

MARINE FISHERIES ADVISORY COMMISSION

March 14, 2019

DFW Headquarters

Westborough, MA

In attendance:

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

Division of Marine Fisheries: Daniel McKiernan, Deputy Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Jared Silva; and Nichola Meserve.

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

Massachusetts Environmental Police: Lt. Kevin Clayton.

Members of the Public: Phil Coates, Don Ciancioli and Joe Nagle.

INTRODUCTIONS AND ANNOUNCEMENTS

Chairman Kane called the March 2019 Marine Fisheries Advisory Commission (MFAC) business meeting to order and thanked commission members for their attendance.

The Chairman stated that DMF had advised him that the MFAC is required to hold annual officer elections. He asked how the MFAC wanted to proceed with this requirement. The current officers are Ray Kane as Chair, Mike Pierdinock as Vice-Chair and Bill Doyle as Clerk.

Bill Doyle made a motion to proceed with the current slate of officers for 2019. The motion was seconded by Mike Pierdinock. No further comments were made. The Chairman moved for a vote on the motion. **The motion was approved unanimously.**

The Chairman then asked if the MFAC should proceed holding officer elections annually in March. Sooky Sawyer asked if there was typically a time of year when terms expire and new members are appointed. Deputy Director Dan McKiernan stated that historically this was not the case, as new appointments are made on an as needed basis and members awaiting reappointment often continue to serve on expired terms.

Sooky Sawyer made a motion to hold officer elections annually on March. The motion was seconded by Bill Doyle. No further comments were made. The Chairman moved for a vote on the motion. **The motion was approved unanimously.**

Chairman Kane noted that at present one MFAC member was serving on an expired term, there were three expirations coming up in August 2019 and the seat vacated by Andrew Walsh had not been filled. Deputy Commissioner Mary-Lee King stated that DFG would work to address this.

Lastly, Chairman Kane noted that Commissioner Amidon and Director Pierce were unavailable for today's meeting. Deputy Commissioner Mary-Lee King and Deputy Director Dan McKiernan would be serving in their absence.

REVIEW AND APPROVAL OF MARCH 14, 2019 BUSINESS MEETING AGENDA

Chairman Kane asked if there were any amendments to the March 14, 2019 MFAC business meeting agenda. No amendments were offered. The Chairman then asked for a motion to approve the agenda.

Sooky Sawyer made a motion to approve the agenda. The motion was seconded by Mike Pierdinock. The Chairman called the motion to a vote. **The motion was approved unanimously.**

REVIEW AND APPROVAL OF FEBRUARY 14, 2019 DRAFT BUSINESS MEETING MINUTES

Chairman Kane asked if there were any amendments to the February 14, 2019 MFAC draft business meeting minutes. There were no comments or edits.

The Chairman then asked for a motion to approve the February 14, 2019 draft business meeting minutes as provided. **Bill Doyle made a motion to approve draft minutes. Sooky Sawyer seconded the motion.** The Chairman called the motion to a vote. **The motion was approved unanimously.**

COMMISSIONER'S COMMENTS

Deputy Commissioner Mary-Lee King reviewed written comments provided by Commissioner Amidon.

The Forge Pond Dam ladder project was moving forward. A temporary ladder will be installed for this calendar year while a permanent ladder is constructed. This will allow fish passage up the Forge Pond Dam for the first time in 100 years. DFG was also meeting with ACOE to discuss the permitting of several ongoing DMF and DFW projects.

DMF held its annual Recreational Fishing Derby Awards at the New England Boat Show on February 16th. The event was well attended.

DFG provided EOEAA with its capital investment plan for the upcoming fiscal year and it was favorably received by the Secretariat. The Ways and Means Committee would be meeting next Tuesday in Springfield to review budget issues for all EOEAA agencies. Secretary Beaton would provide testimony. A draft budget would be released the week before April school vacation and then debates will begin the week following school vacation.

DIRECTOR'S COMMENTS

Deputy Director McKiernan provided comments for DMF.

There was a high profile law enforcement incident this past November involving a charter boat exceeding the recreational fishing limits for tautog and possessing a large number of undersized fish. Dan noted that DMF initiated an adjudicatory hearing on this matter and a settlement agreement was reached. The terms of the settlement were that the charter boat permit holder be placed on a three year probationary period (2019-2021) during which time he will surrender his for-hire permit on August 31st of each year and be prohibited from chartering during the fall.

DMF spent a number of years working with the City of Brockton to allow fish passage on the Jones River at the Forge Pond dam. The city has now agreed to build and maintain a fish ladder at this location.

Chairman Kane asked if DMF or DFW had the legal authority to address beaver dams. Mary Lee King stated that neither agency is involved in beaver dam issues. Beaver dams fall under the discretion of Local Boards of health or the state's Department of Public Health. Mike Armstrong added that beaver dams cannot be addressed until a public health issue arises (e.g., septic systems are flooded).

The Seafood Expo North America is being hosted in at the Boston Convention and Exhibition Center from March 17 to March 19. The show will feature "Massachusetts Avenue" which will highlight MA seafood and seafood businesses. Dan encouraged MFAC members to attend and noted DMF would reimburse them.

DMF, working with the MA Environmental Trust, developed a striped bass vanity plate that was recently approved for production by MA Department of Transportation. The proceeds from the plate will be earmarked to a dedicated account for DMF (and others) to conduct striped bass and anadromous fish research and field work.

Dan then explained how to obtain a striped bass license plate. Kalil Boghdan noted the \$40 plate fee is tax deductible. Sooky Sawyer asked if DMF intended to auction off the high numbers. Dan indicated that he did not expect the first series of plate numbers to be printed to allow for this to occur if there was interest. Mike Pierdinock asked if there was a website associated with the license plate. Dan stated that it was currently under development and DMF would advertise it once it was finalized.

LAW ENFORCEMENT COMMENTS

Lt. Kevin Clayton highlighted two enforcement issues. First, in the last two weeks there were two separate bay scallop seed cases in Dennis involving the same individuals. The seed was released live and the violators fined. Second, officers along the south coast were conducting gear inspections and removals, and found that most of the abandoned non-complaint gear belonged to recreational fishermen.

On the personnel side, six officers were reporting to field training in March 2019 and another five officers were entering into the Police Academy. Those in the police academy are expected to begin field training by the early fall. MEP had also advertised a hiring notice for Colonel position. Tony Abdul-Khabir was currently serving in this capacity on an interim basis.

Chairman Kane noted that several years back the MFAC voted in favor of prohibiting the use of yo-yo rigs when fishing with striped bass due to the impacts this gear may have on release mortality. Despite this, there were a number of complaints from Cape Cod fishermen that this gear was still widely used and the prohibition was not adequately enforced. Ray wanted to know if MEP were patrolling for this, if they had encountered it, and if offenders were being cited.

Lt. Clayton stated that there were a number of complaints regarding the use of yo-yo rigs on Cape Cod last summer. In response, he directed his officers to target this during inspections and engaged local bait shops on the issue. His officers did encounter some anglers using weighted baits. However, the weights were attached to the fishing line and not embedded in the bait, and therefore, did not constitute a yo-yo rig. Mike Pierdinock noted that the complaints that Ray received regarding the continued use of yo-yo rigs underscores the issues associated with terminal tackle prohibitions.

ACTION ITEM

The Chairman provided some guidelines regarding how the MFAC would proceed with these action items. He noted that he would give a member of the public the opportunity to speak for and against each recommendation before he allowed for MFAC debate.

Suspending April 2019 Groundfish Closure in MA Bay

Deputy Director McKiernan reviewed the recently enacted state-waters groundfish conservation rule that allows the Director to close those state-waters within Massachusetts Bay between 42°00' north latitude and 42°30' north latitude that are west of 70°30' west longitude to commercial groundfish fishing in April. This closure was implemented to realign the state-waters groundfish fishery to the limits set-aside by the federal government for the state-waters fisheries ("set-aside"), and to ensure that MA's state-waters fishery did not undermine federal conservation management objectives if these set-asides are exceeded.

The closure language gives the Director - with approval of the MFAC - the discretion to annually suspend the closure if landings data demonstrated the purpose of the closure will not be compromised by such an action. For Fishing Year 2018 (May 1, 2018 – April 30, 2019), the most recent tallied landings project the state-waters fishery will not take the set-aside for Gulf of Maine cod. For Gulf of Maine winter flounder, the state-waters fishery had already harvested more than the set-aside but there was sufficient underutilization of the federal quota to buffer against an overage of the annual catch limit. For these reasons, the Director recommends the MFAC approve the suspension of the April state-waters commercial groundfish closure for 2019.

There were no comments from the public.

Lou Williams made a motion to adopt the Director's recommendation as provided. The motion was seconded by Sooky Sawyer. The MFAC did not debate this motion. The Chairman moved the motion to a vote. **The motion was approved unanimously.**

Striped Bass Conservation Management

Deputy Director McKiernan stated that the Director was moving forward two specific recommendations. The first addressed gaffing and the second addressed circle hooks. While both issues dealt with the release mortality of striped bass, they are not fundamentally related. Accordingly, Dan suggested each issue be addressed in separate motions to limit potential confusion. The Chairman consented.

The Chairman then allowed testimony from the public. Don Cianciolo, President of the Cape Cod Charter Boat Association, spoke in favor of both proposals. However, he felt that gaffing proposal should be even more conservative and prohibit the gaffing of fish under 40" for both recreational and commercial fishermen. He added that he also supported the circle hook mandate. However, he argued that it should allow for the use of offset circle hooks, as well as in line circle hooks. He cited a recent, yet to be published study by the New England Aquarium that demonstrates offset hooks have a lower release mortality rate than inline hooks in the cod and haddock fishery.

Gaffing of Undersized Striped Bass

Dr. Mike Armstrong reviewed the Director's recommendation to prohibit the gaffing of any undersized striped bass by commercial and recreational anglers. Mike A. admitted it was impossible for him to quantify the impact such a prohibition would actually have on mortality. However, the recommendation addresses issues of wanton waste, which are heightened given the findings of the recent stock assessment.

Mike A. noted this recommendation was influenced by public testimony. Rank-and-file recreational anglers were underrepresented at the recent public hearings, but some provided written comments. Mike A. also had the opportunity to talk to these fishermen at trade shows over the winter. He noted that there was a lot of support among these anglers to ban gaffing (and mandate circle hooks). The comments at the public hearing were skewed towards charter and commercial fishing interests. These fishermen were concerned about the safety impacts that would be associated with an outright ban on

gaffing striped bass. DMF was sensitive to these comments and tried to draw a balance by prohibiting only the gaffing of undersized fish.

Mike A. recognized that this rule would be difficult to enforce. However, it would codify best practices and help in angler education. Lt. Clayton stated he would instruct his officers to enforce the rule and some education may come through citations.

Mike Pierdinock was concerned that if the MFAC approved the recommendations (both gaffing and circle hooks) in advance of the ASMFC amending the FMP to address the stock assessment then the state would not get credit for any conservation gained by the recommendations. Mike A. did not share these concerns. He expected the ASMFC would implement a mandatory set of coast-wide measures, so he did not expect there would be an opportunity for MA to argue for a conservation equivalency for a prohibition on gaffing (or circle hook mandate). Moreover, even if an opportunity for conservation equivalency existed, he did not think DMF could adequately quantify and enumerate the impact on mortality. Based on this response, Mike P. was comfortable supporting DMF's proposed measure.

Sooky stated that he felt the recommended regulations would be difficult to enforce and was skeptical of whether it would achieve any reduction in mortality. Lou Williams agreed, but noted that addressing release mortality is going to be difficult to solve and may involve codifying best practices. Tim Brady supported implementing measures to codify best practices.

Kalil Boghdan made a motion to adopt the Director's recommendation as provided. The motion was seconded by Tim Brady. There were no further comments. The motion was approved unanimously.

Mandating the Use of Circle Hooks

Mike A. reviewed the Director's recommendation to mandate the use of circle hooks - beginning in 2020 - among private recreational anglers fishing for striped bass with whole or cut natural baits. This would not apply to private recreational anglers fishing with natural baits attached to an artificial lure (e.g., tube and worm) or weighted treble hook (e.g., drop and snag). The commercial and for-hire fleets are exempt.

Mike A. explained that DMF would define circle hooks to include only inline circle hooks. This would prohibit the use of offset circle hooks. He noted studies that have found that there is no functional difference in gut-hooking rates between offset circle hooks and j-hooks. As gut hooking is a primary cause of striped bass mortality, it seemed appropriate to restrict the use of offset circle hooks.

Similar to the gaffing recommendation, the rank-and-file recreational anglers were strongly supportive of mandating the use of circle hooks for natural baits. However, fishermen in the for-hire and commercial fleets were not as supportive. While many of these fishermen use circle hooks, they did not support a mandate. They argued that they utilize a number of bait-tackle combinations to target large fish. Mandating circle

hooks in this manner would reduce their catch rates, make them less efficiently and ultimately impact their income.

Tim Brady stated that the recent New England Aquarium study on circle hooks in the groundfish fishery was presented to the Stellwagen Bank Charter Boat Association. Tim recalled that the study found that cod and haddock release mortality were actually lower with offset circle hooks than inline circle hooks. Tim then asked two questions. First, were there any studies on striped bass that demonstrated inline circle hooks had a lower release mortality rate than offset circle hooks. Second, in light of this data, would DMF consider also allowing the use of offset circle hooks.

Mike Armstrong did not recall a study that specifically compared the release mortality of striped bass taken by inline circle hooks compared to offset circle hooks. DMF's recommendation relied on two different studies to draw this conclusion. The first study demonstrated that inline circle hooks result in a much lower deep hooking rate of striped bass as compared to j-hooks and offset circle hooks (j-hooks and offset circle hooks had effectively the same deep hooking rate). The second study showed that gut hooking is a primary cause of release mortality for striped bass. When considering these studies together, Mike A. noted that you can come to the conclusion that inline circle hooks are likely to have a much lower release mortality rate for striped bass than offset circle hooks.

Mike A. opined that the lower release mortality rates associated with the use of offset circle hooks in the groundfish fishery may be related to other factors. Offset circle hooks may be removed from the lips of groundfish more quickly than inline circle hooks, shortening their time to release. Additionally, haddock and cod are morphologically different than striped bass and exhibit different feeding behaviors, accordingly fishing techniques are different. As a result, cod and haddock may be less prone to deep hooking than striped bass.

Mike P. generally agreed with this assessment. For striped bass, inexperienced anglers may let the striped bass run for longer periods of time than necessary to hook up. This would increase the likelihood of deep hooking when fishing with j-hooks or offset circle hooks, whereas if fishing with inline circle hooks the angler would likely not hook up. Citing his experience in pelagic fisheries, he noted that the effectiveness of circle hooks and their ability to reduce release mortality are often impacted by the feeding behavior of the target species and the fishing method being used.

Tim Brady stated that he struggled with banning offset circle hooks without a scientific study directly demonstrating that offset circle hooks result in greater striped bass release mortality. Ray Kane suggested DMF conduct such a study with the funding from the recreational fishing license.

Mike A. stated that if the MFAC does not vote up the recommendation, then DMF would delay implementation until further review. However, he reiterated that since inline circle hooks gut hook striped bass 90% less than offset circle hooks, there was a strong

probability that the release mortality rate would be much higher for striped bass caught with offset circle hooks compared to inline circle hooks.

Lou Williams asked if the use of inline circle hooks was widespread in MA. Mike A. stated that they are commonly used and available.

Lt. Clayton stated that he did not support DMF's proposal to mandate the use of circle hooks because he did not believe they would be enforceable. However, he would instruct his officers to enforce the rule to the best of their abilities and some angler education may come in the form of citations.

Kalil Boghdan noted that the recommendation on the table was very specific to mandating the use of inline circle hooks for private anglers fishing for striped bass with natural baits. However, discussion had veered off into the efficacy of inline circle hooks versus offset circle hooks in other fisheries. He was uncertain how this was relevant to the recommendation. Unless anyone had comments or concerns specific to the motion, he requested the Chairman call for a motion and a vote.

Kalil Boghdan made a motion to adopt the Director's recommendation as provided. The motion was seconded by Bill Doyle. There were no further comments. The motion was approved 5-2.

Commercial Striped Bass Management

Dan McKiernan stated that DMF had proposed amending the commercial striped bass season start date and open season days to enhance quota utilization and avoid having striped bass and sea bass open fishing days occur on the same calendar day (Thursdays). Both proposals were developed in reaction to stakeholder comments following the 2018 commercial fishing season when MA did not harvest about 10% of its quota.

Between the development of these proposals and the public hearing, the findings of the stock assessment were released and striped bass were found to be overfished and overfishing occurring making it likely that the quota will be reduced as soon as 2020. As a result, the public testimony was not favorable. Fishermen expressed concerns about having to potentially change the rules again in 2020 in response to quota reductions and favored regulatory stability. Moreover, fishermen reminded DMF that the current rules were developed with lots of input from dealers and fishermen. Accordingly, there was hesitancy to change the rules, as it may negatively impact the market. Based on this testimony, Director Pierce was not recommending any changes to the commercial season start date or open fishing days. The 2019 fishery will open on June 25th with open fishing days on Mondays and Thursdays.

However, Director Pierce was recommending that the MFAC vote in favor of rescinding the regulation that prohibits the importation of non-conforming sized whole striped bass lawfully harvested in other jurisdictions during the state's commercial fishery and instead allow the importation of this fish year-round. Dan McKiernan stated that this

regulation was implemented many years back and it was designed to prevent the black market sale of undersized fish. The ASMFC has since mandated the coast-wide implementation of a rigorous striped bass tagging program. This program is the “gold standard” in traceability among ASMFC managed species. It requires all commercial fish to be tagged prior to entering commerce and that the tag must remain with the fish (or fillets thereof) until it is sold to the final consumer. Moreover, most states – including the Chesapeake Bay states - require the tag be applied by the fisherman at the point of harvest.

In October 2018, Director Pierce rescinded this rule on an emergency temporary basis. This was done to allow the late-fall and early-winter importation of non-conforming striped bass from other jurisdictions, namely MD and VA. Our markets are typically open to the importation of this fish in the fall, as our commercial fishery typically closes by September. However, because our commercial quota was not taken and our commercial fishery remained open, the fish could not be imported into MA.

Concurrently, some MD fishermen went to their state agency looking to exclude large MA caught fish from their markets during their commercial fishery, as MD-caught fish is excluded from MA markets during our summer fishery. Attorneys working on behalf of MD determined this should not move forward due to concerns that it would impede interstate commerce without a sufficient enforcement rationale. MD officials also went to the ASMFC’s Law Enforcement Committee seeking to determine if rules restricting commerce based on minimum size management were still warranted given the tagging program. The LEC determined there was no enforcement rationale for such a rule. Accordingly, there is pressure on states - like MA – to lift these restrictions to encourage commerce.

This recommendation was not widely supported by commercial fishermen in the public testimony, as they were concerned that this would impact the markets and ex-vessel value of this fish. Dan stated that these market based concerns were not sufficient for DMF not to pursue a regulatory change given the potential interstate commerce impacts. Moreover, he was skeptical that these market-based concerns would manifest. Dan noted that this fish could already be imported into MA as processed fillets. Only a small amount of whole fish would likely be imported into MA during the summer given the economics of the Chesapeake Bay fishery. The Bay fishery is an IFQ fishery, the quality of fish is lower in the summer months resulting in a reduced ex-vessel value and there is a local Mid-Atlantic market for the product being harvested. The major beneficiary of this rule change would be Massachusetts processors who could import some quantity of fish for processing and distribution through Boston - a major global seafood distribution hub.

Chairman Kane allowed Joe Nagle of Nagle Seafood in Boston to speak to this recommendation. Nagle Seafood supported the Director’s recommendation. Joe stated his company processes striped bass for distribution nationally and internationally. It is to the detriment of the company when they are prevented from processing and distributing fresh wild fish. When his company cannot import this small wild caught striped bass

from the Bay, they instead import hybrid aquaculture raised striped bass (“hybrid bass”) to meet market demand.

Ray Kane asked if ex-vessel value for MA fishermen would decrease if MA allowed the importation of this non-conforming fish. Joe Nagle stated that the small striped bass from the Bay states did not directly compete in the market with the larger fish taken in MA’s commercial fishery. MA caught bass are typically preferred by the local tourist market and high-end out of state markets. The small fish compete with hybrid bass in certain ethnic markets. Joe added that summertime striped bass coming out of the Bay was often lower and therefore preferable to the hybrid bass.

Kalil Boghdan asked if MA commercial fishermen were already meeting market demand and if the importation of this additional fish would create a local surplus. Joe Nagle stated that there is a market demand for a size of fish that MA fishermen cannot legally land, but the Bay fishery does. Dan McKiernan added that summertime demand for local wild caught fish remains high and this is reflected in both the high ex-vessel value paid to fishermen and the high market value paid by consumers.

Bill Doyle stated that MA dealers have been legally able to import non-conforming sized hybrid striped bass for several decades. Like wild caught fish coming from other jurisdictions the hybrid bass is tagged as such. The importation of this hybrid bass has had no impact on local ex-vessel value for our state’s commercial fishermen. Moreover, Bill argued that allowing dealers to have greater access to wild caught striped bass throughout the year helps support consumer demand for the fish when the MA fishery opens.

Sooky Sawyer asked DMF if they expected this would impact the ex-vessel value for local caught striped bass in MA. Dan stated that this was difficult to quantify. However, based on a number of factors – target markets, quality and quantity of fish being imported – he did not expect this would impact the local ex-vessel value.

Mike P. stated that he heard from fishermen that the ex-vessel value plummeted late in the season due to MA allowing the importation of non-conforming fish. Dan disagreed with this argument. The impact of the regulations on price were negligible given the timing of the implementation of the regulations and the effective end of our commercial fishery. The emergency regulations were not filed until October 29th and were not announced until November 1, while the last open fishing day when any fish was landed was October 31st. Dan agreed that the price per pound did drop later in the season, but this could be attributed to other factors. This included the cost incurred by Boston area dealers having to send trucks and employees to Cape Cod to pick up smaller quantities of fish, as well as less local demand on Cape Cod after the tourist season.

Mike P. asked for DMF’s thoughts on how this may contribute to poaching. Dan expected it would be negligible. DMF historically allowed this fish to be imported into MA before our commercial season started and after it ended, while the fish are still in our

waters. DMF did not observe any evidence that this contributed to poaching. Moreover, the tagging program is about as good as it gets for accountability.

Sooky Sawyer asked if DMF would be willing to revisit this issue if ex-vessel value drops. Dan acknowledged a willingness to do so.

Bill Doyle made a motion to adopt the Director's recommendation as provided. The motion was seconded by Charlie Quinn. No further comments were made. The Chairman called for a vote. **The motion was approved 6-1.**

Commercial Scup Bycatch Limits

Deputy Director McKiernan stated that the Director was making a recommendation to amend the commercial scup bycatch limits in small mesh trawl fisheries. This would match state rules to the limits set forth in the interstate and federal FMPs by allowing fishermen using small mesh trawls (<5 diamond) to possess and land up to 1,000 pounds of scup from October 1 – April 14, 2,000 pounds of scup from April 15 – June 15 and 200 pounds of scup from June 16 to September 30. Current rules allow for these vessels to possess and land up to 1,000 pounds of scup from October 1 – April 30 and just 200 pounds of scup from May 1 – September 30.

Accordingly, the principal action associated with this recommendation would be to increase the scup bycatch limits to 2,000 pounds from April 15 – June 15. Over 2018, DMF and RI DEM worked successfully to have the MAFMC and ASMFC amend their FMPs for scup to allow for an increased bycatch limit for scup during the inshore squid fishery. This was designed to reduce regulatory discarding and increase scup retention during the inshore small mesh squid fishery that occurs in and adjacent to our southern waters. Dan noted that MA's commercial scup quota was largely underutilized in recent years with the fishery typically taking less than 50% of the quota.

Bill Doyle made a motion to adopt the Director's recommendation as provided. The motion was seconded by Lou Williams. The Chairman opened the motion up for further debate.

Sooky Sawyer asked when the FMP was changed. Nichola stated that DMF and RI DEM worked on this change throughout 2018 and it was adopted for the 2019 calendar year. Nichola added that the MAFMC's Scup Monitoring Committee would review the impacts of this increased bycatch allowance before the 2020 season.

Sooky asked if this possession limit increase could result in scup becoming a directed small mesh fishery. Dan stated that DMF did not observe this when the weekly aggregate program was in place (2014-2017) and did not anticipate it would occur because the ex-vessel value for scup was so low.

Sooky then asked if there was a bycatch tolerance or bycatch ratio rule. Dan stated that there was not.

Sooky asked if this would increase our utilization of the scup quota. Jared Silva stated that based on prior performance when the weekly aggregate program was in effect that this recommendation may result in a nominal increase in quota utilization. However, he speculated that the quota would still remain largely underutilized given the size of the quota and other constraining factors such as summertime net mesh size and market factors.

Kalil asked if DMF had considered adjusting the timing of the squid fishery to enhance bycatch avoidance. Dan stated that the dates for the current squid fishery (April 23 – June 9) were developed based on observer data collected by DMF in the 1980s and 1990s to maximize the catch of large squid while limiting the catch on non-target species, particularly small scup. Dan added that DMF was currently tasked by the legislature to produce a report on the bycatch in our squid fishery and he was hopeful this report would be completed and released this summer.

Kalil recognized that bycatch was a reality associated with the small mesh fishery and he preferred fishermen being able to land the fish to discarding them. Mike P. stated that the squid trawl fishery was a “dirty fishery”. If this bycatch limit is increased to allow fishermen to reduce regulatory discards then they will start to target scup with this gear. This will result in more fishing effort with dirty gear, producing more bycatch and more discards. Lou Williams disagreed with Mike P. Lou argued that there was no economic incentive to target scup given their price and the price of squid. Ultimately, Lou thought targeting scup would end up degrading the value of the squid and costing the trawler money.

Kalil noted that squid are a popular forage species for striped bass and he was concerned about striped bass bycatch in the squid fishery. Dan stated that historic observer data in the state-waters fishery showed very little striped bass bycatch. In MA, the biggest issue regarding striped bass bycatch occurs during the fall in federal waters east of Cape Cod and off Nantucket Shoals when the bass are caught as migrate south. Ray Kane noted that tuna fishermen often observe this discarding by otter trawlers fishing at night for flounders on the shoals. Mike P. agreed with Kalil’s concern regarding the bycatch and discard of striped bass. He noted the MAFMC’s analysis of the squid fishery south of the Vineyard and Nantucket showed that striped bass discards were prevalent in the fishery. Mike P. concluded that based on the status of the striped bass fishery and the lack of clear information regarding the impact this action may have on striped bass discards that he could not support the motion.

No further comments were made. The Chairman called the motion to a vote. **The motion was approved 4-2-1.**

Regulatory Housekeeping Items

Deputy Director reviewed the four regulatory housekeeping recommendations being made by Director Pierce.

The first recommendation was to explicitly require the initial sale of fish by a commercial fisherman be to a dealer authorized as a primary buyer (“primary buyer”); a related existing rule requires that only primary buyers purchase fish from fishermen. This new rule would allow both the fisherman and the buyer to be cited. Jared Silva noted that direct to public sales by fisherman allowed under the retail boat and bait dealer permits would still be allowed.

Chairman Kane asked for a motion to be made. **Bill Doyle made a motion to accept the Director’s recommendation as provided. Charlie Quinn seconded the motion.** There was no debate. The Chairman called the vote. **The motion was approved 6-0.**

The second recommendation was to prohibit commercial fishing during a charter. Dan noted that some charter boat operators misconstrued this proposal and were concerned that it would prevent charter boat operators from selling striped bass taken by their anglers under the recreational limits that conformed to the commercial rules that the patrons did not want to bring home. Dan added that the proposed recommendation would not do this.

Jared Silva explained that if fish is caught by anglers on a for-hire trip, then the catch would have to comply with the applicable recreational fishing limits. However, if the anglers do not want some of the catch, the catch complies with the commercial fishing regulations (e.g., size, season, open days) and the charter operation is properly permitted, then the remaining fish may be sold. What this new rule would prevent is for-hire operations advertising trips under higher commercial catch limits and claiming that their patrons are acting as “crew”.

Chairman Kane asked for a motion to be made. **Lou Williams made a motion to accept the Director’s recommendation as provided. Bill Doyle seconded the motion.** There was no debate. The Chairman called the vote. **The motion was approved 6-0.**

The third recommendation was to prohibit the at-sea transfer of trip limit managed fish. Exempted from this would be bait fish sold over the rail under the authority of a bait dealer permit.

Dan noted that DMF needed to minimally implement this rule for the commercial fluke fishery to comply with the FMP. DMF previously complied with this FMP requirement through an obscure inshore at-sea processing regulation. This rule was recently rescinded during a regulatory clean up exercise and DMF was subsequently notified by ASMFC that they were no longer in compliance with the fluke FMP as a result. In reviewing re-implementing this measure for the fluke fishery, it seemed appropriate to extend this rule across all trip limit managed fisheries.

Sooky Sawyer asked if there was a rule prohibiting the transfer of lobsters across the various lobster management areas. Dan stated that this activity would not be prohibited

by the proposed recommendation. However, DMF could address this in future rule-making. Sooky supported such an action.

Chairman Kane asked for a motion to be made. **Tim Brady made a motion to accept the Director's recommendation as provided. Charlie Quinn seconded the motion.** There was no debate. The Chairman called the vote. **The motion was approved 7-0.**

The last recommendation was to provide the Director with the authority to issue Letters of Authorization to allow permitted dealers to operate "buy-boats" and exceed possession limits. Buy-boats were previously used in the state's summertime fluke fishery. Vessels would tie up and offload the fish in Nantucket to allow them to be closer to the fishing grounds of Nantucket Bight. The buy-boat would then take this fish aboard at the pier and transfer it back to mainland ports. The recommendation would allow this activity to occur on a broader basis if there was a need to accommodate it.

Chairman Kane asked for a motion to be made. **Bill Doyle made a motion to accept the Director's recommendation as provided. Lou Williams seconded the motion.** There was no debate. The Chairman called the vote. **The motion was approved 7-0.**

Compliance in May and June Head Boat Fishery for Scup and Black Sea Bass

Dan McKiernan stated DMF's concerns about non-compliance with recreational fishing limits in the head boat fishery. There were two recent high profile incidents in the past few years that resulted in permit suspensions and the implementation of strict permit conditions to better control angler activity on these vessels. DMF also met with industry in 2017 regarding fleet-wide measures to improve compliance. Despite this, there were still allegations that compliance with recreational fishing limits remained low across the fleet.

As a result, DMF moved forward a number of new regulations designed to improve compliance among anglers while reducing the burden on the operations of monitoring angler activity. These proposals were developed with input from a sub-committee of the MFAC that met in October 2018 to address for-hire compliance issues. Public hearing testimony from head boat operators was not supportive of the measures, as they felt the rules were too onerous and they stated that they could not easily comply with them. Moreover, the worst offenders had left the fishery and the small number of remaining vessels did not have a record of non-compliance.

At this time, Director Pierce was not making a final recommendation to the MFAC on this issue. Instead, DMF staff would schedule a meeting in mid-April with the head boat industry and MEP to discuss improving compliance. The meeting would also address improving cooperation with MRIP samplers.

DISCUSSION ITEMS

Updates from Recent Joint MAFMC/ASMFC Meeting

Nichola Meserve stated that numerous actions at the most recent Joint MAFMC/ASMFC meeting focused on fluke management. The new fluke stock assessment was reviewed and it demonstrated that fluke are not overfished and, in a change from the last assessment, overfishing is not occurring. The incorporation of the revised (larger) MRIP catch estimates produced higher estimates of biomass than previously. Interestingly, this was in contrast to the effect the incorporation of the revised MRIP data had on the striped bass stock assessment. The fluke assessment also showed a continued trend of below average recruitment since 2011, as well as several other “red flags,” including slower growth and numerous declining indices of abundance.

As a result of this new stock assessment, the MAFMC & ASMFC set the coast-wide commercial fluke quota for 2019-2021 at 11.5 million pounds annually. This is a 74% increase in the commercial quota from 2018. After overages are accounted for, Nichola anticipated the state’s commercial fluke quota for 2019 will be at least 730,000 pounds (compared to 413,361 lbs in 2018).

The MAFMC & ASMFC also grappled with commercial fluke quota reallocation in the commercial issues amendment. The stock assessment reconfirmed that there has been a shift in the distribution of fluke to the north and the east. This affirmed calls from MA, RI, CT and NY to reallocate quota shares and provide the northern states with more access to the coast-wide quota. The more southern states have opposed reallocation based on changing resource distribution, and given their majority on the Council/Board, were able to approve an option that will redistribute quota based on the amount of the coast-wide quota. Specifically, when the coast-wide quota is set above 9.55-mlb, the quota above that level is redistributed in equal shares of 12.4% to most states. If this amendment is implemented in 2020 or 2021 at a coast-wide quota level of 11.5 mlb, then MA’s share of the coast-wide quota would increase from 6.8% to 7.8%.

Kalil noted that he attended the meeting on behalf of Chairman Kane and noted that he was impressed with how Nichola represented DMF and the Commonwealth.

2019 Recreational Fishing Limit Update

Dan McKiernan noted that the recreational fishing limits for black sea bass, scup, fluke, cod and haddock are reviewed annually at the federal and interstate levels and are consequentially subject to annual changes. The federal and interstate review typically occurs during the late winter and early spring once the past year’s MRIP data are finalized. Then states must turn around and implement these limits by May in time for the fishing year.

As a result, DMF cannot follow the normal rule making process whereby public comment is solicited and the MFAC is actively engaged in reviewing potential management options. In lieu of this process, DMF instead collects public comment while we work with our federal and interstate partners in developing annual fishing limits and brief the MFAC on it during their late winter and early spring meetings. DMF would be seeking this type of feedback from the MFAC at today’s meeting.

Nichola Meserve provided an update on the setting of the 2019 recreational fishing limits for black sea bass, scup and fluke. These limits were reviewed at the federal and interstate level at recent meetings and would likely be promulgated by DMF as emergency regulations in mid-April.

Dan McKiernan then provided an update on cod and haddock. He anticipated that due to the federal government shutdown, the implementation of the 2019 cod and haddock limits would be delayed and would not go into effect until after the May 1 start of the fishing year.

Black Sea Bass

The 2019 recreational black sea bass fishery limits would be very similar to those rules in 2018. While the ASMFC specified status quo measures, MA requested and was granted approval to make a minor revision to its season to accommodate opening on a Saturday in mid-May, as done for the past 6 years. Moving the opening up one day, from May 19 to May 18, requires the fishery to close September 8 rather than September 12, due to daily harvest rates being greater at the start of the season. Past public testimony has favored opening the 3rd Saturday of May over having extra open fishing days during the week in early-to-mid September. Similar to 2018, the bag limit will be 5 fish and the minimum size 15”.

Scup

Recreational scup limits are managed on a regional basis through the ASMFC. MA is in the Northern Region, which also includes RI, CT and NY. The Northern Region may liberalize its recreational fishing limits for 2019. A conference call was recently held to discuss how to take advantage of this liberalization and there was consensus support for opening the fishery year-round and increasing the for-hire bonus season bag limit by 5 fish. As a result the fishery will be open year-round with a 30-fish bag limit and 9” minimum size to all recreational anglers. During May and June for-hire patrons are afforded a bonus season bag limit of 50 fish. (This bonus season occurs in September/October in the three other northern states.)

There was not much support across the Northern Region for adding an additional bonus season. While some MA for-hire operators did support an additional (July–August) bonus season, DMF did not favor this approach for several reasons. First, the scup assessment is pending and as we have seen with the recent striped bass and fluke stock assessments, the new MRIP data can influence these results. Accordingly, to limit inter-annual variability in regulations, a conservative approach was favored. Second, the MRIP data for MA’s for-hire fleet does not demonstrate a need for a bag limit increase during July/August; most for-hire anglers are not taking their current 30-fish bag limit during the summer months. Lastly, additional time spent on the water catching up to 50 scup would likely raise discard rates for non-target species, particularly black sea bass and at a time when discard mortality rates can be higher due to fishing at deeper depths.

Chairman Kane asked Nichola if these decisions reflected the public comment received by DMF during the February comment period. Nichola indicated that private anglers had largely supported status quo for scup, but interest was high among for-hire operations to accommodate the proposed liberalizations, including adding an additional bonus season to attract clientele. Mike P. noted that he similarly heard that some for-hire operators wanted an additional bonus season. Nichola noted that if the stock assessment comes back favorable and the Recreational Harvest Limit for scup remains high in 2020 and beyond, this is something that DMF could prioritize.

Fluke

As a result of the recent stock assessment the recreational harvest limit for fluke was increased to 7.69 million pounds for 2019. However, the MRIP estimates show that the recreational fishery is already operating at this harvest level. As a result, recreational fluke limits will remain status quo for 2019. In MA, the fishery will be open from May 23 through October 9 with a 5-fish bag limit and 17" minimum size.

Cod and Haddock

The MFAC were provided a memorandum from Director Pierce that revealed his expectations for the federal management of recreational cod and haddock in 2019. In the memo, David stated his intention to mirror whatever limits the federal government implements.

In the Gulf of Maine, DMF expected that the haddock bag limit would be increased and the closed seasons reduced, and the retention of cod would be allowed during two short two-week seasons. In the Southern New England/Georges Bank area, DMF expected rules may stay status quo but there was some discussion about potentially reducing the cod bag limits.

Mike Pierdinock stated that David's memorandum only sets forth the recommendation provided by the Groundfish Committee. The Recreational Advisory Panel (RAP) also provided several recommendations. NMFS staff was scheduled to meet on March 15 to develop recommendations to send to the Regional Administrator for implementation. He expected NMFS staff would review options the recommendations set by both bodies.

Mike P. noted that the RAP set forth a number of recommendations that fit the model and were better for the recreational fishing community than the recommendation provided by the Groundfish Committee. However, the Groundfish Committee did not support these recommendations due to concerns regarding uncertainty with MRIP data. To address this issue of uncertainty, Mike P. requested NMFS consider using a three-year average, but he has not heard back from them on whether this can be done.

Mike P. noted that last year the recreational fishery left 104 metric tons of cod on the table. He was concerned that if the Groundfish Committees recommendation is the one that NMFS implements, then a large amount of cod will be left unharvested again to the detriment of recreational fishermen.

Dan stated that DMF would provide a more thorough update at the next meeting, as more information will be available. Dan noted his purpose of bringing this item up for discussion was to let the MFAC know it was David's intention to mirror whatever limits NMFS implements for cod and haddock.

DMF Port Profile Project

Deputy Director McKiernan stated that DMF's Seafood Marketing Program funded a comprehensive port profile project. The report will review each coastal community's commercial fisheries to document the port's landings, ex-vessel value and permit holders; existing infrastructure and infrastructure needs; and tools necessary to sustain and improve working water fronts.

Bill Doyle strongly supported this project and noted that it would likely be a critical tool for communities to get grant and infrastructure funding in the future.

Massachusetts Shellfish Initiative

Deputy Director McKiernan stated that the Massachusetts Shellfish Initiative (MSI) was a group funded to strategically address local shellfish issues and improve technical assistance and management. The MSI is comprised of a Strategic Task Force, as well as a number of committees, and it includes input from a wide range of stakeholders including industry members, NGOs, shellfish officers government officials and researchers to address specific issues. Due to scheduling issues, the Task Force has been slow to meet and develop a strategy to move the work of the MSI.

Dan was hopeful that the MSI would be able to highlight critical needs for the shellfish industry. In turn, this would highlight the need for additional funding for DMF's underfunded Shellfish Program. Dan noted the Shellfish Program that present funding levels forces the program to focus its energy on meeting the National Shellfish Sanitation Program's water quality testing requirements, and they have not been able to sufficiently expand its priorities to sufficiently address emerging issues or provide technical assistance.

Dan noted that unaffiliated fishermen, particularly from lower Cape Cod, were very skeptical of the MSI. These stakeholders did not believe they were adequately involved in the scoping, development and oversight of the MSI, and they were worried the MSI may advocate for positions that may are not favorable to wild harvesters and recreational harvesters.

COMMISSION MEMBER COMMENTS

Bill Doyle asked if DMF could provide the MFAC with updates on the upcoming Interstate Shellfish Sanitation Conference meetings. Deputy Director McKiernan stated that DMF would provide updates. Dan also expected that DMF's Shellfish Advisory Panel would meet in the coming months and would be extensively briefed on these meetings.

Tim Brady thanked DMF for their continued work to encourage the federal government to allow a recreational harvest of cod in the Gulf of Maine and address the disparate recreational cod limits in the Gulf of Maine opposed to Georges Bank. He stated that the moratorium in the Gulf of Maine, coupled with high bag limits for Georges Bank was having a crippling economic effect on for-hire operators north of Cape Cod.

Lou Williams stated that he recently attended the Maine Fisherman's Forum. He left the meeting very concerned about the forthcoming right whale related Endangered Species Act jeopardy finding against the lobster trap fishery. He expected that this would result sweeping changes to the management of the lobster fishery and that the fishery was not prepared for it. Dan, Lou and Sooky then discussed the current efforts at the Atlantic States Marine Fisheries Commission to get ahead of the jeopardy finding, but also implement functional fisheries management policies that actually address potential risk to right whales.

Mike Pierdinock stated that NMFS was holding a series of public scoping meetings to discuss a control date and a limited access permitting scheme for the federal for-hire groundfish fleet. Mike noted that this had been discussed in the past and there had not been much of an appetite for it. However, the issue keeps coming up and NMFS seemed to want to solicit more formal feedback on it.

Tim Brady stated that he can see value in a limited entry scheme. However, at the recent Stellwagen Bank Charter Boat Association there was a lot of skepticism that this would lead to IFQs for the for-hire fishery and limiting the number of for-hire permit holders may further reduce the input of recreational fishermen on groundfish management issues.

PUBLIC COMMENT

Phil Coates requested that DMF and the MFAC consider implementing a new control date or utilizing a past control date to make the commercial striped bass fishery limited entry. At present, the permit is open access and DMF issues about 4,000 regulated fishery striped bass permit endorsements annually. However, a small percentage of these permit holders are responsible for landing a majority of the quota. Considering the forthcoming reduction in quota, there is renewed concern about the potential economic impacts of the activation of latent effort.

ADJOURNMENT

The Chairman asked for a motion to adjourn. **A motion was made by Sooky Sawyer to adjourn the March 14, 2019 MFAC business meeting. The motion was seconded by Charlie Quinn. The meeting was adjourned.**

MEETING DOCUMENTS

- March 14, 2019 MFAC Business Meeting Agenda
- February 14, 2019 MFAC Business Meeting Agenda
- April 2019 Commercial State-Waters Groundfish Mortality Closure in MA Bay
- Recommendation on Striped Bass Conservation and Release Mortality Reduction
- Recommendation on Proposals to Amend Commercial Striped Bass Regulations
- Recommendation on Commercial Scup Bycatch Limits
- Recommendation on Regulatory Housekeeping Items
- Improving Compliance in Springtime Recreational Head Boat Fishery for Black Sea Bass and Scup
- Fluke, Black Sea Bass and Scup Update
- 2019 Recreational Groundfish Rule Making Update

FUTURE MEETINGS

9AM
May 9, 2018
Division of Fish and Wildlife Field HQ
1 Rabbit Hill Road
Westborough, MA

9AM
June 13, 2018
Division of Fish and Wildlife Field HQ
1 Rabbit Hill Road
Westborough, MA