

MARINE FISHERIES ADVISORY COMMISSION

January 25, 2018

DFW Field Headquarters

Westborough, MA

In attendance:

Marine Fisheries Advisory Commission: Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Kalil Boghdan; William Doyle, Sooky Sawyer Lou Williams and Charles Quinn. Absent: Andrew Walsh.

Division of Marine Fisheries: David Pierce, Director; Daniel McKiernan, Deputy Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Ben Gahagan, Biologist; Cate O'Keefe, Policy Analyst; Nichola Meserve, Policy Analyst; and Jared Silva, Policy Analyst.

Department of Fish and Game: Ron Amidon, Commissioner; and Mary Lee King, Deputy Commissioner.

Massachusetts Environmental Police: Major Pat Moran.

Members of the Public: Pete Kelly, Dominic Santoro, John Verissimo, Allen Recurrel, Ron Borjenson, Peter Parisi, Joe Scola, Phil Coates, Chad Brayton, Chris Chadwick, Ed Barrett, and Manuela Barrett.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane wished everyone a happy new year and welcomed everyone to the January 2018 MFAC business meeting. The Chairman asked that the members of the public to introduce themselves. He reminded the public that this was a business meeting and not a public hearing and comments from the public would be limited.

REVIEW AND APPROVAL OF JANUARY 25, 2018 BUSINESS MEETING AGENDA

No comments were made.

Bill Doyle made a motion to approve the January 25, 2018 business meeting agenda. Sooky Sawyer seconded the motion. The agenda was approved unanimously.

REVIEW AND APPROVAL OF DECEMBER 14, 2017 DRAFT BUSINESS MEETING MINUTES

No comments were made.

Bill Doyle made a motion to approve the December 14, 2017 MFAC business meeting minutes. Lou Williams seconded the motion. The minutes were approved unanimously.

COMMISSIONER'S COMMENTS

Commissioner Ron Amidon stated that he recently attended the Massachusetts Lobsterman's (MLA) Annual Weekend. He was also able to get out into the field with DMF biologist Brad Chase to address anadromous fish passage issues and thought this was an area where there was potential for improved private-public partnership. Lastly, he noted he would be attending the NOAA's annual fisheries management conference in March 2018.

Deputy Commissioner Mary Lee King stated that the final FY18 budget was released and DMF fared well in terms of funding.

DIRECTOR'S COMMENTS

Director David Pierce thanked DFG for their support for DMF's budget.

David then moved on to discuss 2018 recreational fishing rules. He noted that DMF would likely have to adjust limits for scup, black sea bass, fluke, cod and haddock. Potential limits for these species would be developed during February and early March. DMF would have a better understanding of where it stands with regards to scup, black sea bass and fluke after the early February ASMFC meeting. For cod and haddock, the issue centered on cod mortality exceeding the RHL and it appeared the NEFMC was proposing to limit haddock fishing in May - in both state and federal waters for private and for-hire anglers - if DMF did not close its state-waters Gulf of Maine cod fishery for private anglers. More details would be available at the March meeting. Staff would address this topic in further detail later in the meeting.

The Director also attended the MLA Annual Weekend. He was also given award of appreciation for his work in support of the lobster fishery.

Right whales had begun to migrate into Cape Cod Bay. There are growing concerns about recent right whale deaths and the declining population of this endangered species. One major source of mortality was ship strikes. He noted that about 10 years ago, NMFS implemented a 10 knot speed limit in Cape Cod Bay from January 1 – May 15 for vessels larger than 65 feet. DMF was considering adopting a complementary rule that would apply to vessels that were below 65' length.

The new DMF/SMASST facility had opened in the south end of the New Bedford. DMF staff will be moving into the new facility in early February. He anticipated holding either the May or June MFAC business meeting there.

NOAA had recently initiated permit sanctions against Carlos Rafael. About 30 permits may be revoked. The Director expected this would be challenged in court. One of the biggest concerns is how the allocations associated with these permits would be distributed. He noted they could be reallocated to existing permit holders based on the formula used to distribute the initial allocations.

LAW ENFORCEMENT COMMENTS

Major Pat Moran stated that it has been a quiet month. There were a few oversized lobster issues with draggers in New Bedford. Additionally, staff had been working to patrol Cape Cod Bay to identify fixed gear and have it removed before the gear haul out period goes into effect on February 1.

ACTION ITEMS

Belding Award Nomination

Director Pierce described the Belding Award. He stated that he was nominating Arthur DeCosta to receive it. Arthur recently retired as a commercial fisherman, a profession he had been involved in for more than 30 years. Arthur was a LMA2 lobsterman, who also fished for Jonah crabs and whelks. Over the course of his career, he contributed a tremendous amount to DMF's scientific work, allowing his vessel to be used as a platform for sea sampling, ventless trap surveys and other work.

Sooky Sawyer made a motion to adopt the Director's nomination of Arthur DeCosta for the Belding Award. Bill Doyle seconded the motion. The motion was approved unanimously.

DISCUSSION OF FUTURE PUBLIC HEARING ITEMS

Mobile Gear Closure Project Update

Jared Silva reviewed Director Pierce's memorandum on this topic which provided an overview of the project and described the path forward. For 2018, DMF would publish maps and coordinates for all mobile gear closure boundaries. To address issues specific to Nantucket Sound, DMF would implement permit conditions to establish the boundary and these permit conditions would be subject to public comment before being adopted. Then for 2019, DMF sought to amend the regulations to eliminate references to LORAN-C, the Line of 1881 and line of sight coordinates and replace this with GPS coordinates.

The Chairman allowed questions and comments from the public.

John Verissimo and Domenic Santoro asked who DMF was using to develop these maps and coordinates. Jared Silva stated he was the project lead and was working with DFG's GIS staff.

John and Domenic questioned why DMF was not utilizing a surveyor, like one would use to describe property boundaries. Dan McKiernan and Jared Silva stated that they did not think this was necessary. They explained that these boundaries already exist and DMF is merely adjusting how they are described to the public. Additionally, DMF was not addressing private property, but rather regulating where fishing may or may not occur in state-waters in accordance with its statutory authority. Mike Pierdinock felt that DMF's position was valid.

John Verissimo asked if the public would have access to DFG's GIS staff. Jared Silva explained that he was project lead and would continue to work with stakeholders. If there were any technical questions, he would discuss them with DFG's GIS staff and then respond back to the public.

Update on Timing of Winter Public Hearings

Jared Silva reminded the MFAC that DMF was planning on going out to public hearing with a number of proposed changes to fishing limits for 2018. This included establishing the new recreational tautog limits; potentially amending commercial black sea bass limits and fishing days; bringing the state's commercial scup rules into compliance with federal and interstate plans; prohibiting commercial striped bass fishing during periods around summer holidays (e.g., 4th of July); seasonally closing an area off Ellisville to surf clam dredging; establishing a minimum bar spacing rule for surf clam dredges; and banning the use of bleach in clam fisheries.

DMF had submitted these draft regulations for review by the Secretariat. He expected the review would be complete in the coming weeks. Based on this schedule, DMF anticipated holding public hearings during the first week of March 2018. DMF would then provide the MFAC with final recommendations at their March business meeting.

To accommodate this schedule, the March 2018 business meeting would be moved from March 8 to March 15. The April 2018 business meeting would then be pushed back from April 5 to April 12.

DISCUSSION ITEMS

Pilot Program to Allow Wintertime Sea Scallop Dredging off Nahant

Director Pierce reviewed his one page memorandum that stated he would not be authorizing this proposed pilot program and described the reasons why. He noted that DMF received a tremendous amount of comments on this proposal, nearly all of which objected to it. Staff would be drafting an advisory to describe his decision to not adopt this pilot program, that would be distributed to the public.

Surf Clam Management

Director Pierce stated that DMF recently held a meeting with fishermen and state and federal fishery managers to discuss a variety of management issues pertaining to the surf clam dredge fishery. DMF provided the MFAC with a summary of the meeting.

Deputy Director Dan McKiernan reviewed the summary of the meeting. He then recognized seven deliverables that DMF would be moving forward on. These deliverables include, prohibiting fishing in both state and federal waters during the same trip (similar to NY); eel grass mapping and establishing regulations to restrict fishing activity in eel grass; modernizing surf clam management areas and moving away from the contour line approach; developing a logbook system for state-waters fishermen, similar to VTR; reviewing the implementation of a vessel tracking system to assist in enforcement and compliance; integrating state and federal data collection; and reviewing – on a case-by-case basis – industry proposals to improve access to this fishery.

Kalil noted that effort landings in this fishery fluctuated was curious what was causing this. Dan stated that many state-waters surf clam fishermen also hold federal permits and are likely also fishing in federal waters. Industry members John Verissimo and Allen Rencurrel agreed. John added that it may also be a result of red tide.

David Pierce stated that the NEFMC habitat amendment was expected to potentially impact dredge operations on Nantucket Shoals in federal waters. This was an important area for the surf clam fishery, particularly as the resource was moving north due to oceanic warming. Constraining the Nantucket Shoals fishery may drive additional effort into state waters or have other impacts on the state fishery and its participants.

Dan noted that improving the management of this gear and its interactions with eel grass should help address a lot of criticism of the industry. DMF often gets calls from individuals concerned about a vessel going through eel grass when they are fishing up on the contour line. While DMF recognizes that fishermen actively avoid eel grass because of its impacts to the gear, there is a perception that this is not the case. Concerns about eel grass contributed to the Provincetown ConCom regulations restricting dredging in certain town waters.

Kalil asked what other agencies are involved in eel grass protection. Dan stated that DMF does the restoration work, but DEP plays a role as well. Kalil asked if DMF staff could provide a future presentation regarding eel grass protection and remediation. Dan stated that this would be possible.

Bill Doyle noted there was an upcoming meeting germane to this discussion. He forwarded the meeting information to Jared Silva who then distributed it to the MFAC.

Sooky Sawyer, Dan McKiernan and Jared Silva discussed the interplay between state and federal management.

Sooky noted that he had strong concerns regarding the surf clam fishery. However, he did not want to side track the meeting. Chairman Kane noted that as the meeting was moving forward ahead of schedule, he would allow time for further discussion at the end of the meeting.

Update on 2018 Recreational Fishing Limits

Nichola Meserve stated that the ASMFC was scheduled to meet in early February. Following this meeting, DMF would begin to develop recreational fishing limits for scup, black sea bass and fluke in 2018. Due to this timing, DMF would implement these limits by emergency regulations.

At this point, she had a good sense of where the limits for fluke and scup would end up, but was less certain about black sea bass. Nichola provided a brief synopsis of expectations for each fishery.

Fluke

In 2017, DMF was required to reduce its harvest by 30% resulting in a reduction in the bag limit from 5-fish to 4-fish and a 1" increase in the minimum size from 16" to 17". For 2018, there is a 17% increase in the fluke RHL, which allows for DMF to liberalize its limits. Modeling suggests that DMF will be able to increase the bag limit back up to 5-fish and increase the season length by 15-days so that it may run from mid-May through Columbus Day weekend. The ASMFC's Technical Committee has endorsed this proposal. DMF reviewed a potential size limit decrease back to 16", but modeling suggested that would have resulted in too much of a liberalization.

Scup

The 2018 scup RHL is increasing by 34%. Northern Region (MA-NJ) agreed to decrease the minimum size by 1", from 10" to 9". This would primarily benefit shore based anglers in MA. Nichola noted that this was a conservative approach and the region could be more liberal, but wanted to keep some consistency from year-to-year to avoid potentially having to implement restrictions next year because estimated harvest exceeded the RHL. If the stock remains in good condition, future liberalizations may consider increasing the bag limit to 50-fish.

Black Sea Bass

The ASMFC was scheduled to vote on Addendum XXX, which was developed to address geographical changes in the distribution of this species and equity among states. The addendum sets forth three regional management options and a variety of sub-options based on stock biomass or harvest within a period. Each of these options would impact MA's fishery differently. Nichola noted that the ASMFC held public hearings along the coast on this addendum in January and she summarized the comments at the MA hearing.

Kalil Boghdan asked which of the options would be best for Massachusetts. Nichola stated that this was a complicated question because of how and when the fish are distributed throughout our waters. South Cape and Buzzards Bay fishermen prefer an

earlier season and higher bag limits, whereas Island fishermen prefer a longer season. At this point, DMF is prioritizing extending the season from May to October, then addressing the bag limit.

Kalil then asked if there were benefits to being in regions with certain states as opposed to others. Nichola stated there were tradeoffs for each region option.

Kalil then asked if MA had ever exceeded the RHL for black sea bass. Nichola stated that the RHL is for all states to share and each state has a projected harvest target. MA had gone over this target in the past. One issue is that the stock is growing, so making annual limit adjustments based on the prior year's data is difficult.

Chairman Kane spoke about trends in harvest from state-to-state, noting that the CT fishery has grown in recent years.

Sooky Sawyer asked if the increase in harvest to the north is the result of the growth of the stock or a shift in geographic abundance, and if the southern states had seen a proportional decline in the resource. Nichola stated that the southern states always contributed to only a fraction of the harvest. The fishery was previously dominated by the Mid-Atlantic states of New York and New Jersey, but the resource has grown and moved north, resulting in more catch and effort in New England.

Sooky then asked if it was possible to reallocate fish from the southern region to the northern region. Nichola stated that some options would result in a de facto change in allocation, for instance, setting the RHL based on harvest over the last 5-years.

Dan McKiernan stated that he was hopeful this new addendum would result in there being more similar rules among states. In past years, MA has been closed and RI open (or vice versa) and this results in enforcement and compliance issues around border areas.

Mike Pierdinock commented that the strawman proposed by the ASMFC during public hearing appears to be different than the table provided in DMF's memorandum. Nichola explained that this was because the ASMFC strawman did not present specific season dates and did not include Wave 5 data. She developed the table for this memo to essentially update and refine what had been presented by the ASMFC, so that it would further demonstrate how each option may impact MA.

Mike P. then raised concerns that NY may use disparate state and federal rules to create loopholes to fish under higher limits. Nichola did not think this was a concern, as the fishery would be managed by the most restrictive rule.

Ray noted that there was some interest in maintaining the status quo. Director Pierce stated that DMF would not support status quo. He did not think this was an option and if status quo or something similar were approved he would likely appeal it. Nichola added

that status quo would have a disproportionate negative impact on MA and it was also not an option in the Addendum.

Mike P. asked about the potential for MA to establish mode specific rules for the for-hire fleet and the private angler fleet. Nichola stated that DMF had previously reviewed this potential management strategy but determined it should not be done for a variety of reasons. Mike P. was interested in seeing this analysis done again.

Nichola stated that if the Addendum was approved on February 8, then the region would meet to determine baseline regulations. DMF would then model state limits for public scoping. Public comment would be taken in March on these models. Then DMF would file emergency regulations to adjust the limits before the start of the fishery on May 19.

Dan McKiernan stated that this may become more complicated if DMF appeals. He noted that in the case of an appeal, DMF would likely maintain status quo rules to start the season and then later in the summer adjust the limits based on the success of the appeal.

PRESENTATION

Ben Gahagan provided the MFAC with a presentation on striped bass migration, maturity and genetics.

COMMISSION MEMBER COMMENTS

Bill Doyle stated that he had a number of general issues he thought the MFAC should address, such as streamlining permit transfer and actively fished criteria and adopting baseline aquaculture regulations. He was interested in seeing if the MFAC could work through sub-committees to address these and other issues. David stated that he would discuss this with staff and report back to the MFAC this spring.

Bill then asked if a new member had been appointed to the vacant MFAC seat. Ray Kane stated that Tim Brady, a head boat operator from Plymouth, was nominated. Tim was going through the nomination process and his first meeting would likely be March 2018.

Mike Pierdinock brought up recreational Gulf of Maine cod and haddock limits for 2018. He opined that cod was a choke species for the haddock fishery. He was frustrated that the NEFMC was pitting MA's one cod state-waters private angler limit against access to the haddock fishery in May in state and federal waters. He would like to see full access to haddock and May and for DMF to retain the one cod limit, however, he did not expect NMFS would support this. Mike also noted that the NEFMC recommended a May 2018 control date for the charter boat/head boat groundfish fleet.

David agreed with Mike P. regarding the cod and haddock limits. He reiterated his long standing concerns regarding shutting down a recreational fishery while maintaining a commercial fishery.

Lou Williams did not think the estimated recreational harvest for Gulf of Maine cod from state waters was a real figure and it was either illegal catch from federal waters or a statistical anomaly.

Ray Kane asked about the status of the fines and penalties legislation. Mary Lee King stated that it was being reviewed by the Executive Office of Administration and Finance. Conversations were on going about how to file (e.g., outside section of budget; amendment to bond bill; standalone legislation). Ray asked if it was typical for legislation to take more than a year to be filed. She stated that it was. Ray asked the MFAC if they would support sending another letter to Secretary Beaton encouraging him to follow through on filing this bill.

Bill Doyle made a motion to draft a letter from the MFAC to Secretary Beaton regarding supporting the proposed fines and penalties bill. Sooky Sawyer seconded the motion. The motion was approved unanimously.

COMMENTS FROM THE PUBLIC

Pete Kelly submitted a petition to the MFAC to reconsider the prohibition passed in 2017 restricting fishermen from commercially and recreationally fishing during the same trip. He believed the MFAC erred in implementing this prohibition and stated that this restriction has had a deleterious impact on commercial rod and reel fishermen and their ability to keep fish for their personal use.

Chairman Kane thanked Pete for his petition. He noted that the MFAC would not debate this issue at the business meeting.

Director Peirce asked Jared Silva to send the petition and all past memorandums from DMF on the subject to the MFAC. He noted that DMF would review the petition and respond to the MFAC at a later date.

Sooky Sawyer noted that he had a number of concerns regarding certain proposed changes to surf clam management. Foremost among them was allowing night fishing. He thought this issue was a non-starter and did not think DMF should allocate staff resources to address this.

Dan McKiernan stated that this was requested in response to public health concerns coming up at the NSSC. He felt that these concerns would likely be resolved through an NSSC working group that was developed to address this. Moreover, if night fishing were to be allowed it would be done via a pilot program for areas east of Nantucket where there is not fixed gear and it would require some type of vessel tracking system.

John Verissimo stated that the industry is not looking to dredge at night in areas where there are fixed gear. They want to pursue a wintertime fishery east of Cape Cod and Nantucket.

John Verissimo asked about the how DMF would move forward the development of new surf clam management and eel grass management areas. Jared Silva stated DMF was just beginning to look into this. Like with the mobile gear closures, Jared expected there would be public meetings to solicit feedback and areas are developed. Then all rules will be subject to public hearings. So he anticipated there would be plenty of opportunity for public input.

Ron Borjenson stated that he supported DMF rescinding the night closure for all mobile gear fishermen. Additionally, he expected a petition would be submitted to DMF to restrict larger non-resident boats from fishing in certain waters of Nantucket Sound and establishing a state trip limit for squid.

Domenic Santoro stated that MA should require fish caught in its state waters to be landed in MA. He noted that squid being caught in MA waters are being landed in RI (and other states). If the federal government were to establish state squid quotas then MA would not be credited for these landings.

Dan McKiernan stated that these issues likely raise legal concerns regarding the Constitutional protections and would have to be addressed by DFG's legal staff.

Chad Brayton wanted to address an earlier comment by Sooky Sawyer regarding the interplay between the federal and state surf clam fisheries. He stated that the federal surf clam quota is typically not realized, so vessels are not taking the federal quota and then coming into state waters to fish the state resource. Inshore fishing typically happens when there is bad weather.

With regards to the night fishery, Chad stated that this was being proposed to address potential time-to-temperature limitations during the summer months. Being able to fish at night would allow fishermen to take their 400 bushel trip limit from state-waters within the time-to-temperature window. This would occur primarily in the state-waters east of Nantucket.

Ray asked if vessels had VMS. Chad stated that all federal permit holders have VMS. However, the VMS does not ping at a high enough frequency to address state management needs. Therefore, the state could not piggyback off the existing federal system and likely has to require different technology.

OTHER BUSINESS

Mike Armstrong stated that DMF would be hosting the 2017 Saltwater Derby Awards of February 17 at 1PM. The awards will be held at the New England Boat Show at the

Boston Expo Center. Kevin Creighton stated that DMF would reimburse MFAC members for their parking and tickets if they wished to attend.

Kalil Boghdan made a motion to adjourn the January 25, 2018 MFAC business meeting. Lou Williams seconded the motion. The meeting was adjourned.

MEETING DOCUMENTS

- **January 25, 2018 MFAC Business Meeting Agenda**
- **December 14, 2017 MFAC Draft Business Meeting Minutes**
- **2018 Belding Award Nomination**
- **Mobile Gear Closure Boundary Project Update**
- **Response to Exempted Sea Scallop Dredge Fishery Request**
- **Surf Clam Dredge Fishery Meeting Summary**
- **NOAA Civil Action Regarding Carlos Rafael**
- **DMF's Comments to NMFS Regarding Wave 1 Black Sea Bass Fishery**
- **Update on 2018 Rule Making for Scup, Sea Bass and FLuke**

NEXT MEETINGS

March 15, 2018
DFW Field Headquarters
1 Rabbit Hill Road, Westborough

April 12, 2018
DFW Field Headquarters
1 Rabbit Hill Road, Westborough

May 10, 2018
DFW Field Headquarters
1 Rabbit Hill Road, Westborough

June 14, 2018
DFW Field Headquarters
1 Rabbit Hill Road, Westborough