

**MARINE FISHERIES ADVISORY COMMISSION**

**August 11, 2016**

**DFW Field Headquarters**

**Westborough, MA**

**In attendance:**

*Marine Fisheries Advisory Commission:* Raymond Kane, Chairman; Bill Adler, Vice Chairman; Michael Pierdinock, Clerk; William Doyle; Kalil Boghdan; Charles Quinn; Gus Sanfilippo; Andrew Walsh; Lou Williams.

*Division of Marine Fisheries:* David Pierce, Director; Daniel McKiernan, Deputy Director; Michael Armstrong, Assistant Director; Kevin Creighton, CFO; Robert Glenn, Senior Biologist; Nichola Meserve, Policy Analyst; Jared Silva, Policy Analyst; Chris Schillaci, Aquaculture Specialist; Erin Burke, Protected Species Specialist; Steve Wilcox, Invertebrate Biologist; Cate O'Keefe, Policy Analyst; and Devon Winkler, Shellfish Biologist.

*Department of Fish and Game:* Mary Lee King, Deputy Commissioner; and Doug Christel, Special Assistant.

*Office of Law Enforcement:* Lt. Matt Bass

*Members of the Public:* Beth Casoni; Patrick Paquette; Chris Sherman; Brad Hoffmiester; and Russell Cleary.

**INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Raymond Kane greeted the Marine Fisheries Advisory Commission (MFAC). There were no introductions or announcements.

**APPROVAL OF AUGUST 11, 2016 BUSINESS MEETING AGENDA**

There were no adjustments to the August 11, 2016 MFAC business meeting agenda. Note that Director Pierce did discuss a recent petition from the Selectmen of Nantucket to prohibit the use of mobile gear seasonally around the island.

**REVIEW AND APPROVAL OF THE JUNE 26, 2016  
DRAFT BUSINESS MEETING MINUTES**

Chairman Kane asked the MFAC if they had any comments or corrections regarding the June 26, 2016 MFAC business meeting minutes.

Vice-Chairman Bill Adler did not have any comments or corrections. However, he did have two follow-up questions. First, Bill asked Director David Pierce if the Mid-Atlantic Fishery Management Council (MAFMC) remained reluctant regarding joint management of black sea bass, scup and fluke with the New England Fishery Management Council (NEFMC). Director Pierce stated that he would discuss this further with the MFAC under the agenda item regarding MAFMC updates. Next, Bill asked if the stock assessment figures regarding Gulf of Maine cod, provided in the minutes, were correct. David stated that they were.

**No further comments were made. Bill Adler made a motion to adopt the June 26, 2016 MFAC business meeting minutes as provided. The motion was seconded by Lou Williams. The minutes were unanimously approved.**

### **COMMISSIONER'S COMMENTS**

Deputy Commissioner Mary Lee King provided the comments for the Department of Fish and Game (DFG). Deputy Commissioner King focused on three items.

First, she stated that the Governor's budget veto was overridden the legislature over a difference of \$200M. She was uncertain about the current status of the FY17 budget and the impact this veto may have on next year's spending plan. However, she fully expected more information to be available in the near future.

Next, she stated that Secretary Beaton (as well as DMF and DFG staff) attended a ribbon cutting event for the Harwich Recreational Fishing Reef. This reef was built with the support of the Town of Harwich using funding from the state's recreational fishing permit. She thanked Michael Pierdinock for emceeding the event and DMF for their hard work on the reef development project.

Lastly, she stated that the Governor's informal fisheries advisory panel would meet again in September. The meeting would address dealing with management of the ongoing groundfish crisis, with less of an emphasis on scientific issues. She informed the MFAC to contact Doug Christel if they had any questions, comments or concerns regarding this meeting.

### **DIRECTOR'S COMMENTS**

Director David Pierce stated that he had recently returned from an MAFMC meeting, as well as an Atlantic States Marine Fisheries Commission meeting (ASMFC). One of the highlights from the ASMFC meeting was an assembly between state directors and NOAA leadership. The notable topic was that Dr. Bill Karp, of the Northeast Fisheries Science Center (Center), stated that he was pushing forward a focused effort to utilize commercial fishing vessels in bottom trawl surveys. David stated that this was prompted in part due to concerns voiced by fishermen regarding groundfish stock assessments and the ability of NOAA research vessels to catch certain species. This was

compounded by mechanical problems affecting the R/V Bigelow, which delayed surveys in 2016. David was interested in this effort and was curious about the Center's ability to address certain potential pitfalls, such as incorporating this data into existing time series. David then noted he would discuss other issues germane to the ASMFC and MAFMC later in the meeting.

David then briefly touched on the Harwich Reef ribbon cutting event. He noted that he enjoyed himself at the event and was happy to see the reef was being colonized by fish and utilized by the recreational fishing public. He also thanked Mike Pierdinock.

David also recently attended the annual "Hooker's Ball" hosted by the Cape Cod Commercial Fisherman's Alliance in Chatham. He enjoyed attending this event and interacting with Cape Cod's commercial fishing interests.

Lastly, Dr. Pierce stated that he also attended the annual Boston Seafood Festival. DMF was an event sponsor and agency hosted a booth that focused on the state's seafood marketing program. Wendy Mainardi, DMF's seafood marketing project coordinator, attended the festival and unveiled the state's new seafood marketing logo. He stated he was very happy with the logo; it addressed the freshness and quality of the state's seafood, as well as the seafood industry's historic economic role. David added that Angela Sanfillipo (Gloucester Fisherman's Wives Association and Massachusetts Fisherman's Partnership) was honored at the meeting for her long standing work on behalf of the commercial fishing industry.

### **LAW ENFORCEMENT COMMENTS**

Lt. Bass stated that marine fishery enforcement was focused on the commercial striped bass fishery. He noted that a number of vessels fishing in southwest Cape Cod Bay had been cited for fishing prior to an open commercial fishing day (front-end loading). Enforcement of this front-end loading activity was aided by the fin clipping rule enacted by DMF and the MFAC in 2015. Additionally, he noted there were ongoing enforcement efforts in the conch fishery, principally related to the minimum size compliance at both the harvester and dealer level. Lastly, Lt. Bass informed the MFAC that there were favorable court decisions resulting from the substantial spring black sea bass violations.

### **ACTION ITEMS**

Director Pierce asked Deputy Director Dan McKiernan and DMF staff to walk the MFAC through DMF's various recommendations for final regulations. He thanked his staff for their hard work in developing this month's recommendation memos.

#### Aquaculture Reared Shellfish

Deputy Director McKiernan stated that the most challenging recommendation was the aquaculture reared ("farm raised") shellfish recommendation. This was one of the more controversial issues DMF took to public hearing in recent years, particularly regarding the in-state sale of 7/8" farm raised quahogs. After thoughtful consideration, DMF was

recommending to allow aquaculture reared oysters to be sold in state at a 2 ½” minimum size and aquaculture reared surf clams to be harvested and sold at 1 ½” minimum size. DMF did not recommend any action on farm raised quahogs; aquaculturists would continue to be allowed to harvest their product at a 7/8”, provided the undersized product was sold to a dealer and the secondary sale was out-of-state and to sell product in-state that complied with the existing 1” minimum size.

Additionally, DMF recommended that all farm raised product that was smaller than the wild harvest minimum size have the phrases “Farm Raised” or “Aquaculture Reared” on the mandatory shellfish tag. This allows farm raised product to be differentiated from wild harvested product, which would aide in enforcement and compliance. The aquaculture industry preferred this over continuing to require non-conforming farm raised shellfish to be marked with an additional red tag that denoted it was “Aquaculture Reared”.

Deputy Director McKiernan then provided a brief history of the public hearing proposal. He stated that for a number of biological and economic reasons the aquaculture industry had been seeking exemptions to the state’s shellfish minimum size regulations over the past 5-10 years and DMF worked to accommodate this in a very deliberate manner:

- In 2010, DMF began issuing Letters of Authorization (LOAs) to certain aquaculturists facing wintertime oyster mortality issues. The LOAs allowed the harvest of 2 ½” aquaculture reared oysters provided secondary sales of these oysters were to out-of-state out-of-state dealers and not to in-state consumer markets.
- Due to concerns regarding the equitability of this program, DMF worked with the Massachusetts Aquaculture Association to allow all aquaculturists to harvest 2 ½” farm raised oysters provided the product bore a separate red tag denoting it was “Aquaculture Reared” and the secondary sales of these oysters were to out-of-state out-of-state dealers and not to in-state consumer markets. The same exemption was also granted to for 7/8” farm raised quahogs.
- In 2015, some aquaculturists began requesting the ability to sell these non-conforming oysters and quahogs in-state. Additionally, there was interest in diversifying operations and culturing small surf clams at sizes that did not conform to the wild harvest minimum size of 5”.

One of DMF’s core missions is to promote the commercial seafood industry and provide seafood to meet consumer market demands. Accordingly, DMF found these requests worthwhile to pursue. Additionally, DMF initially felt these allowances for farm raised product would be benign to the wild fishery. DMF vetted this proposal with its Shellfish Advisory Commission and the MFAC before taking it to public hearing in July 2016.

During the public comment period, there was limited objection to the proposed allowances for the harvest and in-state sale of farm raised oysters or surf clams that were smaller than the state's wild harvest minimum size. However, there was a spirited debate regarding the quahog proposal. At the front of this debate were Chatham fishermen and shellfish officers who expressed a variety of concerns regarding the proposal. These concerns were captured in the extensive public comments. To summarize, the comments on the quahog proposal ranged from potential impacts on ex-vessel value for wild caught quahogs resulting from an influx of small out-of-state farm raised quahogs, to potential impacts on enforcement and compliance that could undermine the sustainability of the wild harvest fishery and overburden municipal shellfish officers.

DMF found the objections regarding compliance and enforcement to be worthy of further consideration. Many municipalities have a wild commercial quahog harvest and shellfish enforcement is typically conducted by municipal authorities. If this proposal were to impact enforcement and compliance, it had the potential to overwhelm already burdened shellfish officers in numerous towns and cities. For this reason, DMF was not moving forward a quahog recommendation that allowed the in-state sale of product smaller than the wild caught minimum size at this time. Instead, the agency would review how the oyster proposal (if approved) affected local enforcement and this could potentially guide future agency decision making.

Dan added that he was also disappointed by the turn out of proponents of the quahog proposal during the public comment period. He noted that DMF informally met with fishermen and dealers at the Cape Cod Fisherman's Alliance prior to the public hearing to discuss the quahog proposal. At this meeting the proponents argued that the proposed allowance for quahogs should not negatively impact the wild harvest fishery. Their rationale was that wild Massachusetts quahogs are consistently priced higher than aquaculture raised quahogs; moreover, the smaller 7/8" quahogs fill a less sought after market than the larger 1" or greater quahogs.

Dan McKiernan asked DMF's aquaculture project coordinator, Chris Schillaci, to further detail the rationale for the DMF's initial, particularly with regards to the aquaculture industry's perspective.

Chris stated that the oyster and quahog proposals were primarily driven by aquaculturists in more remote areas of the state (e.g., lower Cape Cod and Martha's Vineyard). Some aquaculturists in these areas do not have access to dealers who ship product out of state. Without access to these dealers they were unable to harvest and sell off this product. As a result, they were exposed to wintertime mortality they deemed avoidable.

With regards to oysters, there is seasonal mortality in areas that are prone to icing. Aquaculturists want to be able to be able to sell near legal sized product (2 1/2") before the winter to avoid incurring mortality. However, only those with access to dealers who ship out-of-state have this ability. If these smaller oysters could be marketed in state, all

aquaculturists would have the ability to sell this product and minimize wintertime mortality. Additionally, DMF had limited concern about the impact of this allowance on compliance and enforcement in the wild caught fishery; there are only two municipalities with a wild harvest fishery (Westport and Wellfleet) and farm raised oysters make up greater than 95% of the state's commercial harvest.

Kalil Boghdan asked if the wild harvest fishery has similar mortality issues. Chris stated that there is some wintertime natural mortality in the wild population. However, the minimum size is designed to promote spawning to maintain a biomass. So it is important to maintain the wild harvest minimum size at 3". Chris added that there have been ebbs and flows in natural oyster populations, which resulted in variability in ex-vessel value. With the increase in oyster production by aquaculturists, there is a consistent supply of Massachusetts oysters and a stable high price. Additionally, the increased presence of aquaculture has also enhanced wild oyster populations through spawning success by farmed oysters. So, the wild oyster fishery has benefited from aquaculture.

Chris then discussed the aquaculture industry's interest in harvest and selling 7/8" quahogs. Aquaculturists will seed their farm with a year class of quahogs, but quahogs grow at differing rates. So, when the product is dug up, it is common for there to be sub-legal sized product mixed in with legal sized product. During the winter, this results in mortality, because some amount of sub-legal sized clams do not dig back in and instead die off. Allowing them to sell quahogs at 7/8" would prevent some amount of die off. However, the wild quahog fishery is responsible for a majority of the commercial harvest and this commercial harvest occurs throughout the state. As a result, the enforcement and compliance concerns for quahogs are different than those for oysters.

As for surf clams, Chris reiterated Dan's earlier statements that a small number of aquaculturists were looking to diversify their crop. It is impractical and uneconomic for them to grow out surf clams to the state's 5" minimum size. However, if they were allowed to grow this product to 1 1/2" minimum size they could sell the product into the pasta clam market and diversify their business. Due to substantial differences in consumer markets and harvest operations, DMF did not expect this proposal would impact the wild harvest fishery.

Bill Adler stated that one of the most common comments he heard at public hearing was that aquaculturists needed access to in-state markets to address wintertime mortality. Bill was curious why the current allowance to sell non-conforming product out-of-state was insufficient. Chris explained that it was ultimately a matter of access. For numerous reasons (e.g., relationships, scale, geography), certain shellfish farms do not have the ability to harvest this product and avoid associated mortality because their dealers do not have out of state-accounts. Accordingly, they are disproportionately impacted by the current state rules.

Bill stated that he understood this argument for oysters, yet was looking for more details about the quahog fishery. Chris stated that the argument for quahogs was somewhat

similar to oysters. With regards to quahogs there are variable growth rates within a year class resulting in some portion of their catch being under the legal size. During the winter, this undersized catch is at risk of mortality. Access to dealers with out-of-state accounts in this region is limited, particularly during the winter when there is a higher risk of mortality. So there was some interest in selling this product locally so they could return a profit on these clams rather than a loss.

No further comments were made. **Bill Adler made a motion to adopt the Director's recommendation to: (1) allow the instate sale of farm raised oysters that measure at least 2 ½"; (2) allow the harvest and sale of farm raised surf clams that measure at least 1 ½"; and (3) to require "Aquaculture Reared" or "Farm Raised" be on all shellfish tags affixed to containers of shellfish that hold farm raised oysters, surf clams or quahogs that are smaller than the wild caught minimum size. The motion was seconded by Kalil Boghdan and approved unanimously.**

### Aquaculture Raised Finfish

Dan McKiernan stated that DMF periodically received calls from aquaculturists and dealers looking for allowances to sell live farm raised finfish that do not conform to the state's wild caught minimum sizes into Massachusetts markets.

This is because when aquaculturists raise fish, they need to periodically cull off small fish. There are niche markets for these small fish, particularly if they are live. Massachusetts is home to some of these markets and as a seafood distribution hub the state is also used to move this fish. DMF has historically accommodated requests through an LOA. The LOA required documentation verifiable back to a lawfully permitted aquaculturist, this allowed enforcement to differentiate the farm raised product from wild caught finfish. While there are no businesses currently requesting this allowance, the aquaculture industry is growing and it is sensible to codify regulatory standards that mirror the LOA program and would accommodate similar future requests.

Bill Adler asked if this allowance would apply to all finfish. Dan stated that it would apply to any marine finfish for which the state has a minimum size. Bill followed up and asked if this included striped bass. Dan it was conceivable that striped bass could be one of these species and noted that there had been striped bass aquaculture in the past.

Kalil Boghdan then asked if this would be an authorization for the sale of sub-legal striped bass in Massachusetts. Dan stated that the recommendation, if adopted, would authorize farm raised striped bass to be harvested and sold below the 34" commercial wild harvest minimum size. He added that DMF does and has historically allowed striped bass below 34" to be sold into Massachusetts from other Atlantic states where it was legally harvested when our commercial fishery is closed.

Bill Alder was curious if this sub-legal product would compete with wild harvested product. Bill Doyle stated that the importation of hybrid striped bass into Massachusetts typically decreases when the wild fishery opens. Additionally, having aquaculture raised

finfish available typically helps maintain a consistent market value because it provides a dependable supply of fish (wild fisheries tend to be seasonal). Dan McKiernan added that there is typically a stronger consumer market for wild harvested finfish, citing the difference in price for wild caught as opposed to farm raised salmon. Jared Silva agreed with Dan and stated that unless consumer preferences changed this farm raised product would not be competing with wild fisheries, but instead filling niche market demands.

Ray Kane asked Bill Doyle if there were any known aquaculture operations farming black sea bass or tautog. Bill Doyle was unaware of any such operations.

Mike Pierdinock asked if this exemption would apply to Atlantic bluefin tuna that was wild caught then raised in pens in the Mediterranean. Bill Doyle stated that he was unfamiliar as to whether this fish was marketed or branded as aquaculture raised; however, this fish was not commonly imported into the US. Dan McKiernan and Lt. Bass opined that this state rule would not impact the wild Atlantic bluefin tuna fishery because bluefin tuna is managed under federal highly migratory species standards and is not subject to a state minimum size.

No further comments were made. **Bill Adler made adopt the Director's recommendation to: (1) allow the instate harvest and sale of farm raised finfish that do not conform to the state's wild harvest minimum size and that all non-conforming fish be identified as "Aquaculture Reared" or "Farm Raised"; and (2) require all non-conforming aquaculture raised finfish be traceable back to the aquaculturist. The motion was seconded by Kalil Boghdan and was approved unanimously.**

#### Mobile Gear Vessel Replacement Baselines and Restrictions

Deputy Director McKiernan provided a brief history of the existing mobile gear vessel replacement rule. When offshore groundfish stocks collapsed in the early 1990s, there were concerns that the offshore trawl fleet would move inshore and target inshore fishery resources, negatively impacting the fleet that historically targeted fish in these areas. This prompted DMF to implement certain capacity limiting rules for mobile gear. The principal action was the 72' minimum size. However, DMF also adopted a rule to establish mobile gear vessel replacement restrictions (these restrictions complemented federal rules for groundfish trawlers).

These vessel replacement regulations capped vessel upgrades at 10% the overall length and tonnage and 20% the horsepower of the original vessel (so called "10-10-20" rules). Additionally, permit holders were restricted from upgrading their vessel more than once every 5-years. To accommodate smaller vessels in a size class where replacements within the allowable range are more limited, DMF allowed vessels 40' and under to potentially upgrade to 20% the length of the baseline vessel. Dan provided the example of a 38' foot vessel being able to upgrade to the 45' range, rather than the 42' range, which would provide them more access to potential replacement vessels.



Dan noted that concurrent with the federal government eliminating their restriction on tonnage in 2015, that MFAC requested DMF consider liberalizing its 10-10-20 rule to at least match the new federal rule. As a result, DMF took public comment on a proposal to eliminate the tonnage requirement and potentially allow further liberalizations to the horsepower and length upgrade rules. Public comment indicated that there was a desire to see the horsepower requirement eliminated and to provide exemptions to the cap on length provided the replacement vessel did not exceed 50'. The reasoning was that many available vessels were in a length class that would restrict upgrades for vessels with a smaller length and horsepower baseline. The liberalizations proposed by the commenters would allow permit holders with a lower length and horsepower baseline to upgrade into available vessels resulting in enhanced fisherman safety.

Dan stated that DMF concurred with this reasoning. Jared Silva added that current quotas and resulting trip limits for state-waters fisheries had a limiting effect on vessel capacity, meaning that inshore fishery economics were such that it was unlikely that liberalizing the vessel upgrade restrictions would result in the fleet evolving towards its 72' terminal capacity.

Accordingly, Dan stated that DMF was recommending that DMF (1) amend the 10-10-20 rule to eliminate the horsepower and tonnage restrictions; and (2) allow vessels up to 45' to be exempt from the 10% vessel length restriction, provided the upgraded vessels did not exceed 50'. DMF also recommended that the term "baseline vessel" be clarified to mean the original baseline of the vessel in 1992 or the most recently upgraded vessel; this recommendation was consistent with long standing internal agency interpretation of the regulation. DMF was not proposing to amend the 5 year cap on upgrades. Dan added that any vessel with a Coastal Access Permit and certain limited access federal permits (e.g.m groundfish) would remain subject to the federal rule, which was more restrictive.

Andrew Walsh stated that he supported this recommendation in principal. However, he thought that the recommended vessel length exemptions for small vessels allowed fishermen to purchase available Canadian built vessels (which are very beamy), but restricted access to certain American made vessels of similar capacity that may be longer than 50' (but less beamy). Andrew requested DMF consider further liberalizing this small vessel exemption to provide access to these American made boats.

Jared Silva explained that DMF did not receive public comment to this effect and were limited to liberalizing the proposal only to what was discussed in public comment. Bill Adler noted that DMF can always be more liberal than what was proposed at public hearing. Jared concurred, but noted that liberalizations have to be based on public comment. As no public comment was received to support Andrew's request, DMF could not accommodate it at this time. However, Andrew's suggestion could be considered as part of future rule making and David indicated he would have his staff consider the development of a potential proposal.

Chairman Kane stated that former MFAC member Domenic Santoro and his brother Frank Santoro commented on this proposal and requested DMF provide these additional liberalizations.

Gus Sanfilippo asked Dan if this recommendation was designed to address problems a small number of permit holders were having. Dan stated that it was. He noted that a few Coastal Access Permit holders have restrictive vessel baselines that do not allow them to upgrade into available vessels. These restrictions were primarily problematic for permit holders who obtain a permit (and no vessel) with a restrictive baseline through a transfer and cannot purchase a particular vessel because it is outside the permit's baseline.

No further comments were made. **Bill Adler made a motion to adopt the Director's recommendation to: (1) eliminate the tonnage and horsepower restrictions on Coastal Access Permit (CAP) vessel replacements; (2) waive the length restriction on CAP vessel replacements for vessels with a baseline of 45', provided no upgrade increases vessel length above 50'; and (3) clarify that the vessel baseline means either the length of the vessel on the CAP when first issued in 1992 or the length of the most recently upgraded vessel. The motion was seconded by Lou Williams and it was approved unanimously.**

#### Surf Clam Management

The first recommendation was to adopt a state-wide 48" maximum dredge width for surf clam dredge fishing in state waters. This management measure was brought to DMF's attention by state surf clam dredge permit holders who were concerned about the potential of larger federal vessels using a 100" dredge south of Cape Cod (where it was currently allowed). The use of this 100" gear could allegedly deplete inshore sets of surf clams on which the inshore fishery relied. This proposal was supported by DMF's Shellfish Advisory Panel. Deputy Director McKiernan added that this recommendation was approved by the prior MFAC in early 2015. However, due to a change in administrations, the regulation never received executive approval, and therefore, DMF was required to go back out to public hearing.

The second recommendation was to allow dealers to receive and process surf clams smaller than the state's 5" minimum size, provided they were legally harvested in another jurisdiction. Dan noted that New Bedford was a substantial hub for surf clam processing, and this would accommodate certain processor activities in the port. For instance, there are some processors who were interested in bringing in surf clams from New York state waters where there is a 4" minimum size; DMF had accommodated this by LOA. This new regulation would eliminate the need for an LOA. Additionally, in response to the federal government annually rescinding its minimum size, DMF provided an allowance for federal surf clam vessels to land sub-legal sized surf clams (harvested in federal waters) in Massachusetts but did not provide dealers a similar exemption. Additionally, Dan added that surf clams are brought into processors in cages

with information regarding harvest area, so it is easily determined where the clams were harvested, which would aid in enforcement.

Bill Adler supported these proposals. He noted that the inshore fishery had a lot to lose if vessels were able to come into Massachusetts waters using larger dredge gear, as this would disproportionately effect the small boat fisheries access to state-waters abundances.

No further comments were made. **Lou Williams made a motion to adopt the Director's recommendation to: (1) establish a state-wide maximum surf clam dredge width of 48"; and (2) allow dealers to accept and possess surf clam product below the state's 5" minimum size provided it was lawfully harvested in the jurisdiction of harvest. The motion was seconded by Gus Sanfillipo and it was approved unanimously.**

#### Whelk Management

Deputy Director McKiernan noted that recent trends in the whelk fishery presented substantial fishery management challenges that DMF had been working to address over the last number of years. In fact, later in the meeting, the MFAC would be provided a presentation on the fishery and existing management challenges. However, DMF was also providing a few benign regulatory proposals.

By way of background, a key conservation management control for both species of whelks (knobbed and channeled) was the minimum shell width. The focus to minimum size management started in 2013 due to biological concerns facing the fishery. As these animals are asymmetrical, consistent gauging was difficult. So to enhance enforcement and compliance, DMF developed a standardized "chute" gauge. However, despite the implementation of this gauge and industry education on the proper use of this gauge, there did not seem to be a universal understanding of how to properly measure these animals. Certain fishermen were manipulating the animal in the gauge or altering the gauge so that sub-legal sized whelks could be kept.

Accordingly, the first recommendation was to adjust the regulatory language regarding method of measurement so that the whelks had to lie as flat as possible on the gauge and that the apex and siphonal canal had to be in an orientation that is parallel to the sides of the gauge. The prior language had not been as specific and just required the whelk lied flat on the gauge with the operculum facing down. DMF worked with Law Enforcement to develop this language and there was consensus it would begin to address ongoing problems with gauging.

There were also two recommendations regarding whelk fishery limits. The first recommendation was to establish a 15-whelk recreational limit. Dan stated that there is a limited recreational fishery for whelks. However, Law Enforcement had encountered harvesters with large, marketable quantities of whelks and they alleged they were for personal use. Having a recreational limit would provide a threshold whereby a commercial shellfish permit is needed.

The next recommendation was for DMF to establish a commercial hand harvest mixed whelk limit of two level filled fish totes. The primary means of whelk harvest is by conch pot and trawl gear. However, there are some shellfish fishermen that rake them and some SCUBA divers that harvest them by hand. Considering the current ex-vessel value for whelks, there were concerns among potters about the proliferation of unconstrained SCUBA fishing effort and the potential for these fishermen to be taking whelks out of conch pots. The two tote limit (approximately 160-180 lbs) would match typical hand harvest by shellfish fishermen and should constrain new SCUBA effort. Dan noted the initial proposal was a one tote limit, but based on public comment by shellfish fishermen and subsequent review of whelk landings by shellfish fishermen, DMF was comfortable increasing this to a two tote limit.

Chairman Kane asked Law Enforcement if the new method of measurement language was sufficient to address their concerns. Lt. Bass stated that when the chute gauge was developed the intention was to measure the animals in the manner that the recommended language described. Therefore, further clarifying it was a positive because it would eliminate gray area and potential loopholes.

Vice-Chairman Adler stated that he heard shellfish fishermen in Chatham request a limit higher than the proposed one tote limit and was satisfied with DMF's recommendation of a two tote limit.

No further comments were made. **Kalil Boghdan made a motion to adopt the Director's recommendation to: (1) clarify the whelk method of measurement to require the whelk lay flat on the gauge as possible with the apex and siphonal canal parallel to sides of the gauge; (2) require all undersized product be possessed for a period that is no longer than is necessary for gauging; (3) establish a recreational mixed whelk limit of 15; and (4) establish a mixed whelk commercial limit for hand harvesters of 2 level filled fish totes. The motion was seconded by Andrew Walsh and it was approved unanimously.**

### Conch Pot Trap Tags Allocations

Deputy Director McKiernan provided some background on the conch pot fishery. He stated it was a limited entry owner operator fishery with a 200 trap limit. The trap limit is enforced through the use of trap tags. Therefore, trap tag compliance is critical to controlling fishing effort. He acknowledged that compliance with this trap limit was problematic and there was anecdotal evidence to suggest some fishermen were fishing more than their 200 trap limit. However, for a variety of reasons (e.g., use of single pot gear and user group and gear conflicts) the conch pot fishery is subject to more gear loss than other trap fisheries. For instance, surveys of the lobster trap fishery demonstrate 5% gear loss for trawls and 20% gear loss for singles, but some conch pot fishermen report greater than 50% gear loss to be normal.

As a result of this gear loss, DMF typically receives numerous calls every summer from conch pot fishermen requesting additional trap tags to account for lost gear. This gear loss is very difficult to verify because it is incremental and not the result of a storm or a large scale gear conflict.

Existing conch pot trap tag rules are modeled on the lobster fishery whereby fishermen are granted 110% their trap allocation (i.e., 220 tags) and can request a new set of replacement tags in the event of catastrophic gear loss. Considering the high levels of predictable gear loss in the conch pot fishery, DMF was recommending to increase the initial trap tag allocation from 110% to 120% (i.e., 240 trap tags) and to require any gear loss above that result in fishermen having to purchase and implement an entire new set of trap tags. Recognizing that there may be a high level of non-compliance with trap tag requirements, DMF encouraged cooperation with Law Enforcement to haul gear to inspect for trap tags as a manner of enforcement.

Chairman Kane stated that state law had required lobster fishermen to brand both their buoys and their gear with their permit number. Dan stated that this law has since been amended and now requires the buoys and gear be marked with permit numbers. Trap tags meet the gear marking requirements.

Ray then asked if there were similar gear loss issues in other southern trap fisheries. Dan stated that there have not been reports of similar gear loss in these fisheries. This may be the result of gear configuration (e.g., use of single pot gear in the conch pot fishery), truncated fishing seasons (e.g., black sea bass), and boating traffic in areas fished (e.g., Nantucket Sound as opposed to Gosnold or Nomans).

Bill Adler asked if there were similar gear loss events in the lobster trap fishery. Dan stated that there were a few large gear loss events every year. However, these gear loss issues often corresponded with verifiable weather events or gear conflicts. Also, in the Gulf of Maine many lobstermen do not fish their entire 800 trap allocation at one time, so they may have additional trap tags to utilize when gear is lost, whereas data demonstrates most conch pot fishermen are reporting fishing at or close to their 200 trap limit.

The Chairman allowed comments from the audience.

Beth Casoni's question dealt with new replacement trap tag sets for conch pot fishermen and whether they would be different from the original trap tag set. Dan stated that replacement trap tags would have different colors and fishermen would be required to remove the old trap tags from their gear and affix new trap tags to all their gear. Additionally, Law Enforcement would be notified when replacement trap tag sets were issued.

Beth then asked if Law Enforcement seizes untagged or improperly tagged traps. Lt. Bass stated that it depends on the number of non-complaint traps. He noted that Law Enforcement's capacity to haul and confiscate gear was limited by their vessels. To haul

or confiscate a substantial number of traps, Law Enforcement would be dependent on DMF to provide their vessel and trailer. Accordingly, logistics were such that it was difficult to haul and seize non-complaint gear on a regular basis. Dan McKiernan stated that DMF was ready to dedicate resources to these efforts.

No further comments were made. **Kalil Boghdan made a motion to adopt the Director's recommendation to: (1) increase initial conch pot trap tag allotment from 220 to 240 tags; and (2) if gear loss exceeds initial allotment, require an entire new batch of tags be ordered and old tags removed. The motion was seconded by Charles Quinn and approved unanimously.**

### Fall Commercial Scup Limits

Since the commercial scup quota was increased to nearly 2 million pounds, commercial fisherman had difficulties taking more than 60% of this quota. DMF has worked to increase access to this quota when possible. This includes pilot programs for draggers to land weekly aggregate limits for scup and using the Director's declaratory authority to eliminate closed fishing days for all gear types during the fall and to concurrently increase dragger limits above 800 pounds. At this time, DMF was recommending to eliminate closed commercial fishing days for scup and increasing dragger limits to 1,500 pounds after Labor Day.

No further comments were made. **Bill Adler made a motion to adopt the Director's recommendation to: (1) eliminate closed commercial scup fishing days for all gear types beginning the Tuesday after Labor Day; and (2) increase the dragger limit from 800 lbs to 1,500 lbs beginning the Tuesday after Labor Day. The motion was seconded by Lou Williams and approved unanimously.**

### American Eel Management

Dan stated that this was a "housekeeping" recommendation. The most recent addendum to the ASMFC's American Eel FMP required the establishment of a commercial fishery quota. Initially the eel quota would be managed on a coast-wide basis. However, if the coast-wide quota was exceeded by more than 10% in any year or by any amount in two consecutive years, states would be required to implement state-specific quotas. In anticipation of state-by-state quotas, DMF was recommending to establish the regulatory language necessary to adopt this quota and close the commercial fishery when the state's quota (2,000 lbs) was taken.

Additionally, there had been some confusion at ASMFC as to whether the recreational limit was a harvest limit or a general possession limit. Due to this confusion, DMF adopted regulatory language that would establish this limit as a general possession limit. As a result, recreational fishermen that wanted to possess more than 25 eels (or 50 if on a charter) started to purchase commercial fishing permits in order to possess more than the recreational limit. The ASMFC has since clarified that the recreational

limit is a harvest limit. So, DMF was recommending the state amend its regulations accordingly.

Vice-Chairman Adler asked DMF to further elaborate on the commercial eel quota. Deputy Director McKiernan reiterated the quota management scheme. He added that Massachusetts quota is only 2,000 pounds and due to underreporting this may turn out to be lower than historic harvest. As a result of enhanced reporting required with this quota the state was at risk of running an overage. Ray Kane asked if DMF thought the ASMFC would be open minded to Massachusetts eventually receiving a larger quota share. Dan stated that this was potentially possible for states, particularly Massachusetts, due to the state's work to promote eel passage, which in turn enhances eel populations.

No further comments were made. **Bill Adler made a motion to adopt the Director's recommendation to: (1) adopt regulatory language necessary to establish a potential state-wide yellow eel commercial quota; and (2) adjust the recreational eel limit so it applies strictly to harvest and not general possession. The motion was seconded by Lou Williams and approved unanimously.**

#### Sink Gillnet Buoy Line Marking

In 2015, the federal government amended the Atlantic Large Whale Take Reduction Plan (ALWTRP). Part of this amendment was to enhance gear marking requirements for sink gillnet fishermen. Sink gillnet fishermen were previously required to mark their buoy lines with a single 4" green mark. Under the revised ALWTRP, they are required to mark their gear with three 12" green marks (top, middle and bottom). As the ALWTRP applies to all commercial fishermen regardless of whether they are fishing in state or federal waters, this would not be a new requirement. Instead it just updates state regulations to complement existing and applicable federal requirements.

Lou Williams stated that the state-waters gillnet fleet was already complying with this requirement and he did not oppose the state enacting complementary rules.

Chairman Kane asked DMF about how the federal rules were enforced. Erin Burke indicated that NMFS relies on state enforcement through the Joint Enforcement Agreement. Lt. Bass noted that there was strong compliance with the new gear marking rules among the lobster fleet. However, he could not speak to compliance among the state's gillnet fishermen.

Lt. Bass indicated that some lobstermen were reporting difficulty finding supplies to mark their gear. Bill Adler noted there were many methods to do this (e.g., tape, paint). Erin stated that some fishermen use a 12" plastic tie wrap and there were reports of shortages of these ties. Lt. Bass agreed and stated that fishermen were likely focused the materials they use to comply with the requirement and there likely was not a general shortage.

No further comments were made. **Lou Williams made a motion to adopt the Director's recommendation to match existing federal ALWTRP requirements that sink gillnet endlines be marked with a 12" green mark at the top, bottom and middle of the endline. The motion was seconded by Gus Sanfillipo and approved unanimously.**

#### Re-Organization and Re-Codification

Jared Silva provided an overview of DMF's re-organization and re-codification recommendation. He stated that this initiative was in response to Governor Baker's Executive Order 562, which in part required agencies to review, update and simplify their regulatory code. DMF's efforts focused on a couple specific areas: (1) consolidating regulatory sections so that they apply to specific management areas (e.g., catch, gear, permitting); (2) create a streamlined declaration process to allow the Director to make in-season adjustments for all quota managed species; (3) rescind out dated regulations and regulatory sections (e.g., internal waters processing); (4) amend the regulations to use consistent terminology (e.g., "traps" as opposed to "pots"); and (5) to correct grammar and spelling where necessary.

Director Pierce thanked Jared for his hard work on this project. He noted that this project was exceptionally time consuming and required the hard work of not only Jared but Deputy Director McKiernan, DMF permitting staff and DFG's legal staff.

No further comments were made. **Bill Adler made a motion to adopt the Director's recommendation to reorganize and recodify 322 CMR. The motion was seconded by Kalil Boghdan and approved unanimously.**

### **RECREATIONAL FISHING PERMIT AND RECREATIONAL DEVELOPMENT FUND PRESENTATION**

Dr. Mike Armstrong provided a presentation on the state's recreational fishing permit and the use of the revenue from this permit. The presentation provided an overview of the state's recreational permitting requirements, the Recreational Fisheries Development Fund (Fund) and Panel (Panel), past projects and future spending plans and DMF programs these revenues fund (i.e., I&E, Diadromous Fisheries, Public Access, MRIP Surveys, Recreational Fisheries Assessment and Artificial Reefs). This presentation is available through DMF.

Kalil Boghdan asked if DMF built a budget prior to going to the Legislature for funds. Mike Armstrong stated that DMF did do this. He noted that the funding was dedicated and could not be reallocated to the general budget, so the Legislature was supportive of DMF proposed projects.

Chairman Kane was interested in DMF's MRIP program, particularly as it compared to other states. Dr. Armstrong stated that DMF's program was further along than many other states in terms of sampling. However, these states are being brought along by



ASMFC mandates. Mike noted that one of the problems faced by other states face is cooperation with surveys among their for-hire vessels.

As a follow up, Ray asked if the for-hire fleet was required to accommodate surveys. Mike stated that by regulation DMF can put samplers on permit holder vessels. Regarding the MRIP survey, DMF does put survey staff on head boats. Survey staff is not put on charter boats because of constraints related to vessel size. For the charter boat fleet, surveys are conducted dockside on patrons and their cooperation is voluntary. DMF is working with charter boat operators to educate them on the importance of this survey, particularly as it affects recreational fishing limits. The goal of this education is to enhance voluntary compliance.

Lt. Bass asked if any headway had been made in diverting recreational fishing permit proceeds towards enforcement. Mike Armstrong stated that for DMF to receive Wallop-Breaux Act reimbursements there are strict rules on documenting the use of the funds and they would have to document that the funds were used exclusively for recreational fisheries enforcement. Otherwise, it would be considered a diversion and the entire reimbursement may be jeopardized. Mike recognized Law Enforcement's interest in obtaining additional funding and noted the potential to have the revenue from fines for failure to obtain a permit could be transferred to Law Enforcement.

## **FUTURE PUBLIC HEARINGS**

### Commercial Striped Bass Limits

Deputy Director McKiernan led this discussion. DMF amended its commercial striped bass limits in 2014 to address a variety of concerns among fishery participants. One of the amendments was to adopt a 15-fish limit for holders of boat or lobster permit and a 2-fish limit for rod and reel or individual permit holders. This was done to allow a higher limit for more capitalized fishermen (i.e., those with vessels) and a lesser limit for less capitalized fishermen (i.e., shore based anglers). However, as a result of this rule change, shore based fishermen began to buy a boat permit for small vessels such as kayaks to access the higher limit. Then they would fish from shore under the 15-fish limit and allegedly recruit other shore-based fishermen to work as their crew. Dan noted that this activity was occurring along the Cape Cod Canal. This resulted in the submittal of a petition to better restrict this activity and based on this petition DMF was pursuing a public hearing to have the 2-fish limit more strictly apply to shore-based fishing activity.

Mike Pierdinock stated that he was contacted by a number of commercial fishermen who were interested in whether this was a localized issue. Deputy Director McKiernan stated that the petitioner was a southwestern Cape Cod Bay fisherman who was concerned about activity along the Canal. Dan was unaware of similar issues in other parts of the state.

Mike asked if the problem could be resolved through enhanced enforcement. Lt. Bass stated that it was not currently an enforcement issue, as what these individuals were doing was technically legal. He noted that they were exploiting a loophole and Law

Enforcement supported closing it so that it could be resolved through enforcement. Kalil Boghdan agreed.

Mike Pierdinock stated that striper fishing from shore had been poor in recent years. So, this issue was indicative of certain shore based fishermen taking advantage of the regulatory language to target certain near shore aggregations of fish. Deputy Director McKiernan stated that the petitioner also suggested raising the shore based limit from 2-fish to 3 or 4 fish because of the availability of fish along the Canal. However, DMF was not pursuing this higher limit because it deemed the 2-fish limit sufficient for shore based fishermen throughout the state. However, if public comment supported a higher limit, DMF would consider it in a final recommendation.

#### Wintertime Commercial Fluke Limits and Summertime Mobile Gear Limits for Scup

Deputy Director McKiernan stated that in the past few years, DMF emulated Rhode Island's weekly limits in our wintertime fluke and summer time scup fishery. These aggregate limits were allowed through an LOA, as a pilot program. DMF viewed these LOAs as largely successful but wanted to move away from the LOA model and use the lessons learned from these programs and implement regulations.

For fluke, DMF initiated the LOA program at the request of the certain New Bedford based interests that wanted enhanced access to the winter allocation of the fluke quota. In recent years, DMF has allowed a 1,000 pound weekly limit for the winter fishery. While the program has been successful, the administration of this program is burdensome on agency staff. More importantly, to enhance compliance with the weekly limit, DMF has required participants to land in certain ports where there is strong enforcement presence during the winter (e.g., New Bedford). This has made it difficult for certain vessels and dealers to participate in this program. These fishermen and dealers favor a uniform rule that would eliminate the need for an LOA program and allow the landing of this fish in more discrete ports.

Based on these comments, and considering the pending reduction to the 2017 fluke quota, DMF was proposing to eliminate the LOA program and instead allow vessels participating in the wintertime fluke fishery to land 750 lbs of fluke per trip.

With regards to the scup fishery, DMF initiated an LOA program that has allowed a weekly aggregate limit for druggers participating in the summertime scup fishery. This was principally conceived to allow for big tows of scup that often occur during the state's springtime squid fishery. DMF was considering eliminating this program in favor of codifying a regulatory limit that would accommodate fishery participants. However, prior to proposing a regulatory limit, DMF wanted to discuss potential changes with the industry. One of the driving factors in this proposal was to accommodate scup bycatch during the summertime federal squid fishery, as some of these participants are not currently authorized to participate in the state's LOA program, which is restricted only to CAP permit holders.

Andrew Walsh asked DMF to elaborate on their concerns regarding enforcement in the wintertime fluke fishery. Deputy Director McKiernan stated that during the wintertime Law Enforcement coverage is not routine in many discrete ports. By forcing vessels to land in ports where enforcement was more predictable, it was also eliminating opportunities for vessels and dealers who do not have the ability to service these ports. These comments led DMF to believe it may be micro-managing this small quota and to address them, DMF wanted to return to a simple trip limit during this period.

Andrew stated he supported continuing the LOA program. He noted that there are a number of vessels who rely on this wintertime weekly allowance (as well as monkfish and skates) to make ends meet. Eliminating this LOA program in favor of a smaller trip limit would not be profitable for these vessels and would unduly burden them. To address Andrew's concerns, Deputy Director McKiernan stated DMF could allow the LOA program for fluke to continue for another year.

Director Pierce stated that due to changes in the wintertime geographical distribution of fluke, the species is now targeted during this period in waters adjacent to Massachusetts.

This change in wintertime fluke distribution was also evidenced by Massachusetts based offshore fishermen buying fluke permits in Mid-Atlantic states to fish in waters adjacent to Massachusetts. This created problems this past year when vessels were looking to land fluke in Massachusetts against other states' quotas due to wintertime weather making the steam to the Mid-Atlantic dangerous. This change in the geographical distribution of effort was also a major reason why the NMFS was reviewing the potential for adopting a wintertime federal fluke quota management system (similar to what is in place for scup).

Andrew asked David if there was support for federal fluke management during the wintertime period. Director Pierce indicated that he was tentatively supportive of it. Particularly as it would promote fisherman safety and prevent Massachusetts fishermen from having to steam to more southerly states to land their fluke catch taken in the northeast. However, it would be a difficult to convince the southern states to move towards this management system because landings in their ports would likely decrease. Regardless, the Director did not expect this change would occur for 2017 and supported continuing the LOA program for another year.

## **DISCUSSION ITEMS**

### Nantucket Trawl Fishery Petition to Seasonally Prohibit Trawl Fishing around Nantucket

Director Pierce stated that the Nantucket Board of Selectmen and other island residents have expressed a strong desire to restrict trawling activity around Nantucket. The rationale included increased forage around the island to enhance recreational fishing (e.g., striped bass), spawning protections for the squid that spawn in this area and whose egg mops may be disturbed by trawl gear, reduce potential bycatch issues related to small mesh fisheries and reduce alleged habitat impacts.

David stated that he recently received a letter from the Nantucket Board of Selectmen that requested DMF provide a seasonal (spring and summer) mobile gear closure around the island, similar to the 3 mile closure provided to southern Cape Cod. He was in the process of drafting a response to this letter requesting Nantucket provide further clarification as to the applicable gears (e.g., small mesh, all trawls, dredges), where it would apply and how it would interact with the existing April mobile gear closures on the north side of the island. Once he received a response from Nantucket he would bring this issue back to the MFAC for further review. The Director added that this proposal needs to be considered as being in conjunction with the MAFMC's consideration of establishing small mesh trawl fishing buffer zones around Nantucket and Martha's Vineyard.

Andrew Walsh asked if Nantucket's most recent letter was available to the MFAC. David stated that he could provide it to the MFAC. However, he did not distribute it because he was unclear as to the specifics of their request and was seeking further refinements.

Vice-Chairman Bill Adler asked Director Pierce how far out from shore this mobile gear closure would apply. David stated that Nantucket's recent letter was unclear on this issue, but ultimately he expected they would want protections to apply out to the 3 mile line. Bill was under the impression that the MFAC dealt with this issue when they rescinded the allowance to allow small mesh fishing in state-waters behind Nantucket and Martha's Vineyard during the summertime period (i.e., after June 10). David stated that Nantucket may be looking for additional protections. He added that before he approached the MFAC, he wanted further clarification the details of their request.

### Whelk Management

DMF Senior Biologist Bob Glenn provided a presentation on the status of the whelk resource and the need for improved conservation, as well as better compliance with existing conservation management measures (e.g., minimum size and trap tags). This presentation focused on recent DMF size at maturity studies, trends in catch and effort, minimum size compliance and method of measurement techniques, and summertime entanglements of sea turtle entanglements in endlines. This presentation is available through DMF.

At the conclusion of the presentation DMF took questions and comments from the MFAC.

Chairman Kane's comments focused on the inter-annual variability of leatherback turtles being present in Nantucket Sound. He noted that an aerial survey of Nantucket Sound was recently conducted and they did not identify any leatherbacks in the area. However, there were some located to the east and to the south of the islands. Ray added that while doing water quality sampling he did not see a large presence of jellyfish in Nantucket Sound and opined that there may be a correlation between the presence of jellyfish and turtles, as jellyfish are forage for the turtles.

Ray then asked if DMF would be providing this presentation to the public. Bob Glenn responded that this presentation was put together for the MFAC meeting. However, he expected the information in this presentation to be part of any presentation provided to the public.

Director Pierce asked his staff to further explain how turtle entanglements may result in Massachusetts having to apply for a Section 10 permit from the federal government.

Bob Glenn explained that leatherback turtles are endangered species. Accordingly, these entanglements put that state - and the fishermen whose gear entangles the turtle - at risk of a lawsuit. If the state were to be sued, it would undoubtedly prompt the need for a Section 10 permit. Section 10 permits are issued to allow the incidental taking of endangered species during otherwise lawful activities, like conch pot fishing. However, the issuance of the Section 10 permit also triggers a requirement for the agency (e.g., DMF) to develop a conservation plan, approved by the federal government, to reduce takes of protected species to a mandatory and often highly conservative level. Additional management would then be required if takes remained higher than the prescribed allowance.

David then followed up and asked Bob to explain how a potential August conch pot haul out period may impact the need for a Section 10 permit.

Bob stated that sea turtles are typically in our waters during the summer and this is when most sea turtle entanglements (and related mortalities) occur in Nantucket Sound. August is also a period when conch pot effort and whelk landings are diminished due to changes in whelk behavior that make them less conducive to potting. So, requiring a conch pot haul-out period in August when the risk of entanglement (and related mortality) is high and fishing activity is low seemed like a potentially low impact means to sharply reduce entanglements (and mortality). Bob added that this August haul-out period was even suggested to DMF and NMFS by conch pot fishermen concerned about the potential future impacts of Section 10 permitting on the conch pot fishery.

Kalil Boghdan asked if whelks had any natural predators. Bob stated that they do not have many. There may be some predation by crabs.

Kalil asked for an overview of fishery participation and economics. Bob stated that there are about 150 conch pot permit holders, of which approximately 90 are active in any given calendar year. Channeled whelk landings from the conch pot fishery have been trending downwards in recent years from a peak of just over 3.5 million pounds in 2012 to just over 1.5 million pounds in 2015. However, the value has remained at about \$5M during this period due to an increasing ex-vessel value.

The Chairman asked DMF if they intended to move forward with specific management proposals. Dan McKiernan stated that DMF intended to hold public scoping meetings with industry in the immediate future and provide them with a similar presentation. Then,

using comments from the industry, DMF would develop a draft proposal for public hearing that would be presented to the MFAC during the fall. The ultimate goal would be to go to public hearing and enact final regulations, subject to MFAC approval, prior to the start of the 2017 fishery in April. Ray supported DMF providing this presentation to the industry in advance of any rule making.

The Chairman took questions from the audience.

Beth Casoni asked DMF if an August closure would affect all trap fishing in Nantucket Sound. Bob Glenn stated that the turtle entanglement issue seemed to be centered on conch pot gear (other trap gears are more routinely tended). So, it was likely that it would apply specifically to all conch pot gear, rather than all trap gear in a geographical area.

### Recreational Black Sea Bass and Commercial Bluefish Update

Nichola Meserve reviewed her memo to the MFAC. The memo highlighted that final 2015 coast-wide recreational harvest estimates for black sea bass and bluefish were substantially higher than the preliminary estimates, due to the incorporation of vessel trip report (VTR) data from certain for-hire permit holders. This prompted NMFS to consider additional management action.

Based on preliminary recreational harvest estimates, the northern region (MA – NJ) was required to amend their recreational black sea bass regulations to reduce harvest by 23%. NMFS indicated that final harvest estimates demonstrated that an additional 6% reduction should be required. However, the ASMFC objected to this additional reduction, primarily due to concerns that small sample sizes were erroneously driving the final harvest estimates. Additionally, there were public policy arguments against in-season adjustments driven by potentially suspect data. NMFS could have acted unilaterally to further regulate the federal fishery, but ultimately agreed with ASMFC and did not take action.

With regards to bluefish, final recreational harvest estimates were 36% higher than preliminary estimates. Bluefish harvest estimates remain well below the harvest target, so recreational bluefish limits were not impacted. However, the ASMFC's Bluefish FMP allows bluefish that may be potentially unharvested by the recreational sector to be allocated to the commercial sector. Therefore, these final recreational harvest estimates reduced the available commercial quota.

NMFS acted quickly to adopt a process to handle the final recreational harvest estimates and there ended up being a 7% decrease in the commercial quota. To mitigate this quota loss, DMF obtained a 150,000 pound commercial quota transfer from southern states who will land their remaining quota in 2016. With this additional quota, DMF was projecting the commercial bluefish fishery would continue into mid-to-late September, rather than close in mid-August. Nichola added that DMF will review

opportunities for additional quota transfers in September if the quota is reached and fish remain available in our waters.

Chairman Kane asked DMF what the bluefish commercial quota was in 2015. Nichola stated that after transfers, Massachusetts did not end up taking its quota allocation but ended up landing about 600,000 pounds. Ray then asked about the 2016 quota. Nichola stated that including the 150,000 pound quota transfer, the state's 2016 was at about 500,000 pounds.

Ray asked if the Bluefish FMP established a cut-off date for quota transfers. Nichola stated that she was uncertain if such a provision was in either the MAFMC or ASMFC FMP, but she would look into it. (After further review a cut-off date provision does not exist in the FMPs. NMFS has an internal policy that restricts routine transfers of bluefish and fluke after December 15<sup>th</sup>. This policy exists due to constraints resulting from the federal register's 2-week publication cycle. However, NMFS may accommodate unforeseeable late season transfers after the December 15 deadline, e.g., transfers due to safe harbor requests).

Kalil Boghdan asked how recreational harvest was estimated. Nichola noted that the preliminary recreational harvest is a census estimate done through MRIP surveys and then the final estimate includes VTR data from for-hire vessels and is integrated later in the year.

Kalil stated that he had never been surveyed and did not think other fishermen he knew had either. Mike Armstrong stated that survey intercept locations are based on usage by recreational fishermen, so heavily trafficked areas get sampled more than less trafficked ones.

Kalil questioned whether it was possible that harvest could be underestimated based on sampling practices. Nichola stated that if the data incorporated was not representative of harvest, then the harvest estimates could be incorrect. Mike Armstrong stated that this could work either way, meaning that harvest could be either underestimated or overestimated.

Mike Pierdinock stated he did not believe MRIP did an adequate job estimating recreational harvest and for many species the error bars on the estimates were too high to be used in management decisions. Additionally, he objected to the lack of timeliness in integrating the VTR data into the recreational harvest estimate. He stated there was no reason why data should be integrated so late in the year considering the reporting schedule for fishermen. Nichola noted that the timely assimilation of VTR data into the recreational harvest estimates was an issue discussed on a recent ASMFC conference call and NMFS was looking into ways to expedite the integration of VTR data. Director Pierce acknowledged that there are shortfalls in the MRIP survey. However, the use of this data to manage recreational fisheries was mandatory under federal law. Mike Armstrong offered to meet with Kalil to further discuss the MRIP survey.

Related to a potential underestimation of recreational bluefish harvest, Kalil voiced concerns about the availability of bluefish along the north shore, as their presence was scarce in recent years. Lou Williams stated that the presence of bluefish along Cape Ann has always been episodic. He provided a historical anecdote: an older fisherman had told him and his father of bluefish Cape Ann in the 1930s; however, his father who began fishing in the 1940s did not see bluefish in the area until the 1970s.

The Chairman took comments from the audience. Patrick Paquette stated that he expected there to be an increase in commercial bluefish harvest by rod and reel fishermen because of commercial striped bass season being extended into mid-to-late August when bluefish are more available throughout Massachusetts. He was curious if DMF accounted for this potential increase in harvest when projecting the quota closures. Nichola stated that dealers are required to report on a weekly basis and when approaching the quota DMF begins to regularly call active dealers to get a better handle on daily catch rates. So while DMF does not specifically account for changes in effort and landings, these changes are visible in dealer data.

#### Updates from the ASMFC and MAFMC

Director Pierce began by discussing the recent ASMFC meeting. His comments focused on the Menhaden Board. The Board deliberated a potential increase in the menhaden quota up to 20%. Omega Protein strongly advocated for this quota increase as it would provide additional quota to the reduction fishery, and this position was supported by a number of states. The Massachusetts delegation did not support a quota increase and instead supported maintaining the status quo. The rationale for this position was that menhaden is an important forage species and since the adoption of this quota management system we were beginning to see them in large abundances in Massachusetts waters. David stated that the vote was highly contentious and a number of varying quota increase proposals were presented but none passed. So, the vote was pushed back to the October meeting.

Kalil asked if there was a mechanism for an ASMFC Board to break a tie vote. David stated that the Chairman can break a tie vote within their delegation, but in this instance the Chairman did not.

The Director then moved onto to discuss the recent MAFMC meeting. His comments focused on the MAFMC's 2017 and 2018 catch limit specifications for black sea bass, scup and fluke. David stated that scup and black sea bass catch limit specifications would remain status quo, although black sea bass was subject to change pending the results of the forthcoming stock assessment. However, the MAFMC approved revised specifications for fluke, requiring a 30% reduction in catch limits for both the recreational and commercial sectors.

David stated that the previous stock assessment demonstrated that fluke had been rebuilt and spawning stock biomass (SSB) was far above its target. This resulted in catch liberalizations coast-wide. Yet, the most recent stock assessment demonstrated



that the earlier stock assessment was incorrect. In fact, it found that the fluke resource was never rebuilt and overfishing had been occurring since 1980. Additionally, a 2016 stock assessment update demonstrated that fluke could be considered overfished as soon as 2017. David stated that one of the reasons cited for the decline in SSB was consistent below average recruitment into the fishery. He also expressed some concern regarding the vastly different findings in the two most recent stock assessments.

The Director then discussed potential impacts from this 30% cut in catch. He noted that the commercial fishery would see an immediate reduction in the quota. This was problematic for Massachusetts as the state already receives a small share of the coast-wide quota (6.8%) and considering this the 2016 quota reduction the 2017 will be less than half of the quota available in 2015. As for the recreational fishery, preliminary 2016 recreational harvest estimates would not be available until early 2017, so it was hard to gauge what the potential impacts would be. However, if the 2016 harvest estimate was similar to the 2015 harvest estimate then the state would likely not have to constrain recreational fishing limits because its 2016 estimated harvest would be within the 2017 recreational harvest target.

Bill Adler asked if David would discuss potential joint management of black sea bass, scup and fluke between the NEFMC and the MAFMC. David reminded the MFAC that the NEFMC voted unanimously in favor of providing NMFS with a joint management proposal for these species. However, the MAFMC does not support joint management and he did not believe that NMFS was supportive either. As a counter proposal, the MAFMC offered two voting seats to the NEFMC on their Demersal Finfish Committee, which would give New England states the ability to vote on issues germane to these species. David did not find this counter-proposal to be satisfactory because important votes (e.g., specifications) are done at the full Council level and not at the Committee level. However, he believed that the NEFMC's request for joint management was well founded and consistent with NOAA's climate change initiatives.

#### Bureau of Offshore Energy Management

Director Pierce thanked Mike Pierdinock for requesting this item be discussed and asked Mike to lead the discussion.

Mike stated that the Bureau of Offshore Energy Management (BOEM) was considering the development of potential wind farms in areas of importance to the recreational fishery in waters south of Martha's Vineyard (e.g., the claw, Coxes Ledge and the "dumping ground"). These were areas where many recreational fishermen targeted a number of important migratory species (e.g., tunas, billfish and sharks). To date, he was very disappointed with energy companies and their level of engagement with recreational fishermen, particularly with regards to the potential impacts of wind energy development on access, navigation and safety. Additionally, he was frustrated that protected species advocates were not actively pursuing energy companies on the impacts the development of the proposed wind farms may have on these species of concern.

Chairman Kane asked Mike what he wanted to see done differently. Mike stated that he wanted to see the MFAC and DMF take a stronger role in advocating for the recreational fishermen who utilize this area to push the wind energy companies to be transparent on critical issues and impacts.

David stated that DMF had been in communication with BOEM and the energy companies. DMF highlighted to them the importance of communicating with both recreational and commercial fishing interests to discuss potential impacts related to these projects. Additionally, DMF had commented on a recent New York Wind Energy Area proposal and stressed the importance of this type of engagement. Mike acknowledged DMF's work in this area, but stated that it was difficult to foster a unified voice because of having to deal with multiple fisheries stakeholder groups with varying interest across multiple jurisdictions. He saw the MFAC as a means to begin doing this.

Doug Christel commented that a study would be released this fall regarding the proposed New York Wind Energy Area and this study would focus on navigational issues as part of the site assessment. At present, surveys were being conducted to determine the suitability of certain areas. The results of these surveys will provide more information regarding potential sites, which in turn would further inform impacts on navigation and fishing activity. This will allow more productive comment to be provided to BOEM. Additionally, NMFS wrote BOEM a strong letter regarding the need for broad scale stakeholder engagement on issues affecting access and navigation.

The Chairman took comments from the public. Beth Casoni stated that she was on a fisheries advisory committee for BOEM. In this capacity, she encouraged energy companies to provide the fishing industry with timely updates on site assessments and potential impacts. She noted that in terms of determining impacts there was little hard data available on area usage outside of what is available through VTR and VMS. This data did not necessarily take into account the complexity of fishing behavior, where an area may see high usage over a period for a particular reason and then fishing effort may shift into other areas that where there previously not frequented. Accordingly there may be little data to support the need of fishermen to have access to a variety of areas. Mike Pierdinock agreed.

#### Sea Herring Management in Management Area 1A

The Director stated that the "days-out" (closed landing days) management schedule for Management 1A (inshore Gulf of Maine) was recently revised by the ASMFC's Sea Herring Section. The action increased the number of days-out to five-days per week. This was done to address concerns, primarily from Maine, regarding increased effort in the area by purse seiners. Maine's concerns focused on the use of mid-water trawl vessels acting as carriers effectively increasing the capacity of the purse seine fleet and the movement of a new non-local purse seiner into the area.

DMF did not support the proposal to only allow two landing days and instead favored having three landing days. DMF supported three landing days because of concerns from the lobster fishery over the availability and affordability of fresh bait. David noted

that there would be another Section call in the coming weeks to get an update on catch and effort to determine if further action was warranted.

The Director added that the price of bait was particularly high in part due to these effort management controls, but also because the mid-water trawl fleet was not fishing on Georges Bank due to potential high levels of haddock bycatch that may limit their access to the fishery. He was hopeful the aggregations of haddock and sea herring and Georges Bank would disperse allowing the mid-water trawl fleet access to the herring resource and increase bait availability to the lobster fishery.

Kalil Boghdan asked for further clarification on days-out management. David stated that the strategy for managing sea herring in Area 1A was to limit landing days to a certain number of consecutive calendar days beginning on a Monday (e.g., Monday, Tuesday) in any given week. While fishermen could fish all week for sea herring, the fish could only be landed on these days, which in turn controlled effort and landing. Kalil asked why there was a 2,000 pound allowance on any day out. David stated that this was to accommodate catch and bycatch in small scale bottom trawl fisheries (e.g., whiting) and the directed fishery does not take advantage of landing this limit on a closed landing day.

Bill Adler noted that there was very limited fresh bait available in Massachusetts, which was preferred by the lobster industry. Local bait dealers were currently importing their bait from Maine.

Mike Pierdinock was concerned about the timing of the inshore sea herring fishery and its potential impacts on the Atlantic bluefin tuna fishery. Mike stated that large scale bait operations break up aggregations of herring which reduces the forage available for tunas negatively impacting the tuna fishery. David stated that he expected the Trimester 2 (June 1 – September 30) Area 1A fishery to remain open until mid-September. However, the Trimester 3 (October 1 – December 31) fishery is scheduled to open on shortly thereafter and the mid-water trawl fleet can fish in this area during this trimester. Yet, there may be inshore spawning closures (west of the 70<sup>th</sup> meridian) effective through a portion of October. David added that the NEFMC is considering buffer zone restrictions for the directed sea herring fishery to address forage depletion issues that may be impacting tuna fishermen.

#### Nemasket River Herring Run

Dr. Armstrong stated that under the ASMFC's River Herring FMP, states are required to implement a moratorium on the harvest and landing of river herring (except for a small bycatch allowance for the directed sea herring fishery). However, states may open certain river herring runs for directed fishing if data demonstrate there can be a sustainable harvest from a specific run. If a run is open there needs to be a biological plan to ensure harvest is sustainable and there are permitting, reporting and catch verification requirements to prevent poaching.

The Middleborough-Lakeville Herring Fishery Commission wrote DMF to formally request that the state re-open the Nemasket River Herring Run. The Nemasket run has a 10-year data series and DMF has worked with the Middleboro-Lakeville Fishery Commission to develop a sustainable management plan. DMF will be presenting this plan to the ASMFC for their approval. The plan is expected to be approved as it is more conservative than plans that were approved for other states.

If the plan is approved, then DMF would have to go out to public hearing and the MFAC would have to vote in favor of adopting regulations that allows river herring harvest from this run. Mike expected the biggest challenge in opening the Nemasket run would ensuring it did not result in poaching from other runs, which may be difficult to prevent given the relaxation of the prohibition on possession.

Mike Pierdinock asked if this was discussed or voted on at the recent Panel meeting. Nichola Meserve stated that it was discussed and Mike Armstrong added that the Panel did not vote on the issue. Mike Pierdinock recalled the Panel voting against opening the Nemasket run because of concerns that it would result in poaching and negatively impact other runs where herring abundances are low and data poor.

Mike Pierdinock then stated that drought conditions typically have a negative impact on future year classes of river herring. As the state was in the midst of a serious drought, he was concerned that opening the run at this time would have negative effects on efforts to rebuild river herring populations. Mike Armstrong agreed that drought conditions have a demonstrated negative impact on river herring production and future year class strength. However, the Nemasket run was unequivocally healthy with a consistent annual run of approximately 800,000 fish. He posited that if it was determined that harvest from a run this healthy cannot be authorized then it ultimately is a question of whether or not Massachusetts could open any run to river herring harvest.

#### **OTHER BUSINESS AND COMMISSIONERS COMMENTS**

Andrew Walsh asked for a discussion of DMF's proposed horseshoe crab pilot program to allow draggers to harvest horseshoe crabs under a biomedical authorization.

Deputy Director McKiernan stated that the biomedical industry was facing a shortage of crabs. DMF was considering a pilot program to allow draggers to work as biomedical horseshoe crab harvesters to meet the biomedical industry's demand.

Unlike the bait fishery, biomedical harvesters are required to return live crabs after they were bled to where they were harvested. Historically, the biomedical fishery occurred among a few hand harvesters in the Pleasant Bay system. The biomedical firm also takes crabs from bait dealers and bleeds them prior to them being sold. However, there has been a shortage of crabs this year. Accordingly, DMF wanted to accommodate this important market demand and developed a pilot program to allow draggers to work as biomedical harvesters. Participants would be subject to a number of requirements

designed to ensure the crabs are for biomedical purposes only and reduce fluke bycatch.

Noting his potential participation in this program, Andrew Walsh raised a number of concerns. First, he noted that the demand for crabs for bio-medical purposes is in part due to DMF reducing the horseshoe crab limit for draggers from 600 crabs to 300 crabs as a result of concerns about fluke bycatch. Now, DMF was proposing to allow participants in the LOA program to harvest 1,000 crabs during mid-to-late August when fluke are abundant and unavoidable when using trawl gear. He posited that it would be more beneficial for DMF to increase the daily limit for horseshoe crabs, particularly in the early part of the summer when fluke are less abundant but horseshoe crabs can be readily caught. Andrew added that this would also improve the price for crabs by creating stability in the supply chain.

Deputy Director McKiernan argued that the decline in price for horseshoe crabs can also be attributed to conch pot fishermen utilizing alternative bait sources. Additionally, dealer records demonstrate that trawlers were not currently harvesting the 300 crab limit. Andrew countered that most vessels were limiting out on fluke early in the day, particularly in August and there was limited incentive to target crabs after the fluke limit was reached when considering the price being paid to fishermen.

Dan stated that Andrew's point was well taken. However, considering the timing, there was little that could be done in 2016 to increase dragger horseshoe crab limits, particularly as the fluke fishery was about to close. Dan stated that the LOA program was designed to meet a shortage in the horseshoe crab supply for the biomedical industry in 2016. However, DMF could consider liberalizing dragger limits for horseshoe crabs in 2017.

Dan added that DMF was also interested in conservation engineering solutions that would allow for the catch of horseshoe crabs but reduce fluke bycatch. This pilot program provided an opportunity to consider potential ideas. To the point of fluke bycatch, Andrew stated that it would be too high in late-August and early-September to effectively target crabs, but vessels may be able to fish for crabs once the water cools and fluke move offshore.

Ray Kane asked DMF how the market shortfall of crabs may be influenced by regulations affecting hand harvesters. Dan stated that prior to 2010 the primary source of horseshoe crabs was the hand harvest fishery. However, due to spawning concerns restrictions were put in place the limited the hard harvester access to the resource. Ray Kane asked if this LOA program would provide additional opportunities for hand harvesters to meet biomedical demands. Dan stated that it would not because DMF wanted to protect spawning horseshoe crabs due to concerns regarding the impacts of targeting spawning crabs.

Bill Doyle stated that he would like to discuss no discharge areas (NDAs). He was recently informed that certain whale watch boats, head boats and ferries were

discharging in NDAs. He was concerned about the impact this may be having on local water quality and habitat. Bill was interested as to what government body he could address this with. Jared Silva stated that Coastal Zone Management (CZM) was the entity that designated NDAs. Kevin Creighton stated that DMF runs a pump-out program for recreational boaters, but this program did not provide pump-out services to commercial vessels. However, many municipalities have made concerted efforts to provide pump-out services for commercial vessels. He reiterated that CZM was involved in these programs and would be the appropriate entity to discuss this with. Mary Lee King stated that she would put Bill in contact with Bruce Carlisle at CZM.

Ray Kane stated that Director Pierce had mentioned that there were no pending action items for the September meeting. Accordingly, he was interested in gauging the MFAC's interest in cancelling the meeting. There were no objections to cancelling the meeting. (Note: After reconsideration, the September 15 business meeting was scheduled).

No further comments were made. **Bill Adler made a motion to adjourn the August 2016 MFAC business meeting. The motion was seconded by Gus Sanfillipo. The meeting was adjourned.**

### Meeting Documents

- August 11, 2016 MFAC Business Meeting Agenda
- June 28, 2016 MFAC Draft Business Meeting Minutes
- Recommendation to Adopt In-State Allowances for Undersized, Aquaculture Reared Oysters and Surf Clams, but not Quahogs.
- July Public Hearing Recommendations
- Presentation on Recreational Development Panel and Fund
- Petition to Adjust Commercial Striped Bass Limits
- Wintertime Commercial Fluke Limits
- 2016 Recreational Black Sea Bass and Commercial Bluefish Management Updates
- Whelk Fishery Presentation
- ASMFC's 2016 Summer Meeting Summary
- Issue Brief on 2017 Specifications for Black Sea Bass, Scup and Fluke
- Memorandum on 2017 Summer Flounder Fishery
- DMF Comment Letter on New York Wind Energy Area
- Issue Brief on Atlantic Sea Herring
- Middleborough-Lakeville Herring Fishery Commission Request to Open Nemasket Run

**Next Meetings**

September 15, 2016  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA

October 6, 2016  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA

November 10, 2016  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA

December 8, 2016  
DFW Field Headquarters  
1 Rabbit Hill Road  
Westborough, MA