

## **MARINE FISHERIES ADVISORY COMMISSION**

**October 18, 2022**

**Via Zoom**

### **In attendance:**

*Marine Fisheries Advisory Commission:* Raymond Kane, Chairman; Mike Pierdinock, Vice Chair; Bill Doyle, Clerk; Kalil Boghdan; Bill Amaru; Tim Brady; Arthur “Sooky” Sawyer; and Lou Williams. Absent: Shelley Edmundson

*Division of Marine Fisheries:* Daniel McKiernan, Director; Bob Glenn, Deputy Director; Story Reed, Assistant Director; Kevin Creighton, CFO; Jared Silva; Nichola Meserve; Melanie Griffin; Kelly Whitmore; Jeff Kennedy; Anna Webb; Julia Kaplan; Stephanie Cunningham; Derek Perry; Scott Schaffer; Nick Buchan; Steve Wilcox; Vincent Manfredi; and Kerry Allard

*Department of Fish and Game:* Ron Amidon, Commissioner

*Massachusetts Environmental Police:* Lt. Col. Pat Moran; and Lt. Matt Bass

*Members of the Public:* Phil Michaud, Len Michaud, Phil Coates, Emerson Hasbrouck, Peter Fallon, Elizabeth Roche, Beth Casoni, Deborah Cramer, and Mark.

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the October 18, 2022 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW OF OCTOBER 18, 2022 BUSINESS MEETING AGENDA**

There were no changes to the October 18, 2022 agenda.

## **REVIEW AND APPROVAL OF DRAFT BUSINESS MEETING MINUTES**

Jared Silva reminded the MFAC that the August minutes were not approved at the September 13, 2022 MFAC business meeting. Accordingly, the MFAC were to review and approve both the August 18, 2022 and September 13, 2022 draft business meeting minutes.

With regards to the August 18, 2022 MFAC business meeting minutes, Jared stated the August draft minutes were edited to address two issues raised at the September MFAC meeting. First, to include typographical edits proposed by Kalil Boghdan to page eight of the draft minutes. Second, to answer the question raised by Chairman Kane regarding the status of the Atlantic sea herring stock and if it changed from the 2020 assessment to the 2022 assessment. Jared Silva confirmed the draft minutes were correct and the status remained unchanged—overfished with overfishing occurring.

**Chairman Kane asked for a motion to approve the August 18, 2022 MFAC draft business meeting as provided by DMF. Kalil Boghdan made the motion to approve the amended August 18, 2022 business meeting minutes. Tim Brady seconded the motion. A roll call vote was taken and the motion passed 5-0-2 with Mike Pierdinock and Sooky Sawyer abstaining.**

Chairman Kane asked for comments or edits regarding the September 13, 2022 MFAC draft business meeting minutes. Jared Silva stated that Mike Pierdinock submitted comments prior to the meeting regarding typographical edits and reviewed these typographical edits with the MFAC. **Chairman Kane asked for a motion to approve the August 18, 2022 MFAC draft business meeting minutes with the amendments proposed by Michael Pierdinock through Jared Silva. Kalil Boghdan made the motion to approve the amended September 13, 2022 business meeting minutes. Tim Brady seconded the motion. A roll call vote was taken and the motion passed 5-0-2 with Mike Pierdinock and Bill Doyle abstaining.**

### **CHAIRMAN'S COMMENTS**

Chairman Kane thanked everyone for their attendance and turned the floor over to Commissioner Amidon.

### **COMMISSIONER'S COMMENTS**

Commissioner Amidon noted Director McKiernan was able to move forward his plan to restructure DMF, including the creation of several key management position. This enabled Dan to promote several staff members and would help the agency retain talent moving forward. Ron then congratulated Mike Armstrong on his promotion to Deputy Director overseeing the Fisheries Biology Section; Bob Glenn on his promotion to Deputy Director overseeing the Shellfish, Habitat, Invertebrate Fisheries, and Protected Species Section; Story Reed on his promotion to Assistant Director overseeing State Fisheries Management and Policy; Kevin Creighton on his promotion to Assistant Director overseeing Administrative Operations; and Stephanie Cunningham on her promotion to work under Kevin Creighton as the manager for fiscal administration and operations.

### **LAW ENFORCEMENT COMMENTS**

Lt. Col. Moran and Lt. Matthew Bass provided comments for the Massachusetts Environmental Police (MEP). Lt. Bass stated MEP responded to about 1,250 marine fisheries calls over the last month. He then highlighted some species-specific issues, including tautog tagging and shellfish tagging.

Lt. Bass moved on to describe the delays MEP has encountered within the court system, and by comparison, praised DMF's efficient administrative process to sanction permits.

Kalil Boghdan asked about staffing and whether new hires were adding additional officers to the force. Lt. Bass stated there were three new hires entering field training and Lt. Col. Moran added it has yet to be determined if these new hires would report to the Coastal or Inland bureaus. Lt. Col. Moran added MEP was on track to hire 11 new officers in 2023, which would be sufficient to maintain recent staff levels.

Lt. Col. Moran closed MEP's comments by giving praise to one of his officers who designed and distributed 3D printed blue crab gauges to contacts in the field. As a result of this initiative, MEP saw a 50% reduction in blue crab violations in 2022. Chairman Kane congratulated MEP.

Commissioner Amidon recommended the Commission reach out to stakeholder groups such as the coastal caucus committee to request they look into staffing issues faced by MEP.

### **DIRECTOR'S COMMENTS**

Director Dan McKiernan started his comments by thanking Commissioner Amidon for his assistance with the restructuring of DMF and the development of this management team.

Dan then discussed the final assessment from the Monterey Bay Aquarium to red-list American lobster. This red-listing was based on potential interactions between the trap fishery and right whales. The Director stated his disappointment with this final decision and noted DMF had been in contact the aquarium to advocate against red-listing.

On the subject of protected species, Dan also discussed the federal court's decision in Center for Biological Diversity vs NOAA Fisheries. This decision ("Boasberg Decision") invalidated NOAA Fisheries recent Biological Opinion on right whales and subsequent Atlantic Large Whale Take Reduction Plan regulations. Additionally, it requires the agency review its regulatory program to achieve the PBR for right whales within six-months, as required by the Marine Mammal Protection Act. As a result of this, NOAA initiated a public scoping process to determine how to achieve a 90% risk reduction to right whales across all regulated fisheries.

The upcoming ASMFC meeting will be held in person in New Jersey from November 7 to November 10. He added the most significant actions for Massachusetts will be those addressing the menhaden and striped bass management plans.

Dan then discussed the longstanding issue regarding hydraulic dredging for surf clams in Provincetown waters. Several years back, the town restricted this activity pursuant to its authority under the Wetlands Protection Act. The municipal act was controversial and DMF has advocated for trying to resolve the matter in a manner that would allow fishing in the area to continue. In recent weeks, a surf clam dredge business filed a Notice of Intent (NOI) with Provincetown to fish hydraulic dredge gear in municipal waters and reignited this conversation. This NOI will eventually be heard by the local Conservation Commission, however, DMF was hoping to time this hearing so that it occurs after the

release of studies conducted by the Provincetown Center for Coastal Studies on the impacts of hydraulic dredging in the area. Dan expressed his interest in improving the spatial management of this fishery to protect important habitat and was hopeful an arrangement could be brokered to allow the hydraulic dredge fishery to access Provincetown waters again.

Dan then discussed issues related to the administration of the agency. He stated the Boston office will be closing and permitting functions will take place out of the field stations in Gloucester and New Bedford. The Boston staff is being relocated to the field stations. Additionally, DMF continues to develop the Cat Cove facility. DMF was also finalizing a new permitting system, which he expected would go live in 2023. With this change, commercial fishers will be issued a different permit stock and will eventually be able to renew online.

Sooky Sawyer expressed concern over that NOAA Fisheries would not allow Massachusetts to take credit for the Massachusetts Restricted Area to protect right whales. During the federal rule making process occurring prior to the Boasberg Decision, Massachusetts' was given credit for this closure in the risk assessment of its commercial trap fishery. However, following the Boasberg Decision, it appeared NOAA Fisheries would no longer credit Massachusetts because the management measure was implemented in 2015 and NOAA Fisheries was looking to use 2017 as the benchmark for risk reduction. Sooky requested DMF and DFG appeal to the Governor to support the industry. Commissioner Amidon stated that he would be happy to meet with a small delegation of industry members on the issue.

## **DISCUSSION ITEMS**

### *2022 Quota Managed Fishery Performance Update*

Story Reed provided the MFAC with an update on the performance of 2022 quota managed fisheries. The presentation focused on bluefish, black sea bass, summer flounder, horseshoe crabs, spiny dogfish, and tautog.

- Bluefish. DMF projects the commercial fishery is approaching full utilization of annual quota (~97%). Landings have slowed recently indicating the fish have begun to migrate out of nearshore waters. DMF considered obtaining a quota transfer to accommodate additional fishing opportunities, but given current fishing conditions such an action does not appear necessary.
- Black Sea Bass. The fishery has performed similar this year to recent years. However, due to a substantial quota increase for 2022, the fishery had landed only about 75% of the annual quota. While commercial fishing activity continues, DMF anticipates the available quota will likely be underutilized this year. Nichola Meserve added the black sea bass quota increased by 26% from 2021 to 2022 in response to how quota is allocated on a state-by-state basis. However, the quota will be decreasing in 2023 with revisions to how fish are allocated between the recreational and commercial sector, with the recreational share being allocation

being increased from 51% overall to 55% overall. If the fishery performs similarly in 2023, the available quota should be fully utilized.

- Summer Flounder. The summer flounder fishery was again underperforming its quota this year. For 2022, DMF and the MFAC implemented substantial liberalizations to catch limits in response to an increasing quota and underperformance in recent years. However, despite these changes the fishery had only taken 46% of its available quota. The trip limit increased to 10,000 pounds on October 1, with the in-season adjustment approved by the MFAC at their September business meeting. DMF was interested to see how this action may affect performance this fall. Lou Williams expressed concern about the performance of the summer flounder fishery and requested DMF look into potential issues. Nichola stated recent performance has been affected by a number of ecological and economic issues that are driving a decline in participation. Lt. Col. Moran agreed that fishing effort has declined and noted there are only about 10 trawlers participating in the summertime fishery. DMF intends to hold an industry scoping meeting this winter to discuss how to improve quota utilization and fishery performance.
- Horseshoe Crabs. The horseshoe crab fishery was underperforming its quota this year and landings were below recent years. Story opined this may be the result of a shift in fishing effort to the bio-medical fishery, as several hand harvesters and trawlers had turned over their bait permits to participate in the biomedical fishery. Director McKiernan noted DMF would be hosting a stakeholder meeting before the end of the calendar year to address emerging challenges related to the horseshoe crab fishery.
- Tautog. Tautog landings were increasing in recent weeks, which is typical for this fishery. Additionally, some permit holders had begun to reach out to DMF to request second allotments of tags. Mike Pierdinock asked if the commercial fishery had a size preference. Bob Glenn indicated market demand prefers fish in the 16" to 18" range.
- Spiny Dogfish. The spiny dogfish fishery was under performing its quota this year. The spiny dogfish quota is a regional quota; Massachusetts fishes against the northern region's (ME-CT) quota. While the quota is regional, Massachusetts is typically responsible for most of the region's landings. So far, in 2020, Massachusetts has only landed about 20% of the available quota. Kalil Boghdan was interested in what was driving low landings for spiny dogfish. Story stated effort was depressed due to low ex-vessel value and issues related to demand and the European market. Director McKiernan added the low trip limit was designed to support a day boat fishery, but it constrains effort by larger offshore vessels. If trip limits were liberalized new effort could conceivably move into the fishery and create new markets for the product.

#### *Protected Species Management Update*

Bob Glenn provided the MFAC with a protected species update. He discussed NOAA Fisheries ongoing rule making initiative following the Boasberg Decision. DMF also

recently held joint meetings with industry representatives, NOAA Fisheries, and state managers from Rhode Island and New Hampshire to discuss the potential ways the regulated fisheries can achieve the required 90% risk reduction. Lastly, DMF provided NOAA Fisheries with written comment on potential modifications to the Atlantic Large Whaled Take Reduction Plan. DMF advocated for a full accounting of risk management reduction measures for all fixed gear fisheries; for a risk credit be provided to Massachusetts for the Massachusetts Restricted Area closure; to update mortality estimates to include most recent years' data; to delay action until empirical data on the effectiveness of the most recent buoy line configuration measures can be calculated; and test and consider the sensitivity of the right whale density model when accounting for changing in spatial distribution over the past decade.

Bob Glenn moved on to discuss NOAA Fisheries proposed modifications to the right whale speed rule. He described the current rules and stated the proposal would expand the extent of the speed limit rule to include most waters off northeast coast during the period of November 1 – May 30 and it would affect all vessels 35' in length or larger. DMF was preparing written comment on this proposal and intended to raise concerns that the economic impacts are not fully captured, that the scope and scale of the rule is not surgical, and that it is difficult to enforce the speed limit on vessels less than 65' as AIS is not required.

Lastly, Bob provided an update on the status of DMF's Incidental Take Permit to NOAA Fisheries for state managed fixed gear fisheries. The first draft was submitted to NOAA Fisheries in July 2022 and NOAA Fisheries provided its initial feedback in September 2022. NOAA Fisheries indicated the draft plan was thorough and well written. DMF was now working to address NOAA Fisheries' comments with the intention of submitting a formal draft to NOAA Fisheries in December 2022.

Kalil Boghdan asked why NOAA Fisheries was expanding its speed limit rule to include vessels between 35' and 65' length. Bob explained that including this size class of vessels would further reduce the risk of potential ship strikes.

Mike Pierdinock highlighted the negative economic impact of the proposed speed rule not just on the fishing industry but the maritime economy at large. He anticipated numerous national maritime organizations would be submitting written comment to NOAA Fisheries.

Lou Williams asked about the status of the 600-pound weak link requirement at the buoy on trap gear. Bob Glenn indicated that NOAA Fisheries rescinded this requirement for 2022 as part of its most recent round of rule-making because it was determined to have no demonstrable risk reduction benefit. DMF's rules were out of phase with federal rules and still required its trap fishers to have a weak link at the buoy. This occurred because of the timing state and federal rule making processes. However, DMF was currently taking comment on rescinding the weak link requirement for commercial trap fisheries for 2023.

Sooky Sawyer commended Bob Glenn and his staff for their thorough work.

#### *Interstate Fisheries Management Update*

Nichola Meserve provided the MFAC with an update on interstate fisheries management issues.

Earlier in October, the MAFMC took action to reduce the coastwide quota for Fishing Year (FY) 2023 (May 1, 2023 – April 30, 2024) by ~60%. As a result, it is projected the northern region of ME through CT—which receives a 58% share of the coastwide quota—will have its quota allocation reduced from 17.1 mlbs (in FY2022) to 7.0 mlbs (in FY2023). Given recent landing trends, the anticipated FY2023 quota (coastwide and northern region) will be set above where landings have been in recent years, although some states with individual quota shares may struggle with their allocation at the reduced quota.

The preliminary 2022 stock assessment for striped bass will be subject to review and approval by the ASMFC's Striped Bass Board at their November meeting. The preliminary assessment shows the stock remains overfished (SSB estimated at 64,805 metric tons with a threshold of 85,457 metric tons), but overfishing is no longer occurring (fishing mortality rate of 0.14 with a threshold of 0.2 and a target of 0.17). This indicates the management measures adopted through Addendum VI are achieving the goal of reducing fishing mortality. If the current fishing mortality rate (0.14) persists, then there is a 78.6% change the stock will be rebuilt by 2029. As a result, DMF did not anticipate further management measures to reduce mortality would be required for 2023. Had the assessment demonstrated additional cuts in fishing mortality were necessary, Amendment 7 would have required the Board take immediate action to amend state rules for 2023. Nichola encouraged interested MFAC members to listen to the Management Board meeting on November 7.

Kalil Boghdan asked if reduced striped bass stock biomass and availability could have contributed to the recent reduction in catch. Nichola acknowledged that it could be a contributing factor but credited the measures implemented two years prior to achieve an 18% reduction as the main driver given the pronounced dip in fishing mortality that year

Lastly, the ASMFC's Menhaden Board is expected to take final action on Draft Addendum I to the fishery management plan. This addendum considers modifications to the state-by-state quota allocations in response to changes in stock distribution and availability since these baseline allocations were set, as well as management actions to constrain the incidental catch/small scale fishery landings to prevent the annual total allowable catch (TAC) from being exceeded. Additionally, the Board will set the TAC for 2023 – 2025, and the expectation is it will be increased. Following these decisions by the ASMFC, DMF will convene an industry scoping meeting to consider changes to the state's regulatory program for 2023.

### *Federal Fisheries Management Update*

Melanie Griffin provided the MFAC with an update on federal fisheries management issues focused primarily on happenings at the September NEMFC meeting.

- Sea scallops. The NEFMC declined to develop a limited access leasing program. Development of Framework 36—which will set 2023 specifications and 2024 default measures—remains ongoing.
- Multi-species groundfish. The NEFMC continued to work towards the development of Framework 65 to set 2023-2024/2025 specifications, rebuild cod stocks, and consider revisions to the Allowable Biological Catch control rule.
- Atlantic herring. The NEFMC approved the 2023 – 2025 specifications for Atlantic herring and continued to develop Framework 7, which considers spawning protections for Georges Bank.
- Habitat. The NEFMC: (1) recommended GARFO keep the Stellwagen Dedicated Habitat Research Area (DHRA); (2) concluded future recommendations will be provided for the GB DHRA; (3) initiated a framework to allow for Atlantic salmon aquaculture; and (3) gave GARFO some feedback for any future Exempted Fishing Permits regarding surf clam access to certain areas of the Great South Channel Habitat Management Area around Nantucket Shoals.
- Other items. Throughout late-October and early-November, the NEFMC will host workshops regarding ecosystem-based fisheries management. There was also some discussion at the NEFMC regarding offshore wind energy development, sanctuaries and monuments, and the East Coast Climate Change Planning Initiative.

### **OTHER BUSINESS**

#### *Upcoming State Fisheries Management Meeting and Hearing Schedule*

Jared Silva highlighted various upcoming fisheries management meetings:

- 10/20/22 - MFAC Permitting Sub-Committee Meeting (10AM - Zoom)
- 10/26/22 – MFAC Law Enforcement Sub-Committee Meeting (10AM - Zoom)
- 11/1/22 – [DMF Public Hearing on Mackerel, Tautog, Mako, and Groundfish](#) (6PM - Zoom)
- 11/3/22 – [DMF Public Hearing on Trap Fisheries, Mobile Gear Fishing Seasons, and Whelk Sizes](#) (6PM - Zoom)
- 11/7/22 – 11/10/22 – [ASMFC Annual Meeting](#)
- 11/15/22 – Shellfish Advisory Panel Meeting (3PM – Hanover Library)
- 11/22/22 – November MFAC Business Meeting (9AM – DFW Westborough Field HQ)
- TBD – Industry Meeting on Summer Flounder and Horseshoe Crab Management
- TBD – Industry Meeting on Menhaden Management

Kalil Boghdan requested the MFAC be sent a schedule of these upcoming meetings. Jared stated a schedule will be sent out immediately after the meeting with electronic copies of the presentations provided by DMF staff.



### *Commission Member Comments*

Tim Brady appreciated DMF's efforts to address right whale conservation issues. Tim also echoed Mike Pierdinock's earlier comments concerning NOAA Fisheries' proposed vessel speed amendment and the impacts it may have across the maritime industry.

Kalil Boghdan commended DMF for being present at the Topsfield Fair. Kalil added that he would like DMF to set the MFAC dates for 2023 as soon as possible so that he may plan his calendar accordingly.

Mike Pierdinock stated he will be in attendance at the upcoming ICCAT meetings in Silver Spring. He described some agenda items that will be addressed which included stock assessments for certain pelagics. He added that the November ICCAT meeting will be held in Portugal.

Ray Kane thanked everyone for their attendance. Ray asked about a lawsuit pertaining to the limited access scallop fishery. Melanie stated she had not heard anything about it but would look into the subject and respond directly to the Chairman.

### **PUBLIC COMMENTS**

Beth Casoni commended DMF for their efforts in trying to get NOAA Fisheries to credit Massachusetts for the Massachusetts Restricted Area closure. Beth also congratulated DMF staff on their recent promotions.

### **ADJOURNMENT**

Chairman Ray Kane requested a motion to adjourn the October 18<sup>th</sup> MFAC business meeting. **Tim Brady made a motion to adjourn the meeting. The motion was seconded by Sooky Sawyer. The motion was approved by unanimous consent.**

## **MEETING DOCUMENTS**

- October 18, 2022 MFAC Business Meeting Agenda
- August 18, 2022 MFAC Draft Meeting Minutes
- September 13, 2022 MFAC Draft Meeting Minutes
- DMF Comments on ALWTRT Scoping
- Quota Managed Species Presentation
- October 2022 Presentation on Protected Species
- October 2022 Presentation on Interstate Fisheries Management Updates
- October 2022 Presentation on Federal Fisheries Management Updates
- EEA Letter to BOEM on Wind Development on GOM
- NEFMC Letter to BOEM on Wind Development
- GARFO Letter to BOEM on Wind Development
- NEFMC Eco-System Based Fisheries Management Workshop Notice
- NEFMC East Coast Climate Change Scenario Planning Narratives

## **UPCOMING MEETINGS**

November 22, 2022  
DFW Field Headquarters  
Westborough, MA