

MARINE FISHERIES ADVISORY COMMISSION

April 12, 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, Tim Brady, Andrew Walsh and Charles Quinn. Absent: Lou Williams

Division of Marine Fisheries: David Pierce, Director; Daniel McKiernan, Deputy Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Jeff Kennedy, North Shore Shellfish Program Chief; Story Reed, Permitting and Statistics; Anna Webb, Statistics; Nichola Meserve, Policy Analyst; Melanie Griffin, Policy Analyst; and Jared Silva, Policy Analyst.

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

Massachusetts Environmental Police: Lt. Matt Bass.

Members of the Public: Allen Rencurrell, John Verrissimo, Chad Brayton, Mark Plachowicz, Dan Murphy, Sherman Butler, Laurel Gilbert, David Kelly, Jack Lakeman, Bob Hannah and Al Cestero.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Ray Kane welcomed everyone to the April 2018 MFAC business meeting. He asked the members of the public to introduce themselves.

REVIEW AND APPROVAL OF APRIL 12, 2018 BUSINESS MEETING AGENDA

No comments were made.

Sooky Sawyer made a motion to approve the April 12, 2018 business meeting agenda. Mike Pierdinock seconded the motion. The agenda was approved unanimously.

REVIEW AND APPROVAL OF MARCH 15, 2018 DRAFT BUSINESS MEETING MINUTES

No comments were made.

Bill Doyle made a motion to approve the March 15, 2018 MFAC business meeting minutes. Sooky Sawyer seconded the motion. The minutes were approved unanimously.

COMMISSIONER'S COMMENTS

Commissioner Ron Amidon expressed his concern that MFAC business meetings were becoming too extensive and inefficient as a result of accepting extensive and drawn out public comment. This in turn resulted in turning MFAC meetings into public debate. He stated that public hearings and public scoping meetings were the appropriate time to debate management proposals issues. Moreover, DMF may be made available to meet with stakeholders to address specific concerns, and then, if these items may be discussed more formally and thoroughly with the MFAC as an agenda item. In conclusion, he wanted to see MFAC business meetings be conducted more deliberately moving forward.

Commissioner Amidon also commended Director Pierce for his work representing Massachusetts fishing interests at NOAA's Annual State Directors meeting in South Carolina.

DIRECTOR'S COMMENTS

Director Pierce informed the MFAC that the NEFMC would be meeting later in April. The meeting would include discussion of the ongoing programmatic review of the Council. Additionally, issues regarding Carlos Rafael's permits, the Saltwater Recreational Fisheries Summit and Highly Migratory Species management would be addressed.

At NOAA's Annual State Director's meeting, Director Pierce focused his efforts on addressing the re-authorization of the Magnuson-Stevens Act; stock assessment priorities; MRIP performance and the use of MRIP data in management; climate change, changes in species distribution and adaptive management; and aquaculture development.

DMF and other northeast states were appealing Addendum XXX to the ASMFC's Black Sea Bass FMP. The appeal was scheduled to be heard by the ASMFC's Policy Board on May 3, 2018 at 10:30AM. The Director was confident in the merits of the appeal and he thought it would be approved. If the appeal were to be approved, additional fish would be allocated to the northeast states. Accordingly, the Black Sea Bass Management Board would be required to address this additional allocation. DMF would be looking to use any additional fish acquired through this appeal to extend the season.

The bay scallop fisheries on Martha's Vineyard and Nantucket were scheduled to close. However, a provision of law allows DMF to extend them if the municipality requests DMF survey their beds and determine if an extension would result in overharvest. DMF was able to accommodate season extensions on both islands. David thanked his shellfish staff for their work.

The Massachusetts Shellfish Initiative (MSI) was in the process of being formed. This group would include members of industry, as well as state and local government. The

MSI would be addressing a variety of shellfish related issues and would be used to develop and promote a sustainable wild harvest and aquaculture industry.

Wind energy development was ongoing in federal waters south of Martha's Vineyard and Nantucket. Construction operations were currently being put together for Vineyard Wind. DMF was in the process of reviewing the development plan and would be addressing issues affecting fisheries and habitat. Comments were to be submitted by the end of April 2018. Comments would then be sent to BOEM and provide the basis for issues to be addressed in the EIS. David noted that inshore fishermen were also concerned about this project, as wires would be laid through Muskeget Channel and Horseshoe Shoal.

Lastly, the fines and penalties legislation previously reviewed by the MFAC had been filed as part of the Environmental Bond Bill. Members of the MFAC had testified in favor of the bill and he thanked them for that. David also encouraged the fishing groups to which the MFAC belonged to support this legislation. Updates would be provided as the bill made its way through the legislature. David also thanked Mary-Lee King and Ron Amidon for their support.

LAW ENFORCEMENT COMMENTS

Lt. Bass stated that recent enforcement activities had been focused on federal fishery issues, particularly the concealment of overages by scallopers. MEP and DMF efforts to remove abandoned fixed gear from Cape Cod Bay continued.

The MFAC's Law Enforcement Sub-Committee was scheduled to meet on April 24th and MEP had provided DMF with a number of potential agenda items.

MEP had forwarded DMF a number of incidents worthy of adjudicatory proceedings to sanction the permit. DMF was pursuing several of these incidents and would be seeking permit suspensions and revocations for both commercial and recreational fishermen.

Lt. Bass expected MEP would be able to make upwards of 10 new hires. While this would boost the number of officers in the field, their staffing would still be near historic low levels. Commissioner Amidon, Chairman Kane and Lt. Bass further discussed the time frame for these hires. Lt. Bass expected two or three officers would be able to come on more immediately, as they were already trained law enforcement officers. It would likely take the others up to 18 months to get into the field.

DISCUSSION OF UPCOMING EMERGENCY RULE MAKING

2018 Recreational Fishing Limits for Fluke, Black Sea Bass and Scup

Nichola Meserve reviewed Director Pierce's memorandum on these rules. The pending 2018 fishing limits for these species are described in the table below, with changes in bold font.

Species	Season	Bag Limit	Size Limit
Fluke	May 23 – October 9	5-fish	17”
Scup (Private)	May 1 – December 31	30-fish	9”
Scup (For-Hire)	May 1 – June 30	45-fish	9”
	July 1 – December 31	30-fish	
Black Sea Bass	May 19 – Sept. 1	5-fish	15”

Nichola noted there is historically a difference of opinion between the for-hire fleet (who tend to favor higher bag limits) and private anglers (who tend to prefer longer seasons). This was again reflected in the public comment received this year, particularly with regards to fluke. The Director’s proposed emergency regulations tried to find a compromise approach between both.

Mike Pierdinock supported the Director’s proposals. He agreed with Nichola’s observation regarding the dichotomy of opinions between recreational fishing modes. He stated that he would eventually like to see the for-hire mode split out of the recreational fishery.

Director Pierce stated that the splitting of the recreational fishing modes had been discussed often over the past several years at the federal, interstate and state level. He expected these discussions would continue.

Chairman Kane asked if DMF had made any progress pursuing an option that would allow sub-legal sized scup to be kept and used as bait.

Nichola stated that DMF remained interested in pursuing this. However, staff resources had been focused on finalizing these recreational fishing limits for 2018 and this issue had not yet been addressed. She anticipated DMF would begin to offline discussions with other Northern Region (MA-NJ) state managers at the May ASMFC meeting to gauge their interest. This would lay the groundwork for potential changes in 2019.

Mike P. asked several questions about the appeal of Addendum XXX. He was interested in whether the appeal would be heard and ruled on the same day and if DMF had considered non-compliance if the appeal was lost.

Nichola stated the appeal would likely be heard and voted on during the May 3rd Policy Board meeting. Then the management board would have to immediately address rule changes. NOAA fisheries were pushing for this to be done expeditiously due to their need to publish federal rules.

David reiterated his confidence that the appeal would succeed and that non-compliance would not be necessary. Dan McKiernan added that one issue with non-compliance is that under ASMFC plan regulations, states have to pay back the number of days they are non-compliant the following year. So any state that decides to use this option will face commensurate cuts the following year.

DISCUSSION ITEMS

Menhaden Management

Deputy Director Dan McKiernan reviewed the memorandum provided to the MFAC and the February 2018 meeting with menhaden fishing interests. He stated that DMF was seeking consensus from the MFAC regarding several new permit conditions being considered to manage the commercial menhaden fishery in 2018. Dan provided a brief history on why this fishery was typically regulated by permit condition rather than regulation.

Dan noted that the amount of available quota in New England had more than doubled from 2017 to 2018, as a result of a quota increase and reallocation of quota. Accordingly, the New England states were working together to develop similar management systems, so as to limit one state from becoming a hot bed for fishing activity or a port of convenience. This additional quota may also create an interesting dynamic between commercial fishing and recreational fishing interests if the fish are abundant throughout the northeast.

Among the new permit conditions, DMF was considering a logbook requirement to account for fish that may be sold over the rail; closures throughout state-waters on holidays and weekends to reduce user group conflicts; and the marking of volumetric capacity if fish holds of vessels carrying menhaden to improve trip limit enforcement and compliance.

Another issue DMF was facing was the use of carrier vessels. DMF (and the other New England states) decided to limit the use of carrier vessels to one carrier per harvester vessel per trip. The carrier would also be limited to receiving one trip limit per day. This matched the Area 1A herring fishery carrier vessel rules. Carrier vessels would also have to hold a bait dealer permit and report the menhaden received on a nightly basis (as they would serve as the primary buyer).

Dan noted that these carrier vessel requirements were new for 2018. They were developed in response to two concerns raised at the February menhaden meeting. The first concern was the proliferation of carrier vessels and fish being carried in from outside state-waters may result in the expedient utilization of the quota and impact the historic inshore fishery. Secondly, anglers were concerned that the proliferation of carrier vessels may enhance fishing effort resulting in greater localized depletion of forage impacting striped bass and tuna fishing.

Kalil, Dan, Jared and Story discussed the make-up of the fishery.

Limited entry permit holders may land 125,000 pounds of menhaden until 85% of the quota is taken; the trip limit is then reduced to 25,000 pounds until 95% of the quota is taken; the trip limit the again reduced to 6,000 pounds until 100% of the quota is taken.

There are approximately 60 limited entry menhaden permit endorsement holders who may harvest large quantities of fish. However, only about a dozen of these permit

holders also hold the permits to fish within harbors and embayments where these fish are typically most abundant. Moreover, among that dozen there are only a few permit holders that are capable of landing the 125,000 pound limit. Accordingly, there is some interest from the smaller capacity permit holders to offload to carrier vessels, as it would allow them to harvest more fish than they could otherwise carry.

Kalil asked if carriers could carry more than 125,000 pounds of fish. Director Pierce stated that in the past mid-water trawlers had been utilized as carriers and these vessels landed more than 1 million pounds of menhaden. This underscored the concerns raised about how the proliferation of carriers could create quota utilization and localized forage issues.

Andrew Walsh disagreed with the proposal to limit the use of carriers as provided by DMF. He felt that this unnecessarily rendered these businesses more inefficient. He felt the quota utilization issues were overstated, particularly with regards to large quantities of fish being carried into MA from other jurisdictions. He noted that unlike in the past when mid-water trawlers would carry in 1 million pounds, the harvest vessels would now have to MA limited entry permit holders.

Andrew asked if DMF could clarify whether the carrier vessel rule was prompted by enforcement or quota management concerns.

Dan explained that it was both. There were some concerns that multiple harvester vessels using one carrier vessel will make trip limit enforcement more difficult. Additionally, there were concerns from menhaden fishermen and anglers about how increasing use of carrier vessels may affect quota availability and how the fishery is conducted.

Andrew understood the concerns. However, he felt this proposed carrier rule was too blunt and he felt DMF could take a more surgical approach to addressing the various issues in play.

Mike Pierdinock and Tim Brady supported DMF's proposed limitations on carrier vessels. They felt allowing multiple vessels to offload to a single carrier would increase fishing pressure. The potential inefficiency created by requiring one carrier per harvester vessel would limit the use of carriers, resulting in less menhaden being harvested from any one area. This would address their concerns about the quota increase, localized depletion and forage availability.

Bill Doyle asked about carrier use in 2017.

Dan McKiernan stated that two of the large scale operations utilize a carrier. One of these operations was working with a second harvester vessel unloading to a single carrier.

Bill asked if DMF could anticipate how many carriers would be used in 2018.

Dan stated that we do not issue a carrier permit, so it was not limited. Rather the use of carriers would be strained by the availability of fish, quota and economics. Accordingly, DMF could not predict how many carriers may be utilized.

Sooky Sawyer agreed with Dan's assessment of the potential utilization of carriers. He stated that it will likely only be problematic if there are large abundances of fish.

Bill and Sooky proposed that DMF consider alternative management options that would allow harvesters to be efficient and utilize carriers, without leaving the state exposed to large landing events that may substantially impact quota availability.

Kalil Boghdan agreed. He noted the importance of making sure that the quota was available for the tradition inshore fleet.

Dan and David stated that DMF would continue to review this to better address issues related to economies of scale. David stated that he was in favor of considering allowing two harvester vessels to unload to one carrier vessel with the carrier vessel limited to taking 125,000 pounds per harvester vessel not to exceed 250,000 pounds total. He further stated that if he were to move forward with such an allowance it may only be allowed for a period when the 125,000 trip limit is in place (e.g., until 50% of the quota is taken).

Ray asked if DMF would bring this in front of the MFAC again. David stated it would be revisited at the May meeting.

State-Waters Groundfish Management

Director Pierce described the management of the state-waters groundfish fishery, federal state-waters set-asides, and how it relates to the larger federal groundfish fishery. He noted that state-waters set-asides are shared by the states and have never been monitored and managed like hard quotas.

In the past, set-aside overages were not problematic because federal quota for certain stocks were underutilized and therefore provided a buffer. Now, as the federal quotas for these stocks are more utilized, the buffer is diminished and the state-waters set-aside overages may result in accountability measures for the federal fishery. This is creating a choke species situation for certain stocks.

Accordingly, DMF analyzed state-waters catch and effort to develop potential management strategies. Director Pierce opined that the best way to address the state-waters overage was to close a portion of Massachusetts Bay in April. However, he expressed reservations about closing state-waters in April.

David was also concerned about discarding in the federal fishery. He opined that the number of unrecorded dead discards in the federal fishery likely far exceeded the overharvest of the state-waters set-asides, particularly for GOM cod. Accordingly, he felt

the issue of discarding needed to be addressed by the federal government and was likely a more pressing issue than the state-waters sub-component overages.

David concluded that he was not recommending a certain management action at this time. Staff was waiting for final FY17 data to be analyzed. Following this analysis, he expected he would develop management strategies for FY19. For FY18, rules would remain status quo. However, DMF's Statistics Program would look more closely at strategies to monitor the state-waters groundfish fishery in real-time.

Tim Brady asked if this would have any impact on the April recreational haddock fishery. David stated that it would not. However, he added that DMF was pushing NMFS to more closely investigate the relationship between Gulf of Maine and Georges Bank cod.

Mike Pierdinock asked that DMF further explain the relationship between the overharvest of state-waters set-asides and the federal fishery. David explained that state-waters sub-components are not reduced based on overharvest the prior year. Instead if federal quotas are fully utilized, then the overharvest from the state-waters fishery is paid back out of the federal quota.

Andrew Walsh asked about the timeline for a completion of the FY17 state-waters groundfish analysis. Anna Webb stated that the Statistics Program can begin to audit the data in late May. Based on this David concluded that a final analysis would be presented in the fall.

Andrew asked if DMF could predict if there would be any FY17 state-waters sub-component overages. David anticipated that there may be overages of the GOM cod and winter flounder set-asides. Melanie Griffin stated that the state-waters harvest exceeded the state-waters set-asides for these two stocks in FY16. Under status quo conditions in FY17, she had no reason not to expect overages for these two stocks in FY17 as well.

Andrew asked if DMF anticipated there would be a reduction in state-waters witch flounder landings. Melanie was uncertain, but noted that it would be interesting to see if the trip limit reduction impacted landings.

Andrew asked when the 200 pound GOM cod trip limit went into effect. Jared Silva stated that it was implemented in 2015, and FY16 was the first full year it was in effect for. Andrew noted that annual catch tripled despite the trip limit reduction. David reiterated that this was why he felt spatial/temporal closures were the most effective way to reduce harvest.

Andrew stated that he was conflicted. On one hand, he did not want to cut the state-waters fishery. On the other hand, the impact of the state-waters fishery on the federal fishery needed to be limited. The federal fishery cannot be held responsible for pound-for-pound paybacks due to the overharvest of the state-waters set-aside. He noted that the federal government does a good job at managing the federal fishery to their quota

numbers and the state needed to do a better job with the state-waters fishery. Accordingly, he felt it may be best to manage these set-asides like hard quotas.

In conclusion, Andrew advocated that DMF prioritize and expedite the FY17 state-waters groundfish fishery analysis and develop potential management solutions.

Mike Pierdinock asked if the increase in state-waters cod landings from 2013 to 2016 was indicative of the cod resource bouncing back. Melanie stated that a rule change occurred during that period that increased spatial and temporal access and that change was likely driving an increase in landings.

Sooky Sawyer expressed his concerns about latent effort in the state-waters groundfish fishery and stated that he felt this may be contributing to the increase in harvest.

The Chairman allowed a comment from the public. Mark Plachowicz expressed his concerns about new participation and latent effort. Recent cuts to the fluke quota were likely resulting in new participation in the groundfish fishery. With current effort and the low set-asides, even one new boat entering the groundfish fishery was problematic. He advocated for DMF to address latent effort.

Melanie stated that DMF investigated the issue of effort and participation in the state-waters groundfish fishery. The analysis demonstrated that effort in the state-waters groundfish fishery had increased in recent years. However, the number of active permits stayed steady. The increase in effort appeared to instead be driven by those active fishermen fishing harder.

Petitions from MA Fisherman's Mobile Gear Fishing Alliance

Director Pierce stated that DMF had received several petitions from the MA Fisherman's Mobile Gear Fishing Alliance over the past several months. He noted that DMF had also received a letter from the MFMGA to Governor Baker and Secretary Beaton. While he wanted to make the MFAC aware of this correspondence, he did not intend to address it at the April MFAC business meeting.

The Director stated that the MFMGA had obtained counsel to represent them and counsel had requested that DMF not address these issues at the April meeting. However, this request was not received by DMF until late in the afternoon the day before the meeting, after meeting materials had been distributed to the MFAC and the public. Therefore, he felt obliged to review his memorandum regarding the MFMGA's petitions. He noted that this decision would not preclude further discussion in the future.

The Director stated that this memorandum condensed the various petitions into eleven general requests. The memorandum then analyzed and responded to each request, which he summarized. In conclusion, the Director indicated that he would be willing to meet with the petitioners and their representatives to further discuss their petitions and their concerns. Moreover, he expected the MFAC would continue to debate these items at future meetings.

There were no comments from the MFAC. The Chairman then afforded the public with an opportunity to address the Director and the Commission.

Attorney Laurel Gilbert spoke on behalf of the MFMGA. She stated that she had requested DMF delay the discussion of these petitions to afford her more opportunity to review them. She stated that her objective was to preserve the rights of her clients to raise their concerns and issues, particularly as she believes the MFAC acted in an arbitrary and capricious manner towards the MFMGA.

Laurel added that she appreciated the Director's willingness to meet with her and the MFMGA. They would likely take him up on this offer following a thorough review of the issues. She added that they would also be making a public records request, which John Verissimo would provide the details on.

John Verissimo requested historic documents regarding surf clam closures in Provincetown, the North Shore and Ellisville. Director Pierce and Commissioner Amidon asked that given the complexity of this request if it could be put in writing to the Division. Laurel Gilbert agreed.

John Verissimo then raised a study the MFMGA had done on ghost gear. He provided several packets to the Commission with preliminary findings. John stated that MFMGA was applying for two grants to address ghost gear and ghost gear removal. He asked that DMF support their efforts.

Director Pierce stated that he had not yet been able to review this study or its findings. However, he shared the MFMGA's concerns regarding ghost gear and was willing to engage with them on this issue moving forward.

Kalil Boghdan asked how the MFMGA obtained the pictures of ghost gear on the deck of a fishing vessel. John stated that the traps came up in the net of a dragger while fishing.

Commissioner Amidon reiterated the concerns he expressed at the beginning of the meeting regarding the conduct of MFAC business meetings and interactions with the public. He stated that it was not appropriate for the public to come to MFAC meetings with new information and data and expect it to be immediately debated, discussed and supported. This does a disservice to the Division, the MFAC and the public, as it does not allow for thoughtful conversation. Such items should instead be submitted to the Division or the Chairman well in advance of meetings so that it can be reviewed and analyzed prior to discussion. If the public does not feel that DMF is sufficiently or timely addressing certain issues, then he encouraged the public to contact him directly.

Laurel Gilbert stated she requested discussion of the MFMGA petitions be delayed so that it may be further refined, but the Director denied this request.

Director Pierce restated his rationale for denying this request. He stated that he would forward his written response to Laurel on this request to the MFAC.

OTHER BUSINESS

Wind Energy Development Updates

Director Pierce stated that DMF staff was currently reviewing proposed wind development projects south of Martha's Vineyard. They would then be submitting written comments to BOEM. This will allow BOEM to highlight these issues so that they are addressed in the EIS. He committed that DMF would remain engaged on this issue and keep the MFAC apprised.

MFAC COMMENTS

Kalil Boghdan stated that he testified to the MA legislature on behalf of the fines and penalties legislation in the bond bill.

Kalil then added that he asked John Verissimo about the origin of the photos of the trap gear on the dragger because it highlighted that these mobile gear fisheries interact with fixed gear fisheries. This interaction was one of the reasons why the MFAC took action to close the area off Ellisville to surf clam dredging.

Bill Doyle stated that it is likely that the gear the mobile gear fishermen are bringing up is ghost gear and not actively fished gear. He supported efforts to clean up ghost gear.

Sooky Sawyer applauded DMF biologist Bob Glenn for his common sense approach at the recent Atlantic Large Whale Take Reduction Team workshop in Rhode Island.

Tim Brady thanked DMF for their continued push to allow the recreational retention of GOM cod.

Mike Pierdinock concurred with Tim. On recreational fishing, Mike added that he had recently attended a NOAA conference on recreational fishing management issues. He was frustrated that DMF was not invited to attend, as the agency's knowledge would have been useful during discussions regarding reporting and estimating recreational catch.

Mike P then stated that he did not appreciate the comments from the MFMGA's counsel accusing the MFAC of acting arbitrarily and capriciously in their decision making.

Andrew Walsh stated that he felt DMF and the MFAC made the wrong decision regarding seasonally closing Ellisville to surf clam dredging. He did not think that DMF provided enough scientific evidence to demonstrate the need for the closure. Moreover, he did not feel it was the MFAC's role to arbitrate gear conflicts.

For these reasons, Andrew understood why the MFMGA were upset with this decision. Given this, it is understandable that they would obtain legal counsel and legal counsel would aggressively advocate for their clients.

COMMENTS FROM THE PUBLIC

There were not comments from the public.

Sooky Sawyer made a motion to adjourn the April 12, 2018 MFAC business meeting. Tim Brady seconded the motion. The meeting was adjourned.

MEETING DOCUMENTS

- **April 12, 2018 MFAC Business Meeting Agenda**
- **March 15, 2018 MFAC Draft Business Meeting Minutes**
- **Proposed 2018 Recreational Fishing Measures for Fluke, Black Sea Bass and Scup**
- **2018 Menhaden Management**
- **State-Waters Groundfish Management**
- **Response to MFMGA Petitions Regarding Mobile Gear Access**

NEXT MEETINGS

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

**June 14, 2018
SMAST East
836 S Rodney French, New Bedford**