly to obtain predictive management. Tom Shields added that the short term goal was to work with industry and DPH to comply with federal mandates, whereas the long term goal was to collect data and develop potential alternative management models.

Chris Sherman stated that he firmly supported the ongoing research that would move management towards a predictive model. He added that he would be willing to use his Association's political clout to lobby legislators for funding to help expedite the development of this science.

Monte Rome suggested that local authorities may be better suited to do environmental monitoring. Chris noted that DMF does work collaboratively with local shellfish authorities. However, the methods for collecting data for modeling have to be extremely precise and consistent in order for them to be accepted. As a result, farming out data collection is not ideal. Instead, DMF prefers using tools that automatically collect and store this data for future downloading, which can be calibrated on a particular schedule. Paul Bagnall added that municipal data collection was often cost prohibitive, given the cost of the tools and their maintenance and calibration. Ron Bergstrom asked if DMF was prepared to collect this volume of data. Chris stated that the agency was.

Bob Wallace asked if DMF was collaborating with any universities. Chris noted that DMF was working with universities. UNH is a leader in Vp research, and DMF has been working with them on environmental predictive modeling.

Chris moved on to discuss 2015 Vp management. He noted that other states have no summer harvest because of poor compliance and compliance monitoring. Losing the summertime harvest would be a substantial loss for Massachusetts harvesters because of the strong summer tourist market for raw

product. So compliance and enforcement were essential, and tagging is the single most important compliance and enforcement tool. Willfully non-compliant oysters will be embargoed and destroyed and the permit holder may face an automatic permit suspension. Bob Wallace stated that industry supports strong enforcement because of the risk associated with non-compliance and the loss of interstate markets.

Chris Sherman made the point that the Marine Fisheries Commission is the public body that votes on DMF's Vp regulations and advocated that DMF pursue having a shellfish harvester on the Commission. Dan McKiernan appreciated Chris' comment and noted that there have been shellfish harvesters on the MFC in the past. However, due to their narrow interest in shellfish, they were not always the most engaged or active members, as the bulk of the MFC's workload focuses on finfish and lobsters.

#### Shellfish Tagging

The Panel conversation steered towards harvester tagging of market sized oysters. Accordingly, Mike Hickey agreed to discuss this agenda item at this point, rather than later. Chris Sherman and Dick Kraus strongly advocated for the lot tagging of market bound oysters by harvesters. They noted that this was allowed in the NSSP, yet DMF required more restrictive unit tagging, which they deemed cost and labor intensive.

Mike stated that the state manages the harvester tagging of market sized oysters more conservatively than the NSSP, which is within their authority. The primary reason for this is compliance and enforcement at the dealer level. In a lot tagging scheme as lots are broken down there is an increased risk of co-mingling and being unable to indentify bags to harvesters, which increases the public health risk. Eric Hickey agreed. He noted from a DPH perspective that the moment of concern is when a bag is removed from a lot by a dealer but a dealer tag has not been issued.

Chris and Dick both argued that if the concern is at the dealer level then the burden should be on the dealers to make sure their product is properly tagged as they break down lots, not the harvesters. Ron Bergstrom stated that the work to comply with the tagging requirements was excessive considering the purpose of tagging and that compliance with tagging requirements was often limited, particularly with quahogs because they are separated and graded. Monte Rome also supported lot tagging for surf clams.

Chris Schillaci and Mike Hickey noted the compromise solution may be to start lot tagging by allowing it only for harvesters who are also wholesale dealers. Bob Wallace agreed that this made sense to an extent. However, as a harvester and a dealer, he did not want untagged product from other harvesters entering his shop.

In conclusion, Mike Hickey stated that if this is something industry wants to see occur then they should formally petition DMF.

#### Aquaculture Permit Updates

Mike Hickey provided a presentation on three aspects of the aquaculture propagation permit conditions that DMF was working to improve.

The first aspect was overwintering shellfish away from the grant site. Overwintering is presently authorized only for seed, because in the past there was no interest in overwintering market sized

oysters. However, interest in this is increasing. Accordingly, DMF is working to allow this activity with a re-submergence requirement, such as 48-hours.

Dick Kraus provided some feedback on re-submergence following overwintering. He noted that bivalves may take longer than 48 hours to begin to actively pump again. This was often dependent on water temperature at and following the time of re-submergence. Accordingly, he thought DMF should consider a re-submergence period of up to two weeks in certain seasons. Mike thanked Dick for his input and noted it would be considered when drafting a final document.

The next aspect was off-site culling of market sized oysters. Mike noted that no state allows a harvester to off-site cull product and then directly transport the product to market. However, DMF was willing to consider authorizing off-site culling provided the product was then re-submerged for at least 48 hours. This re-submergence would be done with record keeping and tagging similar to what is required in the Vp regulations. There would be an exception to the re-submergence requirement if the shellfish was being culled at a wholesale dealer and then being immediately sold to that dealer.

Bob Wallace asked if a harvester-dealer would have to re-submerge their product if they off-site culled it at their shop. Mike noted this was a DPH issue. Eric Hickey stated that this was allowed under the Model Ordinance to a certain extent. Mike added that the primary public health issue is a harvester bringing product to their back yard to cull it and then bringing it to market. There is no way to verify how long that product had been out of the water and at what temperature. Therefore, DMF was looking to require the product go back to the license site for re-submergence; this would also allow for verifiable record keeping.

Dick Kraus requested DMF either specify how to re-submerge product and/or educate harvesters to this point, due to concerns that they will re-submerge their product in shellfish bags and it will not pump. He also added that he would like to see a re-submergence period that extends beyond two days due to concerns that harvesters may get lazy and not re-submerge the product properly. Chris Schillaci and Bob Wallace both thought that this was an opportunity for education and outreach through dealers, as dealers do not want to accept bad product.

Dan McKiernan asked Mike how he intended to move forward. Mike stated he would draft new permit conditions for 2016, develop a policy document for 2016 and then work to turn these conditions into regulations during future rulemaking.

#### Shellfish Planting Guidelines Update

Dan reminded the Panel that state law allows municipalities to close certain areas of town waters to shellfish harvest for periods up to three years. The Nature Conservancy has expressed interest in working with municipalities to establish more extended closures. At their request, DMF developed a new legal procedure to allow for extended closures under another section of Massachusetts law. This would require the town file a petition to close a discrete shellfish planted area with DMF and then DMF would conduct rule making, and if approved, enact this closure under its regulatory authority. Jared Silva explained the petition and regulatory process.

Mike Hickey stated that when working to establish these closures, one aspect the agency will look at is whether its residents have continued access to a municipal shellfish resource for non-commercial purposes. If a closure infringes on this public access, then DMF will likely not support the petition. He

added that public access to shellfish resources was the principal purpose of the 3-year moratorium on municipal closures.

Bob Wallace asked if this was being proposed to address a nitrogen issue. He noted that the Conservation Law Foundation had reached a settlement with Barnstable County to remove nitrogen from near-shore waters and were looking towards oyster reefs as a way to accomplish this. Dan noted the state law that these closures were to be promulgated under required the closure “increase in the supply of shellfish” for the municipality. Provided this goal was met, nitrogen removal could also be an objective.

#### Shellfish Depuration Plant Update

Jeff Kennedy provided an update on the shellfish depuration plant and the depuration fishery. He noted that the moderately contaminated soft shell clam landings decreased by about 40% from 2013 to 2014. This decrease may have been caused by a variety of factors including green crab predation and acidification. Diane Murphy asked if the decline in landings could be related to neoplasia events in Boston Harbor. Jeff stated there were no new reports of neoplasia and DMF was seeing some signs of recovery.

Bob Wallace asked Jeff if the decrease in harvest was a product of clam abundance or a decrease in fishermen. Jeff stated the “graying of the industry” was a problem across all industries, including shellfish and this was certain true for the depuration fishery. However, state-wide DMF was seeing a decrease in soft shell clam abundance. Monte Rome asked if this was cyclical. Mike and Jeff stated that the last time observed abundance was this low was the 1970s and that was driven by neoplasia related to oil spills and PCBs. Monte added that there has been a boom in the razor clam population. Jeff noted that there has been an increase but it is not as staggering as being depicted and the razor clam population and landings tends to fluctuate from year-to-year.

Jeff then moved on to discuss the plant’s budget. He noted that in the past the plant funding had been cut from the budget. However, it was included in early renditions of the 2015 budget, so funding should not be a problem. He added that wet storage (and associated revenue) decreased by 50% from 2013 to 2014, but he was hopeful that there was some new interest among dealers in this service.

#### Opening Rockport Harbor to Sea Scallop Harvest

Jeff reviewed the memo on this topic. He highlighted that Rockport Harbor had been closed to shellfish fishing since 1989 due to bacteria associated with near-shore septic drainage. With the Northern Area PSP closure being lifted, there was an interest from fishermen in landing whole in-shell sea scallops from the offshore waters of Rockport Harbor. DMF worked with FDA to study the presence of bacteria in this area, and as a result was able to re-open offshore waters because the water quality was not influenced by septic drainage and the landing of whole in-shell sea scallops from this area is now authorized. There is similar interest in opening up the south side of Cape Ann to whole in-shell sea scallops, but this may be limited by the impacts of the MWRA discharge.

Monte asked Jeff if the area was also open to surf clams. Jeff stated that it was but it was currently closed to dredge boats. Monte was curious if there was a surf clam resource in the area. Jeff and Mike opined that based on past survey work the area did not appear to be commercially viable. There was also a tremendous amount of lobster gear in the area. With these considerations, it was unlikely that DMF would open this area to dredge fishing.

### Other Updates

Dan provided a shellfish regulation update. He noted that DMF had not made much progress going to public hearing with recreational wet storage rules due to Governor Baker's pause on the development of new regulations. The Marine Fisheries Commission did approve a state-wide 48" inch maximum dredge width for surf clam and ocean quahog dredge vessels; this is a reduction from the existing maximum dredge widths. However, the final rule has not yet been filed with the Secretary of State.

He moved on to the green crab eradication program. He reminded the Panel that the legislature provided DMF with a \$130,000-earmark to remove green crabs. DMF accomplished this through developing mini-grants with five Cape Ann towns through which they would hire fishermen to remove and destroy green crabs. However, in October 2014 this funding was eliminated through 9-C cuts and DMF was uncertain if funding would be available for 2015. Dan noted that conch pot fishermen are interested in obtaining these crabs as a component of their bait supply.

The next update pertained to recent enforcement issues regarding surf clam dredge fishing off Provincetown. Dan provided the Panel with some history of the management of this fishery and Provincetown's involvement. In 2007, the Provincetown Conservation Commission adopted a regulation, under their alleged authority pursuant to the Wetlands Protection Act, to prohibit the use of shellfish dredge gear out to the 40' depth contour. In recent weeks the town has issued a number of sizeable violations to surf clam dredge vessels found operating within this restricted area. This has sparked a local controversy.

The town wrote to the MA Department of Environmental Protection asking them to weigh in on town authority to promulgate regulations affecting hydraulic shellfish dredge gear under the Wetlands Protection Act and the National Seashore has written the MA Secretary of Energy and Environmental Affairs requesting the state take action to close an area off the National Seashore to this fishing activity due to alleged impacts on benthic habitat and erosion. To address specific habitat concerns regarding a known eel grass bed off Long Point, DMF has issued permit conditions to restrict fishing in this area and this action had the support of industry. Dan added that this type of discrete eelgrass protection based management may be where the state is going to address legitimate habitat concerns.

Allen Rencurrel noted surf clam dredge vessels have historically fished within the 40' depth contour in Provincetown without any negative interactions with the environment and public. He had a boat working off Provincetown in December 2014 and ran into problems with the town's harbormaster. He added that in recent years his boats were picking up more illegally placed gear designed to attract lobsters and this may be part of the underlying controversy and desire to see surf clam boats kept out of the area. Monte Rome concurred. He also added that there is a "not in my backyard" mentality in Provincetown regarding the surf clam dredge fishery, perhaps in part because there is not a strong surf clam fleet in the harbor.

Ron Bergstrom noted that this is ultimately a question of whether the Conservation Commission has the authority to regulate this activity or not. Monte agreed that this was a jurisdictional dispute. Dan agreed and was worried that if they did we would be back to the early 1980s model of "Bulkanized" surf clam fishery management.

Mike Hickey discussed the recent European Union (EU) NSSP/state audit of shellfish programs. The purpose of the audit is to determine if there is program equivalency between the USA and the EU to determine if they can lift the shellfish trade embargo. The EU is expected to report back to FDA by the

end of the summer 2015. Mike did not expect this audit would result in enhanced trade opportunities. In addition to economic protectionism, the EU does not like how we monitor biotoxins and we do not like how they manage water quality classification. Mike opined that this difference in management would likely stall any progress and any resolution would come out of the World Court.

Diane Murphy asked how the USA compares to the EU in terms of rate of incidents. Mike noted that we have a lower rate of illness. He noted one major problem with the EU system is that each country is sovereign and the EU lacks an overarching enforcement authority, similar to the FDA. However, because of this sovereignty, Mike, Chris Sherman and Jack Schwartz speculated about future trade opportunities for the US with specific nations within the EU.

#### NESSUM Meeting

Mike Hickey noted that there was a NESSUM meeting on April 22 and 23 on Long Island. Unfortunately, this date coincides with MA's Vp Plan roll out meetings with FDA, so it will be difficult for MA industry members and regulators to attend. Mike offered to pass along meeting information if anyone was interested.

#### DMF Comments

Jeff Kennedy introduced new DMF shellfish field biologist Ryan Joyce. He also noted that Mellissa Campbell joined DMF as a full-time shellfish field technician.

Dan reviewed deliverables for the next meeting. He asked Mike to convene a meeting with Chris Sherman, Bob Wallace and Dick Kraus to discuss potential harvester lot tagging solutions for market sized product. He also requested Mike to develop a policy document for regarding improvements to the aquaculture propagation permit conditions. Dan suggested the next meeting be held on November 19, following the fall ISSC meeting.

Mike informed the Panel that the ISSC held their last board meeting on March 13. One of the topics of importance was beginning a review of the Model Ordinance, by the Model Ordinance Effectiveness Committee, which Mike chairs. The Committee was tasked to provide suggestions to the ISSC regarding revising out of date provisions and provisions that need further explanation. He added that this was a slow process because there is an inclination among some to facilitate change through calling a provision out-of-date or in need of further clarification. He noted the Lab Methods Review Committee was also looking at various lab methods and improving the review and approval process for new methods. HAACP dealer training was also an important topic.

#### Panel Comments

Dick Kraus and Chris Sherman advocated for a HACCP style harvester management model. Mike noted this was a common request, particularly with regards to Vp management. There is certainly some interest, but it has not been approved for use. Eric Hickey noted that he, Chris Sherman, Mike and Jeff Kennedy were all representatives to the ISSC, so personnel is in place for MA to advocate this on a more national level.

No further comments were made and the meeting was adjourned.